

Enrolled Senate Bill 83

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CHAPTER

AN ACT

Relating to terminology describing persons; creating new provisions; and amending ORS 1.310, 3.260, 3.408, 10.030, 10.115, 21.010, 30.262, 30.475, 30.480, 40.272, 40.460, 45.285, 45.288, 45.291, 67.055, 87.512, 87.527, 87.603, 93.270, 107.500, 109.322, 116.253, 124.005, 124.010, 124.015, 124.020, 124.024, 124.050, 124.100, 125.005, 130.005, 133.055, 133.515, 135.703, 144.226, 167.352, 169.750, 174.107, 176.050, 179.325, 179.450, 179.473, 179.478, 179.485, 181.550, 181.642, 182.109, 185.110, 185.140, 185.225, 192.630, 194.578, 197.663, 206.315, 236.010, 238.350, 254.435, 267.240, 276.594, 276.595, 279.835, 279.840, 279.845, 279.850, 279.855, 279A.025, 279A.050, 279C.335, 285B.746, 285B.755, 289.005, 307.130, 310.155, 311.666, 311.668, 311.679, 311.687, 311.795, 311.796, 315.262, 316.099, 316.752, 316.758, 316.765, 323.455, 327.013, 327.023, 327.348, 336.790, 339.035, 339.137, 339.240, 339.252, 341.937, 342.120, 342.360, 343.035, 343.155, 343.165, 343.193, 343.224, 343.600, 344.511, 344.530, 344.550, 344.720, 344.735, 346.010, 346.015, 346.035, 346.070, 346.110, 346.120, 346.130, 346.160, 346.165, 346.169, 346.170, 346.180, 346.190, 346.210, 346.220, 346.250, 346.260, 346.290, 346.510, 346.520, 346.540, 346.565, 346.570, 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685, 346.687, 346.690, 348.270, 352.015, 353.070, 353.130, 353.210, 358.543, 366.486, 366.487, 391.815, 391.820, 391.830, 401.395, 401.710, 401.773, 408.570, 409.010, 409.610, 410.010, 410.020, 410.030, 410.040, 410.060, 410.070, 410.100, 410.210, 410.230, 410.270, 410.290, 410.295, 410.320, 410.490, 410.495, 410.600, 410.602, 410.604, 410.608, 410.715, 410.730, 410.732, 410.740, 410.851, 411.704, 411.706, 411.708, 414.025, 414.105, 414.211, 414.424, 414.708, 414.710, 418.015, 418.032, 418.205, 419B.504, 420.500, 420.505, 421.084, 426.005, 426.180, 426.220, 426.330, 426.490, 426.495, 426.500, 426.502, 426.504, 426.506, 426.508, 426.650, 427.005, 427.007, 427.010, 427.041, 427.051, 427.205, 427.330, 427.335, 428.205, 428.270, 430.010, 430.021, 430.050, 430.610, 430.625, 430.630, 430.640, 430.665, 430.685, 430.695, 430.705, 430.735, 430.737, 431.180, 437.030, 441.137, 441.525, 442.015, 442.502, 442.700, 443.400, 443.410, 443.452, 443.480, 443.485, 443.715, 443.720, 444.010, 444.020, 444.030, 444.120, 454.657, 455.720, 456.515, 456.539, 456.541, 456.543, 456.559, 457.095, 458.215, 458.515, 458.610, 458.625, 458.650, 458.655, 471.752, 476.730, 479.250, 479.255, 479.297, 480.225, 480.315, 497.121, 498.136, 498.170, 609.100, 646.482, 653.030, 653.269, 655.515, 656.033, 656.628, 657A.120, 658.019, 659A.100, 659A.103, 659A.103, 659A.112, 659A.115, 659A.118, 659A.130, 659A.133, 659A.136, 659A.142, 659A.145, 675.583, 675.785, 677.010, 677.415, 677.615, 677.625, 677.635, 680.205, 681.220, 682.025, 682.027, 682.035, 682.204, 683.120, 689.342, 689.344, 689.346, 701.525, 735.720, 742.518, 746.015, 801.115, 801.120, 801.235, 802.500, 803.030, 803.305, 807.070, 807.700, 811.035, 811.602, 811.604, 811.606, 811.607, 811.609, 811.611, 811.615, 811.617, 811.625, 811.630, 811.632, 811.635, 811.637, 813.270, 814.110, 814.120, 814.528, 815.110, 815.300, 820.210, 820.220, 822.105 and 825.017 and sections 9, 10, 11, 12 and 14, chapter 290, Oregon Laws 1987,

section 15, chapter 736, Oregon Laws 2003, and section 2, chapter 204, Oregon Laws 2005, and ORCP 34 G.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 1.310 is amended to read:

1.310. (1) As used in this section:

(a) "Judge" includes any judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court, or of any circuit court, of the State of Oregon.

(b) "Subject judge" means any judge whose alleged disability is involved in proceedings under this section.

(c) ["*Disabled*"] "**Disability**" means [*so incapacitated physically or mentally as*] **physical or mental incapacitation of such a degree as to cause a judge** to be unable to discharge the duties of judicial office.

(d) "Chief Justice" means the Chief Justice of the Supreme Court of Oregon; except that, if the Chief Justice is the subject judge, then the term "Chief Justice" means the one of the remaining judges of the Supreme Court who has served the longest period of time as a judge of that court.

(2) Any judge who becomes disabled may be retired in the manner provided in this section. The Governor, the Chief Justice, the Judicial Conference or the Board of Governors of the Oregon State Bar may file at any time with the Secretary of State a written request for an investigation to determine whether a judge named in such request [*is disabled*] **has a disability**. Upon receipt of such request, the Secretary of State shall transmit to the subject judge a certified copy of such request, with a notice to the effect that, unless such judge files a resignation within 45 days after the date of the notice, an investigation will be made to determine whether the judge [*is disabled*] **has a disability**. Such certified copy and notice shall be served on the subject judge, either by delivering them to the judge in person or by transmitting them by registered mail or by certified mail with return receipt to the judge at the last residence address of the judge as shown in the records of the Secretary of State.

(3) If the subject judge fails to file a resignation within 45 days after the date of the notice, the Secretary of State, within 10 days after the expiration of that period, shall transmit to the Commission on Judicial Fitness and Disability certified copies of the request and notice, with a certificate to the effect:

(a) That the Secretary of State had served the notice and copy of the request on the subject judge as provided in subsection (2) of this section; and

(b) That the judge had not filed a resignation.

(4) Upon receipt of the certified copies and certificate referred to in subsection (3) of this section, the commission shall make the requested investigation and, after hearing, determine whether the subject judge [*is disabled*] **has a disability**. The commission shall prepare an official record which shall include the testimony taken and the exhibits considered. If the subject judge refuses or is unable to attend, the commission may proceed with the hearing in the absence of the judge.

(5) If a majority of the members of the commission shall determine that the subject judge [*is*] in fact [*disabled*] **has a disability**, they shall make and sign written findings of fact upon which the determination is made and transmit them to the Secretary of State. If no appeal is filed, the office of such judge shall become vacant 10 days after the filing of such findings; and thereupon the Secretary of State shall certify to the Governor the existence of such vacancy. If a majority of the members of the commission do not find that the subject judge [*is disabled*] **has a disability**, they shall sign and file with the Secretary of State a written report to that effect, and thereupon the proceeding shall terminate.

(6) The commission may prescribe rules of procedure for the conduct of the investigation and fix the time and place of the hearing, giving the subject judge due notice thereof. The fees and mileage allowance of witnesses, including experts, shall be fixed by the commission.

(7) No judge retired under the provisions of this section shall be appointed as judge pro tempore to serve upon any court of the State of Oregon.

(8) The subject judge may appeal to the Supreme Court from a determination by the commission that the judge *[is disabled]* **has a disability**, by filing a notice with the Secretary of State within 10 days after the date of filing of the written findings of fact by the commission. The Secretary of State shall thereupon notify the commission and the Chief Justice. The commission shall forthwith transmit the official record to the Supreme Court, which upon receipt of such record shall have full jurisdiction of the proceeding.

(9) The Supreme Court shall review the proceeding de novo on the record with authority to affirm, reverse or annul the determination. Prior to such final determination, remand may also be made to the commission for additional findings of fact. In the event that the Supreme Court reverses or annuls the determination of the commission, the proceeding shall thereupon terminate and notice to that effect shall be filed with the Secretary of State. If the determination of the commission is affirmed, a decision to that effect shall be filed with the Secretary of State and the office of the subject judge shall forthwith become vacant. Thereupon, the Secretary of State shall certify to the Governor the existence of such vacancy.

SECTION 2. ORS 3.260 is amended to read:

3.260. (1) The circuit courts and the judges thereof shall exercise all juvenile court jurisdiction, authority, powers, functions and duties.

(2) Pursuant to ORS 3.275, in addition to any other jurisdiction vested in it by law, the circuit court shall exercise exclusive and original judicial jurisdiction, authority, powers, functions, and duties in the judicial district in any or all of the following matters that on the date specified in the order entered under ORS 3.275 are not within the jurisdiction of the circuit court:

(a) Adoption.

(b) Change of name under ORS 33.410.

(c) Filiation.

(d) Commitment of *[the mentally ill or mentally deficient]* **persons with mental illness or mental retardation**.

(e) Any suit or civil proceeding involving custody or other disposition of a child or the support thereof or the support of a spouse, including enforcement of the Uniform Reciprocal Enforcement of Support Act and enforcement of out-of-state or foreign judgments and decrees on domestic relations.

(f) Waivers of the three-day waiting period before a marriage license becomes effective under ORS 106.077.

(g) Issuance of delayed birth certificate.

SECTION 3. ORS 3.408 is amended to read:

3.408. (1) The presiding judge of the judicial district may assign to a family court department established under ORS 3.405 all of the following matters:

(a) Proceedings under the provisions of ORS chapters 107, 108, 109 and 110;

(b) Proceedings under the provisions of ORS chapter 25;

(c) Guardianship proceedings for minors under the provisions of ORS chapter 125;

(d) Juvenile court proceedings under ORS chapters 419A, 419B and 419C;

(e) Proceedings to commit a *[mentally ill]* person **with a mental illness** under the provisions of ORS chapter 426 and ORS 430.397 to 430.401;

(f) Probate proceedings under ORS chapters 111, 112, 113, 114, 115, 116 and 117; and

(g) Any other proceeding in which a family is involved.

(2) In addition to the matters specified in subsection (1) of this section, the presiding judge of the judicial district may assign to a family court department any criminal proceeding that involves domestic violence or other crime between family members.

SECTION 4. ORS 10.030 is amended to read:

10.030. (1) Except as otherwise specifically provided by statute, the opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation or any other factor that discriminates against a cognizable group in this state.

(2) Any person is eligible to act as a juror in a civil trial unless the person:

(a) Is not a citizen of the United States;

(b) Does not live in the county in which summoned for jury service;

(c) Is less than 18 years of age; or

(d) Has had rights and privileges withdrawn and not restored under ORS 137.281.

(3)(a) Any person is eligible to act as a juror in a criminal trial, beginning on or after December 5, 1996, unless the person:

(A) Is not a citizen of the United States;

(B) Does not live in the county in which summoned for jury service;

(C) Is less than 18 years of age;

(D) Has had rights and privileges withdrawn and not restored under ORS 137.281; or

(E) Has been convicted of a felony or served a felony sentence within the prior 15 years.

(b) As used in this subsection:

(A) "Felony sentence" includes any incarceration, post-prison supervision, parole or probation imposed upon conviction of a felony or served as a result of conviction of a felony.

(B) "Has been convicted of a felony" has the meaning given that term in ORS 166.270.

(4) A person who is blind, **hard of** hearing or speech impaired or [*physically disabled*] **who has a physical disability** shall not be ineligible to act as a juror or be excluded from a jury list or jury service on the basis of blindness, hearing or speech impairment or physical disability alone.

(5) No person is eligible to act as a juror in any circuit court of this state within 24 months after being discharged from jury service in a federal court in this state or circuit court of this state unless that person's service as a juror is required because of a need for additional jurors.

(6) In addition to the disqualifications listed in subsection (2) of this section, a person is ineligible to act as a juror on a grand jury if the person has been convicted of a felony, other than a felony traffic offense, or has served a felony sentence, other than a sentence for a felony traffic offense, within the prior 15 years. As used in this subsection, "conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

SECTION 5. ORCP 34 G is amended to read:

G Procedure. The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased **party** or [*disabled*] **the party with a disability**, or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

SECTION 6. ORS 10.115 is amended to read:

10.115. (1) As used in this section:

(a) "Assistive communication device" means any equipment designed to facilitate communication by a [*disabled*] person **with a disability**.

(b) [*Disabled juror*] "**Juror with a disability**" means a person who is **hard of** hearing or speech impaired, who is summoned to serve as a juror and whose name is drawn for grand jury or trial jury service.

(c) "Qualified interpreter" means a person who is readily able to communicate with a [*disabled*] juror **with a disability**, accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(2) The court to which a [*disabled*] juror **with a disability** is summoned, upon written request by the juror and upon a finding by the court that the juror requires the services of a qualified interpreter or the use of an assistive communication device in examination of the juror as to the juror's qualifications to act as a juror or in performance by the juror of the functions of a juror, shall appoint a qualified interpreter for the juror and shall fix the compensation and expenses of the interpreter and shall provide an appropriate assistive communication device if needed. The compen-

sation and expenses of an interpreter so appointed and the cost of any assistive communication device shall be paid by the public authority required to pay the fees due to the juror.

(3) An oath or affirmation shall be administered to a qualified interpreter appointed for a [disabled] juror **with a disability**, in substance that the interpreter will accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(4) Except as provided in subsection (5) of this section, a qualified interpreter appointed for a [disabled] juror **with a disability** shall be present during deliberations by the jury on which the juror serves. The interpreter [shall] **may** not participate in the jury deliberations in any manner except to facilitate communication between the [disabled] juror **with a disability** and the other jurors or other persons with whom the jurors may communicate, and the court shall so instruct the jury and the interpreter.

(5) When a [disabled] juror **with a disability** serves on a trial jury, each party to the proceeding shall stipulate to the presence of the qualified interpreter appointed for the juror during jury deliberations[,] and shall prepare and deliver to the court proposed instructions in respect to the interpreter.

SECTION 7. ORS 21.010, as amended by section 3, chapter 702, Oregon Laws 2005, and section 33, chapter 843, Oregon Laws 2005, is amended to read:

21.010. (1) Except as provided in subsection (2) of this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$105. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees [shall] **may** not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200 and the involuntary commitment of [allegedly mentally ill] persons **determined to be mentally ill** under ORS 426.135 or [allegedly mentally retarded] persons **determined to be mentally retarded** under ORS 427.295, or on judicial review of orders of the Psychiatric Security Review Board under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision.

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

SECTION 8. ORS 30.262 is amended to read:

30.262. (1) The following facilities and training homes are public bodies for the purposes of ORS 30.260 to 30.300:

(a) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives more than 50 percent of its funding from the state or a political subdivision of the state for the purpose of providing residential or vocational services to [mentally retarded or developmentally disabled] individuals **with mental retardation or developmental disabilities**.

(b) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives less than 50 percent of its funding from the state or a political subdivision of the state but that provides residential or vocational services to [mentally retarded or developmentally disabled] individuals **with mental retardation or developmental disabilities**, more than half of whom are eligible for funding for services by the Department of Human Services under criteria established by the department.

(2) The provisions of this section apply only to a nonprofit residential training facility, nonprofit residential training home or nonprofit facility that provides services to [*mentally retarded or developmentally disabled*] individuals **with mental retardation or developmental disabilities** under a contract with:

(a) The Department of Human Services; or

(b) A community mental health and developmental disabilities program established pursuant to ORS 430.620.

SECTION 9. ORS 30.475 is amended to read:

30.475. In enacting ORS 30.480 and 30.485, the Legislative Assembly of the State of Oregon declares:

(1) That many [*disabled*] persons **with disabilities** and older persons, due to disability or age, cannot obtain medical, educational, recreational or other important services or benefits, or pursue daily life activities outside the home, such as shopping or socializing, without transportation and other necessary assistance;

(2) That public resources are not adequate to provide dependable transportation to [*disabled*] persons **with disabilities** and older persons, and that it is in the best interest of this state to encourage volunteers to provide transportation services to Oregon's [*disabled*] people **with disabilities** and older people;

(3) That the threat or fear of personal liability arising from the provision of transportation services to [*disabled*] persons **with disabilities** and older persons seriously discourages individuals from providing services on a volunteer basis;

(4) That the policy of this state is to encourage volunteers to provide such transportation services; and

(5) That, therefore, persons who qualify under ORS 30.480 must be protected from the threat of unlimited personal liability arising from the provision of volunteer transportation services, and that ORS 30.475 to 30.485 shall be liberally construed in favor of such persons in order to promote fully the foregoing policies.

SECTION 10. ORS 30.480 is amended to read:

30.480. (1) When a provider of volunteer transportation services who is qualified under subsection (3) of this section provides the services under the conditions described in subsection (4) of this section to a person [*who is disabled or*] **with a disability or a person** who is 55 years of age or older, the liability of the provider to the person for injury, death or loss arising out of the volunteer transportation services shall be limited as provided in this section. When volunteer transportation services are provided to five or fewer persons at one time, the liability of the provider of the volunteer transportation services shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy, as described in ORS 806.080, or the amounts specified in ORS 806.070 for future responsibility payments for:

(a) Bodily injury to or death of any one person to whom the transportation services are provided, in any one accident.

(b) Bodily injury to or death of two or more persons to whom the transportation services are provided, in any one accident.

(c) Injury to or destruction of the property of one or more persons to whom the transportation services are provided, in any one accident.

(2) Notwithstanding the amount specified in subsection (1)(b) of this section by reference to ORS 806.070, if a qualified provider of transportation services provides the services to more than five persons, but not more than 16, at one time who [*are disabled*] **have disabilities** or who are 55 years of age or older, under the conditions described in subsection (4) of this section, the liability under subsection (1)(b) of this section shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy or \$300,000. The limitations on liability provided by ORS 30.475, 30.480 and 30.485 do not apply when volunteer transportation services are provided to 17 or more persons at one time who [*are disabled*] **have disabilities** or who are 55 years of age or older.

(3) The following persons qualify for the limitation on liability under subsections (1) and (2) of this section:

- (a) The person who provides or sponsors transportation services.
- (b) The owner of the vehicle in which transportation services are provided.
- (c) The person who operates the vehicle in which transportation services are provided.

(4) The limitation on liability under subsections (1) and (2) of this section applies to a person qualified under subsection (3) of this section only under the following conditions:

- (a) If the person is an individual, the individual must hold a valid Oregon driver's license.
- (b) The person must provide the transportation services on a nonprofit and voluntary basis.

However, this paragraph does not prohibit a sponsor of transportation services from reimbursing an operator of a private motor vehicle providing the services for actual expenses incurred by the operator. If an operator is paid, that operator is qualified only if operating as an emergency operator.

(c) The person providing the transportation services must not receive from the persons using the services any substantial benefit in a material or business sense that is a substantial motivating factor for the transportation. A contribution or donation to the provider of the transportation services other than the operator of the motor vehicle or any mere gratuity or social amenity shall not be a substantial benefit under this paragraph.

(d) Except as provided in paragraph (c) of this subsection, the transportation services must be provided without charge to the person using the services.

(5) The amounts received by a person [*who is disabled or*] **with a disability or a person 55 years of age or older** under the personal injury protection provisions of the insurance coverage of a person who qualifies for the limitation on liability under this section shall not reduce the amount that the person may recover under subsection (1) or (2) of this section.

(6) The liability of two or more persons whose liability is limited under this section, on claims arising out of a single accident, shall not exceed in the aggregate the amounts limited by subsection (1) or (2) of this section.

(7) This section does not apply in the case of an accident or injury if the accident or injury was intentional on the part of any person who provided the transportation services or if the accident or injury was caused by the person's gross negligence or intoxication. For purposes of this subsection, gross negligence is negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others.

(8) For purposes of this section, a person [*is disabled*] **has a disability** if the person has a physical or mental disability that for the person constitutes or results in a functional limitation to one or more of the following activities: Self-care, ambulation, communication, transportation, education, socialization or employment.

SECTION 11. ORS 40.272 is amended to read:

40.272. (1) As used in this section:

(a) [*“Disabled person”*] **“Person with a disability”** means a person who cannot readily understand or communicate the spoken English language, or cannot understand proceedings in which the person is involved, because of deafness or because of a physical hearing impairment or cannot communicate in the proceedings because of a physical speaking impairment.

(b) “Sign language interpreter” or “interpreter” means a person who translates conversations or other communications for a [*disabled*] person **with a disability** or translates the statements of a [*disabled*] person **with a disability**.

(2) A [*disabled*] person **with a disability** has a privilege to refuse to disclose and to prevent a sign language interpreter from disclosing any communications to which the [*disabled*] person **with a disability** was a party that were made while the interpreter was providing interpretation services for the [*disabled*] person **with a disability**. The privilege created by this section extends only to those communications between a [*disabled*] person **with a disability** and another, and translated by the interpreter, that would otherwise be privileged under ORS 40.225 to 40.295.

SECTION 12. ORS 40.460 is amended to read:

40.460. The following are not excluded by ORS 40.455, even though the declarant is available as a witness:

(1) (Reserved.)

(2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause of external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the memory of the witness and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, and in any form, kept in accordance with the provisions of subsection (6) of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(a) The activities of the office or agency;

(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding however, in criminal cases matters observed by police officers and other law enforcement personnel; or

(c) In civil actions and proceedings and against the government in criminal cases, factual findings, resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) A statement of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act

certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Statements of facts concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) The record of a document purporting to establish or affect an interest in property, as proof of content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in a document in existence 20 years or more the authenticity of which is established.

(17) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) (Reserved.)

(18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

(b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is unavailable as a witness but was chronologically or mentally under 12 years of age when the statement was made or was 65 years of age or older when the statement was made. However, if a declarant is unavailable, the statement may be admitted in evidence only if the proponent establishes that the time, content and circumstances of the statement provide indicia of reliability, and in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of reliability as is constitutionally required to be admitted. No statement may be admitted under this paragraph unless the proponent of the statement makes known to the adverse party the proponent's intention to offer the statement and the particulars of the statement no later than 15 days before trial, except for good cause shown. For purposes of this paragraph, in addition to those situations described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a substantial lack of memory of the subject matter of the statement, is presently incompetent to testify, is unable to communicate about the abuse or sexual conduct because of fear or other similar reason or is substantially likely, as established by expert testimony, to suffer lasting severe emotional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the declarant in chambers and on the record or outside the presence of the jury and on the record. The examination shall be conducted immediately prior to the commencement of the trial in the presence of the attorney and the legal guardian or other suitable person as designated by the court. If the declarant is found to be unavailable, the court shall then determine the admissibility of the evidence. The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the examination shall be to aid the court in making its findings regarding the availability of the declarant as a witness and the reliability of the statement of the declarant. In determining whether a state-

ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited to, the following factors:

- (A) The personal knowledge of the declarant of the event;
- (B) The age and maturity of the declarant or extent of disability if the declarant is a person with a developmental [*disabilities*] **disability**;
- (C) Certainty that the statement was made, including the credibility of the person testifying about the statement and any motive the person may have to falsify or distort the statement;
- (D) Any apparent motive the declarant may have to falsify or distort the event, including bias, corruption or coercion;
- (E) The timing of the statement of the declarant;
- (F) Whether more than one person heard the statement;
- (G) Whether the declarant was suffering pain or distress when making the statement;
- (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabricated a statement that represents a graphic, detailed account beyond the knowledge and experience of the declarant;
- (I) Whether the statement has internal consistency or coherence and uses terminology appropriate to the declarant's age or to the extent of the declarant's disability if the declarant is a person with a developmental [*disabilities*] **disability**;
- (J) Whether the statement is spontaneous or directly responsive to questions; and
- (K) Whether the statement was elicited by leading questions.

(c) This subsection applies to all civil, criminal and juvenile proceedings.

(d) This subsection applies to a child declarant, a declarant who is an elderly person as defined in ORS 124.050 or an adult declarant with a developmental [*disabilities*] **disability**. For the purposes of this subsection, "developmental [*disabilities*] **disability**" means any disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other disabling neurological condition that requires training or support similar to that required by persons with mental retardation, if either of the following apply:

(A) The disability originates before the person attains 22 years of age, or if the disability is attributable to mental retardation the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

(B) The disability results in a significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

(19) Reputation among members of a person's family by blood, adoption or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation of a person's character among associates of the person or in the community.

(22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding in which a child under 12 years of age at the time of trial, or a person with a developmental [*disabilities*] **disability** as described in subsection (18a)(d) of this section, may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with

or on the child or person with a developmental [*disabilities*] **disability** by another, the testimony of the child or person with a developmental [*disabilities*] **disability** taken by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child or person with a developmental [*disabilities*] **disability** will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a party, the child, the person with a developmental [*disabilities*] **disability** or the court in a civil proceeding, or on motion of the district attorney, the child or the person with a developmental [*disabilities*] **disability** in a criminal or juvenile proceeding, may order that the testimony of the child or the person with a developmental [*disabilities*] **disability** be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child or person with a developmental [*disabilities*] **disability** may be present during the testimony of the child or person with a developmental [*disabilities*] **disability**.

(25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police, and the person retrieving the data attests that the information was retrieved directly from the system and that the document accurately reflects the data retrieved.

(b) Any document containing data prepared or recorded by the Oregon State Police that is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police and that is electronically transmitted through public or private computer networks under an electronic signature adopted by the Oregon State Police if the person receiving the data attests that the document accurately reflects the data received.

(c) Notwithstanding any statute or rule to the contrary, in any criminal case in which documents are introduced under the provisions of this subsection, the defendant may subpoena the analyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst or other person.

(26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after the incident occurred, if the statement:

(A) Was recorded, either electronically or in writing, or was made to a peace officer as defined in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency medical technician or firefighter; and

(B) Has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a) of this subsection, the court shall consider all circumstances surrounding the statement. The court may consider, but is not limited to, the following factors in determining whether a statement has sufficient indicia of reliability:

(A) The personal knowledge of the declarant.

(B) Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection.

(C) The timing of the statement.

(D) Whether the statement was elicited by leading questions.

(E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient reason for denying admission of a statement under this subsection in the absence of other factors indicating unreliability.

(27) A report prepared by a forensic scientist that contains the results of a presumptive test conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that the report accurately reflects the results of the presumptive test.

(28)(a) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(A) The statement is relevant;

(B) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

(C) The general purposes of the Oregon Evidence Code and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this subsection unless the proponent of it makes known to the adverse party the intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that such statement is probative of the issues at hand, to provide the adverse party with a fair opportunity to prepare to meet it.

SECTION 13. ORS 45.285 is amended to read:

45.285. (1) For the purposes of this section:

(a) **“Assistive communication device” means any equipment designed to facilitate communication by a person with a disability.**

(b) **“Hearing officer” includes an administrative law judge.**

(c) **“Person with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.**

(d) **“Qualified interpreter” means a person who is readily able to communicate with the person with a disability, interpret the proceedings and accurately repeat and interpret the statements of the person with a disability to the court.**

[(1)] (2) In any civil action, adjudicatory proceeding or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a [disabled] person **with a disability** is a party or witness, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the [disabled] person **with a disability**, or to interpret the testimony of the [disabled] person **with a disability**.

[(2)] (3) No fee shall be charged to the [disabled] person **with a disability** for the appointment of an interpreter or use of an assistive communication device under this section. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person [is disabled] **has a disability** for the purposes of this section.

[(3)] (4) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state shall be from funds available to the court other than the Public Defense Services Account established by ORS 151.225, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(d) By the agency in an adjudicatory proceeding.

[(4) For the purposes of this section:]

[(a) *“Assistive communication device” means any equipment designed to facilitate communication by a disabled person.*]

[(b) "Disabled person" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.]

[(c) "Hearing officer" includes an administrative law judge.]

[(d) "Qualified interpreter" means a person who is readily able to communicate with the disabled person, interpret the proceedings and accurately repeat and interpret the statements of the disabled person to the court.]

SECTION 14. ORS 45.288 is amended to read:

45.288. (1) For the purposes of this section:

(a) "Hearing officer" includes an administrative law judge.

(b) "Non-English-speaking person" has the meaning given that term in ORS 45.275.

(c) "Person with a disability" has the meaning given that term in ORS 45.285.

(d) "Qualified interpreter" means a person who meets the requirements of ORS 45.285 for an interpreter for a person with a disability, or a person who meets the requirements of ORS 45.275 for an interpreter for a non-English-speaking person.

[(1)] (2) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, or whenever a hearing officer is required to appoint an interpreter in an adjudicatory proceeding, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter. Upon request of a party or witness, the court, hearing officer or designee of the hearing officer, in the discretion of the court, hearing officer or the designee of the hearing officer, may appoint a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case or adjudicatory proceeding.

[(2)] (3) The requirements of this section apply to appointments of interpreters for *[disabled]* persons **with disabilities** *[, as defined in ORS 45.285,]* and for non-English-speaking persons*[, as defined in ORS 45.275].*

[(3)] (4) The court, hearing officer or the designee of the hearing officer may not appoint any person under ORS 45.272 to 45.297 or 132.090 if:

(a) The person has a conflict of interest with any of the parties or witnesses in the proceeding;

(b) The person is unable to understand the judge, hearing officer, party or witness, or cannot be understood by the judge, hearing officer, party or witness; or

(c) The person is unable to work cooperatively with the judge of the court, the hearing officer, the person in need of an interpreter or the counsel for that person.

[(4)] (5) The Supreme Court shall adopt a code of professional responsibility for interpreters. The code is binding on all interpreters who provide interpreter services in the courts or in adjudicatory proceedings before agencies.

[(5) For the purposes of this section:]

[(a) "Hearing officer" includes an administrative law judge.]

[(b) "Qualified interpreter" means a person who meets the requirements of ORS 45.285 for a disabled person, or a person who meets the requirements of ORS 45.275 for a non-English-speaking person.]

SECTION 15. ORS 45.291 is amended to read:

45.291. (1) Subject to the availability of funding, the State Court Administrator shall establish a program for the certification of court interpreters. The program shall be established by rules adopted pursuant to ORS 1.002 and shall include, but not be limited to, provisions for:

(a) Prescribing the form and content of applications for certification;

(b) Prescribing and collecting reasonable fees for the application, examination, certification and renewal of certification for court interpreters;

(c) Establishing categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for *[disabled]* persons **with disabilities**, as defined in ORS 45.285, and for interpreters for non-English-speaking persons, as defined in ORS 45.275;

(d) Establishing minimum competency requirements for court interpreters in the various categories of certification;

(e) Establishing teaching programs designed to educate court interpreters in ethical, substantive and procedural legal issues;

(f) Prescribing the form of and administering examinations for the purpose of testing court interpreters for competency and ethics;

(g) Establishing grounds for renewal, suspension or cancellation of certificates;

(h) Establishing a process for receiving comments and input into the policy and procedures of the certification program;

(i) Establishing a process for receiving comments and input on compliance with ORS 45.272 to 45.297;

(j) Establishing a process for receiving comments and input on compliance with the code of professional responsibility adopted under ORS 45.288; and

(k) Establishing a process by which an adversely affected interpreter may seek review of any decision made by the State Court Administrator on renewal, suspension or cancellation of a certificate.

(2) An interpreter may be certified in Oregon by the State Court Administrator upon satisfactory proof that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section.

SECTION 16. ORS 67.055 is amended to read:

67.055. (1) Except as otherwise provided in subsection (3) of this section, the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(2) A partnership may be created under this chapter, a predecessor statute or a comparable law of another jurisdiction.

(3) An association or entity created under a law other than the laws described in subsection (2) of this section is not a partnership.

(4) In determining whether a partnership is created, the following rules apply:

(a) Factors indicating that persons have created a partnership include:

(A) Their receipt of or right to receive a share of profits of the business;

(B) Their expression of an intent to be partners in the business;

(C) Their participation or right to participate in control of the business;

(D) Their sharing or agreeing to share losses of the business or liability for claims by third parties against the business; and

(E) Their contributing or agreeing to contribute money or property to the business.

(b) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself create a partnership, even if the co-owners share profits made by the use of the property.

(c) The sharing of gross returns does not by itself create a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(d) It is a rebuttable presumption that a person who receives a share of the profits of a business is a partner in the business, unless the profits were received in payment of:

(A) A debt by installments or otherwise;

(B) Wages or other compensation to an employee or independent contractor;

(C) Rent;

(D) Amounts owing to a former partner, a beneficiary, representative or designee of a deceased [or *disabled*] partner **or a partner with a disability**, or a transferee of a partnership interest;

(E) Interest or other charge on a loan, whether or not the amount of payment varies with the profits of the business, and whether or not the loan agreement or instrument includes a direct or indirect present or future ownership interest in collateral or rights to income, proceeds or increase in value derived from collateral; or

(F) Consideration for the sale of a business, including goodwill, or other property by installments or otherwise.

(e) An agreement to share losses by the owners of a business is not necessary to create a partnership.

SECTION 17. ORS 87.512 is amended to read:

87.512. The notice of lien required under ORS 87.507 shall be a written statement verified by the oath of an officer of the long term care facility that asserts a claim for the lien and that contains:

(1) A true statement of demand, including an itemized statement of services provided and setting forth the amount due and owing to the long term care facility as of the date of the notice, after deducting all credits and offsets;

(2) The name of the individual who received care;

(3) The name, address and telephone number of the long term care facility;

(4) A statement that the amount claimed is a true and bona fide existing debt as of the date of filing the notice of lien;

(5) A statement that the lien may cover contracted services provided by the long term care facility subsequent to the services itemized under subsection (1) of this section and that interested persons may obtain information on the current amount due under the lien by contacting the long term care facility;

(6) A statement that the long term care facility has given the individual or an authorized representative a written summary of the requirements and procedures for establishing eligibility for Medicaid, including the right to an assessment that determines the extent of spouses' nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of the resources that can not be considered available for payment of costs for the medical care of the institutionalized spouse in the process of spending down to Medicaid eligibility levels. The written statement shall be given no fewer than 30 days and no more than 60 days before the notice of lien is filed. The long term care facility may meet the requirement of this subsection by providing written materials relating to Medicaid eligibility for long term care services for *[disabled]* persons **with disabilities** and elderly persons used by the Department of Human Services; and

(7) A description of the real property to be charged with the lien that complies with ORS 93.600.

SECTION 18. ORS 87.527 is amended to read:

87.527. Notwithstanding ORS 87.503 (1):

(1) A lien created by ORS 87.503 on the home of a living individual who received care may not be foreclosed for as long as any of the following individuals reside in the home:

(a) The individual who received care.

(b) The spouse of the individual.

(c) A *[minor or disabled]* child of the individual, **if the child is a minor or has a disability.**

(d) A sibling of the individual who has an equity interest in the home, but only when the sibling continuously resided in the home during the calendar year immediately preceding the date on which the individual first received care.

(e) Any other child of the individual, but only when the child continuously resided in the home during the two-year period immediately preceding the date on which the individual first received care and provided assistance during that period that delayed the need for care.

(2) A lien created by ORS 87.503 on the home of a deceased individual who received care may not be foreclosed for as long as any of the following individuals reside in the home:

(a) The surviving spouse of the individual.

(b) A *[minor or disabled]* child of the individual, **if the child is a minor or has a disability.**

(c) A sibling of the individual, but only when the sibling continuously resided in the home during the calendar year immediately preceding the date on which the individual first received care.

(d) Any other child of the individual, but only when the child continuously resided in the home during the two-year period immediately preceding the date on which the individual first received care and provided assistance during that period that delayed the need for care.

(3) A lien created by ORS 87.503 on other real property of a deceased individual may not be foreclosed while there is:

(a) A surviving spouse; or

(b) [minor or disabled Children] **A child of the individual, if the child is a minor or has a disability.**

SECTION 19. ORS 87.603 is amended to read:

87.603. As used in ORS 87.603 to 87.633, unless the context requires otherwise:

(1) "Ambulance" has the meaning given that term in ORS 682.025.

(2) "Ambulance services" includes the transportation of an **individual who is ill[,] or injured or [disabled individual] who has a disability** in an ambulance and the administration of medical or emergency care, if necessary, while the individual is being transported.

(3) "Governmental unit" means the state, any county, city or other municipal corporation or any department, board or other agency of any of them.

SECTION 20. ORS 93.270 is amended to read:

93.270. (1) [No] **A person conveying or contracting to convey fee title to real property [shall] may not include in an instrument for such purpose a provision:**

(a) Restricting the use of the real property by any person or group of persons by reason of color, race, religion, national origin or physical or mental [handicap] **disability.**

(b) Restricting the use of the real property by any home or facility that is licensed by or under the authority of the department under ORS 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) Any such provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable.

(3) [No] **An instrument that contains a provision restricting the use of real property in a manner listed in subsection (1)(b) of this section [shall] does not give rise to any public or private right of action to enforce the restriction.**

(4)(a) [No] **An instrument that contains a provision restricting the use of real property by requiring roofing materials with a lower fire rating than that required in the state building code established under ORS chapter 455 [shall] does not give rise to any public or private right of action to enforce the restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on public or private right of action under this paragraph are limited solely to considerations of fire rating.**

(b) As used in this subsection, "wildfire hazard zones" are areas that are legally declared by a governmental agency having jurisdiction over the area to have special hazards caused by a combination of combustible natural fuels, topography and climatic conditions that result in a significant hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be determined using criteria established by the State Forestry Department.

SECTION 21. ORS 107.500 is amended to read:

107.500. Each circuit court shall make available with appropriate forms an instructional brochure prescribed by the State Court Administrator and describing the procedures set forth in this section and ORS 107.485 and 107.490. The content of the forms used pursuant to this section and ORS 107.485 and 107.490 shall be substantially as follows:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
) No. _____
_____,)
Petitioner,) PETITION FOR

and _____,
Respondent.

) SUMMARY
) DISSOLUTION
) OF MARRIAGE
)
)
)
)

1. (_____, Petitioner,) (_____, Respondent,) has been a resident of Oregon continuously for the past six months before filing this petition.

2. Statistical Facts:

- a. Date of marriage:

- b. Place of marriage:

- c. Wife's address:

- d. Wife's maiden name:

- e. Wife's former legal names:

- f. Wife's age:

- g. Husband's address:

- h. Husband's former legal names:

- i. Husband's age:

3. My spouse and I have not been married more than 10 years.

4. Petitioner does not know of any pending (not yet decided by a judge) domestic relations suits involving this marriage in this or any other state.

5. There are no minor children born to the parties or born during the marriage. There are no adopted minor children. The wife is not now pregnant.

6. Petitioner requests a dissolution because irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

7. The personal property of the parties is not worth more than \$30,000. Petitioner requests that the Court divide the property as follows:

- (a) The wife should be awarded the following personal property:

Additional pages have been attached and labeled "7a. continued."

- (b) The husband should be awarded the following personal property:

Additional pages have been attached and labeled "7b. continued."

(c) The husband and wife should each sign any documents necessary to remove his or her name as owner of personal property awarded to the other party.

8. Neither the husband nor the wife own any real property.

9. The debts incurred by the husband and wife together or separately from the date of the marriage are not greater than \$15,000.

Petitioner requests the following division of debts:

(a) The wife be required to pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$_____. The wife can satisfy this judgment by paying off the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____
_____	_____

(b) The husband be required to pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$_____. The husband can satisfy the judgment by paying off the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____
_____	_____

10. I relinquish all rights I may have to spousal support and waive any right to pendente lite orders (temporary orders) except those pursuant to ORS 107.700 to 107.735 (the Family Abuse Prevention Act) or 124.005 to 124.040 (the Elderly Persons and Persons With Disabilities Abuse Prevention Act).

(Complete only if petitioner is paying fees and wants reimbursement from spouse or if fees are being deferred for the petitioner.)

11. (a) If petitioner has paid court costs and service fees, petitioner requests that costs and fees paid by petitioner be repaid by respondent spouse, _____, and that a judgment in the amount of such costs and fees be entered in favor of petitioner, _____, in the amount of \$_____.

(b) If fees are being deferred for petitioner:

Petitioner requests that judgment be entered against

(_____, Petitioner)

(_____, Respondent) in favor of the state in the amount of \$_____.

12. Petitioner requests that:

wife's legal name be restored to

husband's legal name be restored to

(Petitioner's signature)

Address:

Telephone:_____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____) No. _____
)
Petitioner,) SUMMONS FOR SUMMARY
) DISSOLUTION
) Marriage Dissolution Suit
and)
)
_____)
Respondent.)
)

TO: Name of Respondent

Address of Respondent

_____, Oregon

YOU HAVE BEEN SUED. The court may decide against you without your being heard unless you respond within 30 days of the day you received these papers. Read the information below.

NOTICE TO RESPONDENT:

READ THESE PAPERS CAREFULLY

Your spouse has filed a petition with the court to end your marriage and asking to divide your property and debts, if any. You must "appear" in this case or the court will grant your spouse's requests. To "appear," you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the Court Clerk or Administrator at: (location) _____ within 30 days of the day you received these papers, along with the required filing fee. The "motion" or "answer" must be in proper form and you must show that your spouse has been served with a copy of it.

Name of Petitioner

Address of Petitioner

City/State/Zip Code

Important Information about Respondent (A recent photo may be attached in addition to the requested information.)

Height:_____

Weight:_____

Race:_____

Date of Birth:_____

Automobile license number and description:

Other identifying information:

Best time and place to locate:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____) No. _____
)
Petitioner,) AFFIDAVIT OF PROOF
) OF SERVICE
)
and)
)
_____,)
Respondent.)
)
STATE OF OREGON)
) ss.
County of)

I, _____, swear/affirm under oath that:

I am a resident of the State of Oregon. I am a competent person over 18 years of age. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case. On the _____ day of _____, 2____, I served the Summons and Petition in this case personally upon the above named respondent in _____ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

Signature of _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____) No. _____
)
Petitioner,) MOTION AND ORDER FOR
) WAIVER OF FEES
)
and)
)

_____,)
Respondent.)
_____)

Petitioner moves the Court for an order waiving payment of filing fees, service fees, and other costs.

Petitioner

POINTS AND AUTHORITIES

ORS 21.605; the Court shall waive all fees and costs if the Court finds that the party is unable to pay such fees and costs.

ORDER

IT IS SO ORDERED.

DATED: This ____ day of _____, 2____.

COURT

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____) No. _____
_____)
Petitioner,) AFFIDAVIT FOR
and) WAIVER OF
_____) FEES AND COSTS
_____)
Respondent.)
STATE OF OREGON)
County of) ss.
County of)

I, _____, being first duly sworn upon oath, depose and declare that I am the petitioner for a Judgment of Summary Dissolution and am unable to pay necessary filing fees, service fees and court costs. My total monthly income from all sources is \$_____. I have \$_____ as assets and \$_____ as savings. I support _____ people. My monthly expenses are \$_____ housing, \$_____ food, \$_____ utilities, \$_____ transportation, \$_____ laundry, cleaning and personal requirements, \$_____ medical expenses, \$_____ clothing, \$_____ telephone, \$_____ total installment payments, \$_____ other expenses, for total monthly expenses of \$_____.

Signature of _____

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2____.

NOTARY PUBLIC FOR OREGON
My Commission Expires _____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR

THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____,) No. _____
Petitioner,)
) PETITIONER'S
) AFFIDAVIT, MOTION
) AND ORDER FOR
and) DEFAULT JUDGMENT
) OF DISSOLUTION
)
_____,)
Respondent.)
)
STATE OF OREGON)
) ss.
County of)

I, _____, swear/affirm under oath that:

I am the Petitioner. The Respondent is not now nor was at the time of the commencement of this suit in the military service of the United States; nor is the Respondent a [*legally mentally incapacitated*] person **who is legally mentally incapacitated**; nor is the Respondent under 18 years of age.

The Respondent was served with Summons and Petition for Dissolution on the _____ day of _____, 2____, in _____ County, Oregon, and has failed to answer or appear.

Petitioner
SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2____.

NOTARY PUBLIC FOR OREGON
My Commission Expires _____

Petitioner moves the Court for an Order entering the default of Respondent.

Petitioner

Address of Petitioner

City, State Zip

ORDER

IT IS SO ORDERED.
DATED: This ____ day of _____, 2____.

CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

In the Matter of)
the Marriage of)
_____,) No. _____
Petitioner,) JUDGMENT OF

) SUMMARY DISSOLUTION
)
 and)
)
 _____,)
 Respondent.)
)
)

Statistical Facts:

- a. Date of marriage:

- b. Place of marriage:

- c. Wife's address:

- d. Wife's maiden name:

- e. Wife's former legal names:

- f. Wife's age:

- g. Husband's address:

- h. Husband's former legal names:

- i. Husband's age:

This matter came before the Court for default. Petitioner appeared (in person) (by affidavit), and Respondent did not appear. THE COURT HAS BEEN FULLY ADVISED, AND JUDGMENT IS RENDERED AS FOLLOWS:

1. Dissolution: This marriage is dissolved and shall terminate on _____.
2. Prior Wills: Any will previously executed by either spouse with provisions in favor of the other spouse is revoked with respect to those provisions, unless the will expresses a different intent.
3. Division of Property: (a) The wife is awarded and shall own by herself the following personal property:

Additional pages have been attached as C-1.

- (b) The husband is awarded and shall own by himself the following personal property:
- _____
- _____
- _____
- _____

Additional pages have been attached as C-2.

(c) Husband and wife each shall sign any documents necessary to remove his or her name as owner of personal property awarded to the other. If either fails to sign the necessary documents, a certified copy of the Judgment shall serve as a conveyance of the property.

4. Payment of Debts: (a) The wife shall pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$_____. The wife can satisfy this judgment by paying the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____

Additional pages have been added as D-1.

(b) The husband shall pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$_____. The husband can satisfy the judgment by paying the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____

Additional pages have been added as D-2.

5. The wife shall have her former legal name restored. The restored name is:

The husband shall have his former legal name restored. The restored name is:

6. A judgment against (the husband) (the wife) for court costs and service fees in the amount of \$_____ is awarded to (the husband) (the wife) (this state if fees were waived or deferred).

DATED: This ____ day of _____, 2____.

CIRCUIT COURT JUDGE

SECTION 21a. If Senate Bill 269 becomes law, section 21 of this 2007 Act (amending ORS 107.500) is repealed.

SECTION 22. ORS 109.322 is amended to read:

109.322. (1) If a parent has been adjudged mentally ill or mentally [*deficient*] **retarded** and remains so at the time of the adoption proceedings, or if a parent is imprisoned in a state or federal prison under a sentence for a term of not less than three years and has actually served three years, the petitioner, in accordance with ORS 109.330, shall serve on the parent, if the parent has not consented in writing to the adoption, a summons and a motion and order to show cause why the adoption of the child should not be ordered without the parent's consent.

(2) In the case of a parent adjudged mentally ill or mentally [*deficient*] **retarded**, the petitioner shall also serve the summons and the motion and order to show cause upon the guardian of the parent. If the parent has no guardian, the court shall appoint a guardian ad litem to appear for the parent in the adoption proceedings.

(3) Upon hearing, if the court finds that the adoption is in the best interests of the child, the consent of the [*mentally ill, mentally deficient or imprisoned*] parent **who is imprisoned or adjudged mentally ill or mentally retarded** is not required, and the court may proceed regardless of the objection of the parent.

(4) This section does not apply when consent is given in loco parentis under ORS 109.316 or 109.318.

SECTION 23. ORS 116.253 is amended to read:

116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition shall be verified in the same manner as a petition in probate and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;

(d) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner;

(e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Department of State Lands shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time an inmate of a state institution in Oregon for *[the mentally ill or mentally deficient]* **persons with mental illness or mental retardation**, the reasonable unpaid cost, as determined by the Department of Human Services, of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property.

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

SECTION 24. ORS 124.005 is amended to read:

124.005. As used in ORS 124.005 to 124.040:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or a person with *[disabilities]* **a disability** or the withdrawal or neglect of duties and obligations owed an elderly person or a person with *[disabilities]* **a disability** by a caregiver or other person.

(d) Willful infliction of physical pain or injury.

(e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a na-

ture as to threaten significant physical or emotional harm to the elderly person or person with *[disabilities]* **a disability**.

(f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with *[disabilities]* **a disability** who had received sweepstakes promotional material in the United States mail, spent more than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.

(g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with *[disabilities]* **a disability** to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with *[disabilities]* **a disability** to believe that the threat will be carried out.

(h) Sexual contact with a nonconsenting elderly person or person with *[disabilities]* **a disability** or with an elderly person or person with *[disabilities]* **a disability** considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Guardian petitioner" means a guardian or guardian ad litem for an elderly person or a person with *[disabilities]* **a disability** who files a petition under ORS 124.005 to 124.040 on behalf of the elderly person or person with *[disabilities]* **a disability**.

(4) "Interfere" means to interpose in a way that hinders or impedes.

(5) "Intimidate" means to compel or deter conduct by a threat.

(6) "Menace" means to act in a threatening manner.

(7) "Molest" means to annoy, disturb or persecute with hostile intent or injurious effect.

(8) "Person with *[disabilities]* **a disability**" means a person described in:

(a) ORS 410.040 [(5)(b)] **(7)(b)**; or

(b) ORS 410.715.

(9) "Petitioner" means an elderly person or a person with *[disabilities]* **a disability** who files a petition under ORS 124.005 to 124.040.

(10) "Sweepstakes" means:

(a) A procedure for awarding a prize that is based on chance;

(b) A procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize; or

(c) A procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.

(11) "Sweepstakes promotion" means an offer to participate in a sweepstakes.

SECTION 25. ORS 124.010 is amended to read:

124.010. (1)(a) Except as provided in subsection (8) of this section, an elderly person or a person with *[disabilities]* **a disability** who has been the victim of abuse within the preceding 180 days or a guardian or guardian ad litem of an elderly person or a person with *[disabilities]* **a disability** who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 124.005 to 124.040, if the *[elderly]* person *[or person with disabilities]* is in immediate and present danger of further abuse from the abuser.

(b) The elderly person or person with *[disabilities]* **a disability** or the guardian or guardian ad litem of the *[elderly]* person *[or person with disabilities]* may seek relief by filing a petition with the circuit court alleging that the *[elderly]* person *[or person with disabilities]* is in immediate and present danger of further abuse from the respondent, alleging that the *[elderly]* person *[or person with disabilities]* has been the victim of abuse committed by the respondent within the 180 days

preceding the filing of the petition and describing the nature of the abuse and the approximate dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition.

(c) A petitioner or guardian petitioner is not required to provide in the petition information regarding the relationship between the elderly person or person with *[disabilities]* a **disability** and the respondent.

(d) Allegations in the petition must be made under oath or affirmation. The circuit court has jurisdiction over all proceedings under ORS 124.005 to 124.040.

(2) The petitioner or guardian petitioner has the burden of proving a claim under ORS 124.005 to 124.040 by a preponderance of the evidence.

(3) The right to petition for relief under ORS 124.005 to 124.040 is not affected by the fact that the elderly person or person with *[disabilities]* a **disability** has left the residence or household to avoid abuse.

(4) A petition filed under ORS 124.005 to 124.040 must disclose the existence of any Elderly Persons and Persons With Disabilities Abuse Prevention Act proceedings, any Abuse Prevention Act proceedings, any marital annulment, dissolution or separation proceedings pending between the parties or any protective proceedings under ORS chapter 125.

(5) Upon the filing of a petition under ORS 124.005 to 124.040, the clerk of the court shall give the petitioner or guardian petitioner information provided by the Department of Human Services about local adult protective services, domestic violence shelters and local legal services available.

(6) For purposes of computing the 180-day period in this section and ORS 124.020, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the elderly person or person with *[disabilities]* a **disability** is not counted as part of the 180-day period.

(7) If a guardian or guardian ad litem files a petition under this section on behalf of an elderly person or a person with *[disabilities]* a **disability**, the elderly person or person with *[disabilities]* a **disability** retains the right to:

- (a) Contact and retain counsel;
- (b) Have access to personal records;
- (c) File objections to the restraining order;
- (d) Request a hearing; and
- (e) Present evidence and cross-examine witnesses at any hearing.

(8) An elderly person or a person with *[disabilities]* a **disability** may not file a petition under ORS 124.005 to 124.040 against a guardian or conservator for the *[elderly]* person *[or the person with disabilities]*.

SECTION 26. ORS 124.015 is amended to read:

124.015. (1) The court shall hold a hearing within 21 days following the request, and may cancel or change any order issued under ORS 124.020 if the respondent, elderly person or person with *[disabilities]* a **disability** requests a hearing pursuant to ORS 124.020 (9).

(2) In addition to the relief granted under ORS 124.020, the court, in a hearing held pursuant to subsection (1) of this section, may:

- (a) Require either party to move from any residence whose title or right to occupy such premises is held jointly by the parties; and
- (b) Assess against any party reasonable attorney fees and such costs as may be incurred in the hearing.

(3)(a) If the respondent is represented by an attorney, time for the hearing may be extended for up to five days at the request of the petitioner or guardian petitioner so that the petitioner or guardian petitioner may seek representation.

(b) If the elderly person or person with *[disabilities]* a **disability** is represented by an attorney, time for the hearing may be extended for up to five days at the request of the respondent or guardian petitioner so that the respondent or guardian petitioner may seek representation.

(4) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for re-

straint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 124.010. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 124.020.

(5) An order or agreement made under ORS 124.005 to 124.040 or ORS 133.310 and 133.381 may not in any manner affect title to any real property.

(6) No undertaking shall be required in any proceeding under ORS 124.005 to 124.040.

(7) Any proceeding under ORS 124.005 to 124.040 shall be in addition to and not in lieu of any other available civil or criminal remedies.

(8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to 105.168, a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 to 124.040.

SECTION 27. ORS 124.020 is amended to read:

124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the elderly person or person with *[disabilities]* **a disability** named in the petition has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the *[elderly]* person *[or person with disabilities]*, the court shall, if requested by the petitioner or guardian petitioner, order, for a period of one year or until the order is withdrawn or amended, whichever is sooner:

(a) That the respondent be required to move from the residence of the elderly person or person with *[disabilities]* **a disability**, if in the sole name of the *[elderly]* person *[or person with disabilities]* or if jointly owned or rented by the *[elderly]* person *[or person with disabilities]* and the respondent, or if the parties are married to each other;

(b) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party;

(c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with *[disabilities]* **a disability**, or attempting to abuse, intimidate, molest, interfere with or menace the *[elderly]* person *[or person with disabilities]*;

(d) That the respondent be restrained from entering, or attempting to enter, on any premises when it appears to the court that such restraint is necessary to prevent the respondent from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with *[disabilities]* **a disability**;

(e) That the respondent be:

(A) Restrained, effective on a date not less than 150 days from the date of the order, from mailing the elderly person or person with *[disabilities]* **a disability** any sweepstakes promotion;

(B) Required to remove the elderly person or person with *[disabilities]* **a disability** from the respondent's sweepstakes promotion mailing list or place the *[elderly]* person *[or person with disabilities]* on a list of persons to whom sweepstakes promotions may not be mailed; and

(C) Required to promptly refund any payment received in any form from the elderly person or person with *[disabilities]* **a disability** after the date the order is entered by the court; or

(f) Except as provided in subsection (2) of this section, other relief that the court considers necessary to provide for the safety and welfare of the elderly person or person with *[disabilities]* **a disability**.

(2)(a) If the court finds that the elderly person or person with *[disabilities]* **a disability** has been the victim of abuse as defined in ORS 124.005 (1)(g), the court may order only relief that the court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the *[elderly]* person *[or person with disabilities]*, including but not limited to:

(A) Directing the respondent to refrain from exercising control over the money or property of the *[elderly]* person *[or person with disabilities]*;

(B) Requiring the respondent to return custody or control of the money or property of the [elderly] person [or person with disabilities] to the [elderly] person [or person with disabilities];

(C) Requiring the respondent to follow the instructions of the guardian or conservator of the [elderly] person [or person with disabilities]; or

(D) Prohibiting the respondent from transferring the money or property of the elderly person or person with [disabilities] **a disability** to any person other than the elderly person or person with [disabilities] **a disability**.

(b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

(A) To allow any person other than the elderly person or person with [disabilities] **a disability** to assume responsibility for managing any of the money or property of the elderly person or person with [disabilities] **a disability**; or

(B) For relief that is more appropriately obtained in a protective proceeding filed under ORS chapter 125 including, but not limited to, giving control and management of the financial accounts or property of the elderly person or person with [disabilities] **a disability** for any purpose other than the relief granted under paragraph (a) of this subsection.

(3) The showing required under subsection (1) of this section may be made by testimony of:

(a) The elderly person or person with [disabilities] **a disability**;

(b) The guardian or guardian ad litem of the elderly person or person with [disabilities] **a disability**;

(c) Witnesses to the abuse; or

(d) Adult protective services workers who have conducted an investigation.

(4) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with [disabilities] **a disability** with additional abuse.

(5) When a guardian petitioner files a petition on behalf of an elderly person or a person with [disabilities] **a disability**, the guardian petitioner shall provide information about the [elderly] person [or person with disabilities] and not about the guardian petitioner where the petition, order or related forms described in subsection (6) of this section require information about the petitioner.

(6) An instruction brochure shall be available from the clerk of the court explaining the rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be available from the clerk of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

_____,) PETITION FOR
Petitioner) RESTRAINING ORDER
(your name)) TO PREVENT ABUSE
) OF ELDERLY
) PERSONS OR
vs.) PERSONS WITH
) DISABILITIES
)
) NO. _____
_____,)
Respondent)
(person to be)
restrained))

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CONTEMPT OF COURT.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

ATTACH ADDITIONAL PAGES
IF NECESSARY.

I am the Petitioner and I state that the following information is true:

I am a resident of _____ County, Oregon.

Respondent is a resident of _____ County, Oregon.

I am either 65 years of age or older (I am _____ years of age) or I am a person with [disabilities] **a disability** (CIRCLE THE ONE THAT DESCRIBES YOU).

1. CHECK AND FILL OUT ANY SECTION(S) that apply to you and respondent:
 - ___ A. Respondent and I have been living together since _____, ____ (year).
 - ___ B. Respondent and I lived together from _____, ____ (year), to _____, ____ (year).
 - ___ C. I have been under the care of respondent since _____, ____ (year).
 - ___ D. I was under the care of respondent from _____, ____ (year), to _____, ____ (year).
 - ___ E. Respondent has sent me sweepstakes promotions.
 - ___ F. None of the above.
2. To qualify for a restraining order, respondent must have done one or more of the following:
Within the last 180 days, respondent has:
 - ___ A. Caused me physical injury by other than accidental means.
 - ___ B. Attempted to cause me physical injury by other than accidental means.
 - ___ C. Placed me in fear of immediate serious physical injury.
 - ___ D. Caused me physical harm by withholding services necessary to maintain my health and well-being.
 - ___ E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obligations.
 - ___ F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to place me in fear of significant physical or emotional harm.
 - ___ G. Sent me sweepstakes promotions, and I feel the need for the court's assistance to protect me from further expense. I am an elderly person or a person with [disabilities] **a disability**. In the past year, I spent more than \$500 on sweepstakes promotions that I received in the United States mail.
 - ___ H. Wrongfully taken or appropriated my money or property, or alarmed me by conveying a threat to me that my money or property would be wrongfully taken or appropriated, which I reasonably believed would be carried out.
 - ___ I. Had nonconsensual sexual contact with me or sexual contact to which I was incapable of consenting.

NOTICE TO PETITIONER: Sweepstakes companies are allowed up to 150 days to stop sending you sweepstakes entry materials. For a time after the court issues a restraining order, you may receive additional solicitations from respondent. However, beginning on the date the restraining order is issued, the respondent must immediately reject any further orders from you and must return any money you send to the company after the date the restraining order is issued.

3. Any period of time after the abuse occurred during which respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for a restraining order.
Respondent was incarcerated from _____, ____ (year), to _____, ____ (year).
Respondent lived more than 100 miles from my home from _____, ____ (year), to _____, ____ (year).

4. Did the abuse happen within the last 180 days not including the times respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

Date and location of abuse:

How did respondent injure or threaten to injure you?

5. Are there incidents other than those described in question 4 above, in which respondent injured or threatened to injure you? If yes, explain:

6. The abuse I am complaining about was witnessed by _____ (affidavit attached).
Other persons with knowledge of the abuse are _____ (affidavit attached).

7. I am in immediate and present danger of further abuse by respondent because:

8. In any of the above incidents:
Were drugs, alcohol or weapons involved? Yes No
Did you need medical help? Yes No
Were the police or the courts involved? Yes No

If you have circled yes to any of the above questions, explain:

9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Prevention Act or Abuse Prevention Act proceeding pending between respondent and me. It is filed in _____ (County), _____ (State), and I am (Petitioner) or (Respondent) in that case.
The case number of the case is: _____
B. There (is) (is not) another lawsuit pending between respondent and me for divorce, annulment or legal separation.
If yes, type of lawsuit: _____
It is filed in _____ (County), _____ (State).

- C. There (is) (is not) a protective proceeding filed in _____ (County), _____ (State).
10. Respondent may be required to move from your residence if it is in your sole name, or if it is jointly owned or rented by you and respondent, or if you and respondent are married. I (do) (do not) want respondent to move from my residence.
 My residence is:
 Owned Leased Rented
 By: _____

PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

PETITIONER MUST NOTIFY THE COURT
 OF ANY CHANGE OF ADDRESS.

ALL NOTICES OF HEARING WILL
 BE SENT TO THIS ADDRESS
 AND DISMISSALS MAY BE
 ENTERED IF YOU DO NOT APPEAR
 AT A SCHEDULED HEARING.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

 PETITIONER

STATE OF OREGON)
) ss.
 County of _____)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2_____.

 NOTARY PUBLIC FOR OREGON
 My commission expires: _____

RELEVANT DATA

RESPONDENT _____
 Sex _____ Telephone # _____
 Residence Address _____
 City/State/Zip _____
 County _____
 Birthdate _____ Age _____
 Race _____
 Height _____ Weight _____
 Eye Color _____
 Hair Color _____

PETITIONER (you) _____
Sex _____ *Telephone # _____
*Residence Address _____
City/State/Zip _____
County _____
Birthdate _____ Age _____
Race _____
Height _____ Weight _____
Eye Color _____
Hair Color _____

GUARDIAN PETITIONER
Name _____
Address _____
Telephone # _____

*If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

PLEASE FILL OUT THIS INFORMATION
TO AID IN SERVICE OF
THE RESTRAINING ORDER

Where is respondent most likely to be located?

Residence	Hours _____
Employment	Hours _____
	Address: _____

Employment	Hours _____
	Address: _____

Description of vehicle _____

Does respondent have any weapons or access to weapons? Explain:

Has respondent ever been arrested for or convicted of a violent crime? Explain:

Is there anything about respondent's character, past behavior or the present situation that indicates that respondent may be a danger to self or [other] **others**? Explain:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON

FOR THE COUNTY OF _____

_____,)
 Petitioner)
 (your name)) RESTRaining ORDER
) TO PREVENT ABUSE
 vs.) OF ELDERLY PERSONS
) OR PERSONS WITH
) DISABILITIES
)
) NO. _____
 _____,)
 Respondent)
 (person to be restrained))
)

TO THE RESPONDENT:
 VIOLATION OF THIS RESTRAINING ORDER
 MAY RESULT IN YOUR ARREST AND IN
 CIVIL AND/OR CRIMINAL PENALTIES.
 REVIEW THIS ORDER CAREFULLY.
 EACH PROVISION MUST BE OBEYED.
 SEE YOUR RIGHTS TO A HEARING.

The Court, having reviewed the petition, makes the following findings:

Judge's Initials

- Petitioner **has** been abused by respondent as defined by ORS 124.005;
- The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS 124.010;
- There is an immediate and present danger of further abuse to petitioner.

IT IS HEREBY ORDERED that:

<u>Petitioner's Request</u>	<u>Judge's Initials</u>
[] 1. Respondent is restrained (prohibited) from intimidating, molesting, interfering with or menacing petitioner, or attempting to intimidate, molest, interfere with or menace petitioner.	_____
[] 2. Respondent is restrained (prohibited) from entering, or attempting to enter: (Include names and address unless withheld for safety reasons.)	_____
[] Petitioner's residence.	_____
[] Petitioner's business or place of employment.	_____
[] Petitioner's school.	_____
[] Other locations.	_____
[] 3. Respondent is restrained (prohibited) from:	
[] Contacting, or attempting to contact, petitioner by telephone.	_____
[] Contacting, or attempting to contact, petitioner by mail.	_____
[] 4. Respondent shall move from and not return to the residence located at _____ except with a peace officer in order to remove essential personal effects of the respondent, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.	_____

- [] 5. A peace officer shall accompany the petitioner to the parties' residence in order to remove essential personal effects of petitioner, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade. _____
- [] 6. Beginning on a date not less than 150 days from the date of this order, the respondent shall not mail the petitioner any further sweepstakes promotions. _____
- [] 7. Respondent shall remove the petitioner from the respondent's sweepstakes promotion mailing list or shall place the petitioner on the respondent's list of persons to whom sweepstakes promotions may not be mailed. _____
- [] 8. Respondent shall refund any payment received in any form from the petitioner after the date this order is entered by the court. _____
- [] 9. Other relief: _____

- [] 10. No further service is necessary because respondent appeared in person before the Court. _____

IT IS FURTHER ORDERED that:
SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000 unless otherwise specified.
 Other Amount (\$)

THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR SUPERSEDED, WHICHEVER OCCURS FIRST.

DATED this _____ day of _____, 2_____.

 CIRCUIT COURT JUDGE (signature)

 CIRCUIT COURT JUDGE (printed)

IN THE CIRCUIT COURT OF
 THE STATE OF OREGON
 FOR THE COUNTY OF _____

_____,)
) NO. _____
 Petitioner,)
 vs.) AFFIDAVIT OF PROOF
 _____,) OF SERVICE
 Respondent.)
)
)
)
 STATE OF)
 OREGON)

County of _____) ss.
County of _____)

I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the _____ day of _____, 2_____, I served the Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities and the Petition for Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities in this case personally upon the above-named respondent in _____ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

Signature of _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) NO. _____
vs.)
_____,) MOTION AND ORDER
Respondent.) OF DISMISSAL
_____)
_____)

Comes now petitioner, _____, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2_____.
Petitioner

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IT IS SO ORDERED this _____ day of _____, 2_____.

JUDGE

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
(D.O.B. _____)) NOTICE TO RESPONDENT
Petitioner,) (Elderly Persons and
_____) Persons With Disabilities

and _____,
(D.O.B. _____)
Respondent.

) Abuse Prevention Act)
)
) NO. _____
)
)
)
)

THIS FORM MUST BE
ATTACHED TO SERVICE COPY
OF RESTRAINING ORDER

TO RESPONDENT: A TEMPORARY RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AFFECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:

REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR EXTENDED.

Keep in mind that this order remains in effect until the court that issued the order modifies or dismisses it. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless a different amount is ordered by the court. Violation of this order constitutes contempt of court and is punishable by a fine of up to \$500 or one percent of your annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

REQUEST FOR HEARING

I am the Respondent in the above-referenced action and I request a hearing to contest all or part of the order as follows (mark one or more):

- The order restraining me from contacting, or attempting to contact, the petitioner.
- Other _____

I (will) (will not) be represented by an attorney at the hearing.

Notice of the time and place of the hearing can be mailed to me at the address below my signature.

Date: _____

SIGNATURE OF RESPONDENT

ADDRESS

TELEPHONE NUMBER

(7) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent, unless the court finds that further service is unnecessary because the respondent appeared in person before the court.

(b) The county sheriff shall serve the respondent personally unless the petitioner or guardian petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 124.030.

(c) A respondent accused of committing abuse by means of a sweepstakes promotion may be served:

(A) Personally;

(B) By mailing certified true copies of the petition and order by certified mail to the address to which the elderly person or person with *[disabilities]* **a disability** would have sent the payment for goods or services promoted in the sweepstakes promotion had the elderly person or person with *[disabilities]* **a disability** been ordering the goods or services; or

(C) In the manner directed by the court.

(d) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 124.005 to 124.040.

(8) If the county sheriff:

(a) Determines that the order and petition are incomplete, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, that the documents have not been served. If the petitioner or guardian petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(9)(a) Within 30 days after a restraining order is served on the respondent under this section or within 30 days after notice is served on the elderly person or person with *[disabilities]* **a disability** under ORS 124.024, the respondent, elderly person or person with *[disabilities]* **a disability** may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court and shall be in substantially the form provided in subsection (6) of this section.

(b) If the respondent, elderly person or person with *[disabilities]* **a disability** requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the court information sufficient to allow such notification.

(c) The hearing is not limited to the issues raised in the request for hearing form and may include testimony from witnesses to the abuse and adult protective services workers. The hearing may be held in person or by telephone. If the respondent, elderly person or person with *[disabilities]* **a disability** seeks to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(d) The court shall exercise its discretion in a manner that protects the elderly person or person with *[disabilities]* **a disability** from traumatic confrontation with the respondent.

SECTION 28. ORS 124.024 is amended to read:

124.024. (1) A guardian petitioner must give notice of the petition, order and related forms described in ORS 124.020 (6) to the elderly person or person with [*disabilities*] **a disability** named in the petition.

(2) The guardian petitioner must also serve on the elderly person or person with [*disabilities*] **a disability** a notice that contains a statement of the rights of [*an elderly*] **the** person [*or a person with disabilities*] as follows:

- (a) The right to contact and retain counsel;
- (b) The right to have access to personal records;
- (c) The right to file objections to the restraining order;
- (d) The right to request a hearing to contest all or part of the restraining order; and
- (e) The right to present evidence and cross-examine witnesses at any hearing.

(3) Notice provided under subsection (1) of this section must be similar to the notice provided to the respondent under ORS 124.020 (6) and must contain an objection form that the elderly person or person with [*disabilities*] **a disability** may complete and mail to the court.

(4) Notice under this section must be personally served on the elderly person or person with [*disabilities*] **a disability**. The date of personal service must be not later than 72 hours after the court issues a restraining order under ORS 124.020.

(5) Proof of service under this section must be filed in the proceeding before the court holds a hearing under ORS 124.015.

SECTION 29. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect which leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with [*disabilities*] **a disability** to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the [*elderly*] person [*or person with disabilities*] to believe that the threat will be carried out.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(4) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician and surgeon, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services, county health department or community mental health and developmental disabilities program.

(d) Peace officer.

(e) Member of the clergy.

- (f) Licensed clinical social worker.
- (g) Physical, speech or occupational therapists.
- (h) Senior center employee.
- (i) Information and referral or outreach worker.
- (j) Licensed professional counselor or licensed marriage and family therapist.
- (k) Any public official who comes in contact with elderly persons in the performance of the official's official duties.

(L) Firefighter or emergency medical technician.

SECTION 30. ORS 124.100 is amended to read:

124.100. (1) As used in ORS 124.100 to 124.140:

- (a) "Elderly person" means a person 65 years of age or older.
- (b) "Financially incapable" has the meaning given that term in ORS 125.005.
- (c) "Incapacitated" has the meaning given that term in ORS 125.005.
- (d) "Person with [*disabilities*] **a disability**" means a person with a physical or mental impairment that:

(A) Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; and

(B) Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.

(e) "Vulnerable person" means:

- (A) An elderly person;
- (B) A financially incapable person;
- (C) An incapacitated person; or
- (D) A person with [*disabilities*] **a disability** who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person's physical or mental impairment.

(2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

(a) An amount equal to three times all economic damages, as defined in ORS 31.710, resulting from the physical or financial abuse, or \$500, whichever amount is greater.

(b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710, resulting from the physical or financial abuse.

(c) Reasonable attorney fees incurred by the plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(3) An action may be brought under this section only by:

- (a) A vulnerable person;
- (b) A guardian, conservator or attorney-in-fact for a vulnerable person;
- (c) A personal representative for the estate of a decedent who was a vulnerable person at the time the cause of action arose; or
- (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable person.

(4) An action may be brought under this section only for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.

(5) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.

(6) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced.

SECTION 31. ORS 125.005 is amended to read:

125.005. As used in this chapter:

(1) "Conservator" means a person appointed as a conservator under the provisions of this chapter.

(2) "Fiduciary" means a guardian or conservator appointed under the provisions of this chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter.

(3) "Financially incapable" means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental [*deficiency*] **retardation**, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(4) "Guardian" means a person appointed as a guardian under the provisions of this chapter.

(5) "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(6) "Minor" means any person who has not attained 18 years of age.

(7) "Protected person" means a person for whom a protective order has been entered.

(8) "Protective order" means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

(9) "Protective proceeding" means a proceeding under this chapter.

(10) "Respondent" means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055.

(11) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose of interviewing and evaluating a respondent or protected person.

SECTION 32. ORS 130.005 is amended to read:

130.005. (1) Except as provided in subsection (2) of this section, this chapter applies to express trusts, whether charitable or noncharitable, and to trusts created pursuant to a statute or a judgment that requires that the trust be administered in the manner of an express trust.

(2) This chapter does not apply to:

(a) A trust that is part of an employee benefit arrangement or an individual retirement account.

(b) A trust account established under a qualified tuition savings program pursuant to ORS 348.841 to 348.873.

(c) Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to rules of professional conduct adopted under ORS 9.490 and by real estate brokers pursuant to ORS 696.241.

(d) An endowment care fund established by a cemetery authority pursuant to ORS 97.810.

(e) Funds maintained by public bodies as defined by ORS 174.109 or other governmental entities.

(f) Trust funds held for a single business transaction or an escrow arrangement.

(g) Trusts created by a depository agreement with a financial institution.

(h) Trusts created by an account agreement with a regulated financial services entity.

(i) An account maintained under the Oregon Uniform Transfers to Minors Act as set forth in ORS 126.805 to 126.886.

(j) A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or business liquidation.

(k) A business trust as described in ORS 128.560.

(L) A voting trust as described in ORS 60.254.

(m) Funds maintained to manage proceeds from class actions.

(n) A trust deed as defined in ORS 86.705 (5) or any other trust created solely to secure the performance of an obligation.

(o) A trust established on behalf of a resident of a residential facility under ORS 443.880.

(p) A trust managed by a nonprofit association for [disabled] persons **with disabilities** under 42 U.S.C. 1396p(d)(4)(C), as in effect on January 1, 2006, and under the rules of the Department of Human Services.

(q) A resulting or constructive trust.

(r) A trust fund established for a purchaser who enters into a prearrangement sales contract, as defined in ORS 97.923, or a preconstruction sales contract, as defined in ORS 97.923.

SECTION 33. ORS 133.055 is amended to read:

133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.

(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;

(B) If reasonably ascertainable, the history of domestic violence between the persons involved;

(C) Whether any alleged crime was committed in self-defense; and

(D) The potential for future assaults.

(3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a person with [disabilities] **a disability** has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is under \$3,500.

Similar relief may also be available in tribal courts.

For further information you may contact: _____.

SECTION 34. ORS 133.515 is amended to read:

133.515. (1) As used in this section:

(a) **“Person with a disability” means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the person, or is incapable of presenting or assisting in the presentation of a defense, because of deafness, or because of a physical hearing impairment or physical speaking impairment.**

(b) **“Qualified interpreter” means a person who is readily able to communicate with the person with a disability, translate the proceedings, and accurately repeat and translate the statements of the person with a disability to the officer or other person.**

[(1)] (2) Upon the arrest of a *[disabled]* person **with a disability** and before interrogating or taking the statement of the *[disabled]* person **with a disability**, the arresting peace officer, or when the arrest is by a private person, the officer to whom the *[disabled]* person **with a disability** is delivered, shall make available to the *[disabled]* person **with a disability**, at the earliest possible time, a qualified interpreter to assist the *[disabled]* person **with a disability** throughout the interrogation or taking of a statement.

[(2)] (3) The public employer of the arresting peace officer or officer to whom the *[disabled]* person **with a disability** is delivered shall pay the fees and expenses of the qualified interpreter if:

(a) The *[disabled]* person **with a disability**, subsequent to the arrest, makes a verified statement and provides other information in writing under oath showing inability to obtain a qualified interpreter, and provides any other information required by the court having jurisdiction over the offense for which the *[disabled]* person **with a disability** was arrested concerning the inability to obtain such an interpreter; and

(b) It appears to the court that the *[disabled]* person **with a disability** was without means and was unable to obtain a qualified interpreter.

[(3) As used in this section:]

[(a) “Disabled person” means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the person, or is incapable of presenting or assisting in the presentation of a defense, because of deafness, or because of a physical hearing impairment or physical speaking impairment.]

[(b) “Qualified interpreter” means a person who is readily able to communicate with the disabled person, translate the proceedings, and accurately repeat and translate the statements of the disabled person to the officer or other person.]

SECTION 35. ORS 135.703 is amended to read:

135.703. (1) When a defendant is charged with a crime punishable as a misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in ORS 135.705, except when it was committed:

(a) By or upon a peace officer while in the execution of the duties of office;

(b) Riotously;

(c) With an intent to commit a crime punishable only as a felony; or

(d) By one family or household member upon another family or household member, as defined in ORS 107.705, or by a person upon an elderly person or a person with *[disabilities]* **a disability** as defined in ORS 124.005 and the crime was:

(A) Assault in the fourth degree under ORS 163.160;

- (B) Assault in the third degree under ORS 163.165;
- (C) Menacing under ORS 163.190;
- (D) Recklessly endangering another person under ORS 163.195;
- (E) Harassment under ORS 166.065; or
- (F) Strangulation under ORS 163.187.

(2) Notwithstanding subsection (1) of this section, when a defendant is charged with violating ORS 811.700, the crime may be compromised as provided in ORS 135.705.

SECTION 36. ORS 144.226 is amended to read:

144.226. (1) Any person sentenced under ORS 161.725 and 161.735 as a dangerous offender shall within 120 days prior to the parole consideration hearing under ORS 144.228 or the last day of the required incarceration term established under ORS 161.737 and at least every two years thereafter be given a complete mental and psychiatric or psychological examination by a psychiatrist or psychologist appointed by the State Board of Parole and Post-Prison Supervision. Within 60 days after the examination, the examining psychiatrist or psychologist shall file a written report of findings and conclusions relative to the examination with the Director of the Department of Corrections and chairperson of the State Board of Parole and Post-Prison Supervision.

(2) The examining psychiatrist or psychologist shall include in the report a statement as to whether or not in the psychiatrist's or psychologist's opinion the convicted person has **mental retardation** or any mental or emotional disturbance, [*deficiency,*] condition or disorder predisposing the person to the commission of any crime to a degree rendering the examined person a danger to the health or safety of others. The report shall also contain any other information which the examining psychiatrist or psychologist believes will aid the State Board of Parole and Post-Prison Supervision in determining whether the examined person is eligible for release. The report shall also state the progress or changes in the condition of the examined person as well as any recommendations for treatment. A certified copy of the report shall be sent to the convicted person, to the convicted person's attorney and to the executive officer of the Department of Corrections institution in which the convicted person is confined.

SECTION 37. ORS 167.352 is amended to read:

167.352. (1) A person commits the crime of interfering with an assistance, a search and rescue or a therapy animal if the person intentionally or knowingly:

- (a) Injures or attempts to injure an animal the person knows or reasonably should know is an assistance animal, a search and rescue animal or a therapy animal;
- (b) Interferes with an assistance animal while the assistance animal is being used to provide assistance to a [*physically impaired*] person **with a physical impairment**; or
- (c) Interferes with a search and rescue animal or a therapy animal while the animal is being used for search and rescue or therapy purposes.

(2) As used in this section, "assistance animal" and "[*physically impaired*] person **with a physical impairment**" have the meanings given those terms in ORS 346.680.

(3) As used in this section and ORS 30.822:

- (a) "Search and rescue animal" means that the animal has been professionally trained for, and is actively used for, search and rescue purposes.
- (b) "Therapy animal" means that the animal has been professionally trained for, and is actively used for, therapy purposes.

(4) Interfering with an assistance, a search and rescue or a therapy animal is a Class A misdemeanor.

SECTION 38. ORS 169.750 is amended to read:

169.750. [*No*] **A** juvenile detention facility [*shall*] **may not**:

(1) Impose upon a detained juvenile for purposes of discipline or punishment any infliction of or threat of physical injury or pain, deliberate humiliation, physical restraint, withholding of meals, or isolation, or detention under conditions [*which*] **that** violate the provisions of subsections (2) to (8) of this section, ORS 169.076 (7) to (11), (13) or (14) or 169.740;

(2) Use any physical force, other means of physical control or isolation upon a detained juvenile except as reasonably necessary and justified to prevent escape from the facility, physical injury to another person, to protect a detained juvenile from physical self-injury or to prevent destruction of property, or to effectuate the confinement of the juvenile in roomlock or isolation as provided for in ORS 169.090, 169.730 to 169.800, 419A.050 and 419A.052, and for only so long as it appears that [said] **the** danger exists. [No] **A** use of force or other physical means of control [shall] **may not** employ:

(a) The use of restraining devices for a purpose other than to prevent physical injury or escape, or, in any case, for a period in excess of six hours. However, the time during which a detained juvenile is being transported to another facility pursuant to court order shall not be counted within the six hours; or

(b) Isolation for a period in excess of six hours;

(3) Use roomlock except for the discipline and punishment of a detained juvenile for violation of a rule of conduct or behavior of the facility as provided for in ORS 169.076 (12) or for conduct [which] **that** constitutes a crime under the laws of this state or [which] **that** would justify physical force, control or isolation under subsection (2) of this section;

(4) Cause to be made an internal examination of a detained juvenile's anus or vagina, except upon probable cause that contraband, as defined in ORS 162.135 (1), will be found upon such examination and then only by a licensed physician or a nurse;

(5)(a) Administer to any detained juvenile medication, except upon the informed consent of the juvenile or in the case of an imminent threat to the life of the juvenile or where the juvenile has a contagious or communicable disease that poses an imminent threat to the health of other persons in the facility. However, [in no case shall] prescription medication **may not** be administered except upon a written prescription or written order by a licensed physician or licensed dentist and administered by a licensed physician, licensed dentist or other medical personnel authorized by the State of Oregon under ORS chapter 677, 678 or 679 to administer medication. Facility staff not otherwise authorized by law to administer medications may administer noninjectable medications in accordance with rules adopted by the Oregon State Board of Nursing pursuant to ORS 678.150 (9);

(b) Nonmedical personnel shall receive training for administering medications, including recognition of and response to drug reactions and unanticipated side effects, from the responsible physician or nurse and the official responsible for the facility. All personnel shall be responsible for administering the dosage medications according to orders and for recording the administrations of the dosage in a manner and on a form approved by the responsible physician; and

(c) Notwithstanding any other provision of law, [no] medication [shall] **may not** be administered unless a registered nurse or physician is either physically on the premises or readily available by telephone and within 30 minutes travel time of the patient;

(6) Administer to any detained juvenile any medication or medical procedure for purposes of experimentation;

(7) Discipline or punish any juvenile for conduct or behavior by roomlock, for a period in excess of 12 hours, or by denial of any privilege, regularly awarded other detained adults or juveniles, for more than one day, except after:

(a) Advising the juvenile in writing of the alleged offensive conduct or behavior;

(b) Providing the juvenile the opportunity to a hearing before a staff member who was not a witness to the alleged offensive conduct or behavior;

(c) Providing the juvenile the opportunity to produce witnesses and evidence and to cross-examine witnesses;

(d) Providing the detained juvenile the opportunity to testify, at the sole option of the juvenile; and

(e) A finding that the alleged conduct or behavior was proven by a preponderance of the evidence and that it violated a rule of conduct or behavior of the facility as provided for in ORS 169.076 (12) or constituted a crime under the laws of this state; and

(8) Detain juveniles [*who are emotionally disturbed, mentally retarded or physically handicapped*] **with emotional disturbances, mental retardation or physical disabilities** on the same charges and circumstances for which other juveniles would have been released or provided with another alternative.

SECTION 39. ORS 174.107 is amended to read:

174.107. (1) As used in the statute laws of this state, [*“disabled person”*] **“person with a disability”** means any person who:

(a) Has a physical or mental impairment which substantially limits one or more major life activities;

(b) Has a record of such an impairment; or

(c) Is regarded as having such an impairment.

(2) Specific types of [*disability*] **disabilities** shall be considered subcategories under the definition of [*disabled*] person **with a disability**.

SECTION 40. ORS 176.050 is amended to read:

176.050. (1) Whenever a Governor who is unable to discharge the duties of the office believes that the Governor's disability has been removed, the Governor may call a conference consisting of the three persons referred to as members of such a conference in ORS 176.040 (1). The three members of the conference shall examine the [*disabled*] Governor. After the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

(2) The finding of or failure to find the disability removed shall be made public.

SECTION 41. ORS 179.325 is amended to read:

179.325. The Department of Human Services may order the change, in all or part, of the purpose and use of any state institution being used as an institution for the care and treatment of [*the mentally ill or mentally retarded*] **persons with mental illness or mental retardation** in order to care for persons committed to its custody whenever the department determines that a change in purpose and use will better enable the state to meet its responsibilities to [*the mentally ill and mentally retarded*] **persons with mental illness or mental retardation**. In determining whether to order the change, the department shall consider changes in the number and source of the admissions of [*mentally ill and mentally retarded*] persons **with mental illness or mental retardation**.

SECTION 42. ORS 179.450 is amended to read:

179.450. The Department of Corrections may direct the employment of able-bodied persons at the Department of Corrections institutions and the Department of Human Services may direct the employment of able-bodied persons at institutions for [*the mentally ill or mentally deficient*] **persons with mental illness or mental retardation**, in the performance of useful work upon land owned by the state if it does not compete with free labor. [*No*] Work [*shall*] **may not** be performed upon any such land except by consent and approval of the agency of the state having management of the land.

SECTION 43. ORS 179.473 is amended to read:

179.473. (1) Whenever the health and welfare of the person and the efficient administration of the institution [*requires*] **require** the transfer of an inmate of a Department of Corrections institution or a youth offender in a youth correction facility to another institution:

(a) The Department of Corrections or the Oregon Youth Authority, with the consent of the Department of Human Services, may transfer a person at any institution under its jurisdiction to an institution for [*the mentally retarded*] **persons with mental retardation**, or, with the consent of the Oregon Health and Science University, to the Oregon Health and Science University.

(b) The Department of Corrections may transfer an inmate of a Department of Corrections institution to a state mental hospital listed in ORS 426.010 for evaluation and treatment pursuant to rules adopted jointly by the Department of Corrections and the Department of Human Services.

(c) The Oregon Youth Authority may transfer a youth offender or other person confined in a youth correction facility to a hospital or facility designated by the Department of Human Services for evaluation and treatment pursuant to rules adopted jointly by the Oregon Youth Authority and the Department of Human Services.

(d) Except as provided in subsection (2) of this section, the Department of Corrections or the Oregon Youth Authority may make a transfer of a person from any institution under the jurisdiction of the department or authority to any other institution under the jurisdiction of the department or authority.

(2) A youth offender in a youth correction facility may not be transferred to a Department of Corrections institution under subsection (1) of this section. A youth offender in a youth correction facility who has been transferred to another institution may not be transferred from such other institution to a Department of Corrections institution.

(3) The rules adopted under subsection (1)(b) and (c) of this section must:

(a) Provide the inmate or youth offender with the rights to which persons are entitled under ORS 179.485.

(b) Provide that a transfer of an inmate or a youth offender to the Department of Human Services for stabilization and evaluation for treatment may not exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (c) of this subsection.

(c) Provide for an administrative commitment hearing if:

(A) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate or youth offender for treatment; and

(B) The inmate or youth offender does not consent to the administrative commitment or an extension of the transfer.

(d) Provide for, at a minimum, all of the following for the administrative commitment hearing process:

(A) Written notice to the inmate or youth offender that an administrative commitment to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the inmate or youth offender to prepare for the hearing.

(B) Disclosure to the inmate or youth offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the inmate or youth offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the inmate or youth offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the inmate or youth offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the inmate or youth offender or extending the transfer.

(G) A qualified and independent assistant for the inmate or youth offender to be provided by the state if the inmate or youth offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this paragraph.

(e) Provide that an inmate or a youth offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the inmate or youth offender is a mentally ill person as defined in ORS 426.005.

(f) Provide that the duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing. Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced or beyond the period of time that the youth offender may be placed in a youth correction facility.

SECTION 44. ORS 179.478 is amended to read:

179.478. (1) If the person, a relative, guardian or friend, or institution staff have probable cause to believe that an inmate or youth offender is [*mentally retarded*] **a person with mental retardation** to such a degree that the inmate or youth offender cannot adjust to or benefit from the Department of Corrections institution or youth correction facility, the superintendent of the institution shall request that a diagnostic assessment be performed by the Department of Human Services or its designee. If there is probable cause to believe that the inmate or youth offender is [*mentally retarded*] **a person with mental retardation** and otherwise eligible for admission to a state [*hospital and*] training center [*for the mentally retarded*] pursuant to ORS 427.010 and other applicable statutes and rules of the Department of Human Services, the person shall be entitled to a commitment hearing.

(2) If the inmate or youth offender is by clear and convincing evidence determined by the court to be [*mentally retarded*] **a person with mental retardation**, the person shall be committed and transferred to a [*hospital and*] training center designated by the Department of Human Services as soon as space in an appropriate unit is available, and any sentence to a Department of Corrections institution or commitment to the youth correction facility shall be terminated.

SECTION 45. ORS 179.485 is amended to read:

179.485. Persons transferred to a state institution for [*the mentally ill or the mentally retarded*] **persons with mental illness or mental retardation** under ORS 179.473, 179.478[, 179.485] and 420.505 shall be entitled to the same legal rights as any other persons admitted to those institutions.

SECTION 46. ORS 181.550 is amended to read:

181.550. (1) All law enforcement agencies shall report to the Department of State Police statistics concerning crimes:

(a) As directed by the department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation.

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities but not individual criminal records.

(c) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental [*handicap*] **disability**, age, economic or social status or citizenship of the victim.

(d) And other incidents arising out of domestic disturbances under ORS 133.055 (2) and 133.310 (3).

(2) The department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein;

(b) An annual public report of the statistics on the incidence of crime motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental [*handicap*] **disability**, age, economic or social status or citizenship of the victim;

(c) Quarterly and annual reports of the statistics on the incidence of crimes and incidents of domestic disturbances; and

(d) Special reports as directed by the Governor.

SECTION 47. ORS 181.642 is amended to read:

181.642. The Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to:

(1) Investigate, identify and report crimes:

(a) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental [*handicap*] **disability**, age, economic or social status or citizenship of the victim; and

(b) That constitute abuse, as defined in ORS 419B.005, or domestic violence.

(2) Understand the requirements of the Vienna Convention on Consular Relations and identify situations in which the officers are required to inform a person of the person's rights under the convention.

SECTION 48. ORS 182.109 is amended to read:

182.109. In carrying out the policies stated in ORS 410.710, state agencies shall:

(1) Review their rules and policies and may revise them as necessary to reflect a positive approach to persons with disabilities.

(2) Encourage and promote education of state employees, state officials and the public in general about the worth and capacity of persons with disabilities.

(3) In all state correspondence and publications, avoid the use of stereotypes and negative labels such as "victim," "afflicted," "crippled" and "handicapped" except as such terms *[as]* **are** required by statute or federal law and regulation.

(4) Use the preferred and more positive term "person with *[disabilities]* **a disability**" instead of "disabled person," "handicapped" or other negative words except as such terms *[as]* **are** required by statute or federal law and regulation.

(5) In implementing subsections (1) to (4) of this section, develop and seek input regarding terminology and portrayal of persons with disabilities from persons who have disabilities and their advocates.

(6) Foster corrective measures and avoid stereotypes and negative labeling in texts used by schools, newspapers, magazines, radio and television by encouraging review and analysis of these media by publishers, company owners or appropriate agencies.

(7) Use the term "person with *[disabilities]* **a disability**" to the extent consistent with state and federal law in rules adopted on or after January 1, 2006.

SECTION 49. ORS 185.110 is amended to read:

185.110. As used in ORS 185.110 to 185.230, unless the context requires otherwise:

(1) "Advocate self-help group" means any organized group of individuals with disabilities who have joined together for purposes of informing the public of their needs and obtaining resources, services and benefits for their membership.

(2) "Consumer" means an individual with a disability, or a parent or legal guardian, other than the State of Oregon, of an individual with a disability, who utilizes the services made available by public and private organizations which serve individuals with disabilities.

(3) "[*Disabled*] Individual **with a disability**" means anyone who:

(a) Has a physical or mental impairment which substantially limits one or more of the individual's major life activities;

(b) Has a record of such impairment; or

(c) Is regarded as having such an impairment.

(4) "Sign language interpreter" means a person who is readily able to communicate with a [*hard-of-hearing*] person **who is hard of hearing**, translate proceedings or conversations and accurately repeat and translate the statements of a [*hard-of-hearing*] person **who is hard of hearing**.

SECTION 50. ORS 185.140 is amended to read:

185.140. (1) The Oregon Disabilities Commission shall:

(a) Advise the Department of Human Services, the Governor, the Legislative Assembly and appropriate state agency administrators on services and resources needed to serve [*disabled*] individuals **with disabilities** and recommend action by the Governor, the Legislative Assembly, state agencies, other governmental entities and the private sector appropriate to meet such needs.

(b) Advise the Governor, state and local elected officials and managers of public and private firms and agencies on issues related to achieving full economic, social, legal and political equity for individuals with disabilities.

(2) The commission in no way shall impinge upon the authority or responsibilities of any other existing or duly appointed commissions, boards, councils or committees. The commission shall act

as a coordinating link between and among public and private organizations serving [*disabled*] individuals **with disabilities**.

SECTION 51. ORS 185.225 is amended to read:

185.225. The State Board of Education shall adopt by rule standards for sign language interpreters for [*the deaf and hard-of-hearing*] **persons** in the public schools **who are deaf or hard of hearing**. In developing the standards, the state board shall consult with the advisory committee created under ORS 410.740 and the Director of Human Services.

SECTION 52. ORS 192.630 is amended to read:

192.630. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to [*the disabled*] **persons with disabilities**, or, upon request of a [*deaf or hard-of-hearing*] person **who is deaf or hard of hearing**, to fail to make a good faith effort to have an interpreter for [*deaf or hard-of-hearing*] persons **who are deaf or hard of hearing** provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services.

SECTION 53. ORS 194.578 is amended to read:

194.578. (1) As used in this section, "[*blind*] person **who is blind**" and "[*visually impaired individual*] **person with a visual impairment**" have the meanings given those terms in ORS 346.110.

(2) Notwithstanding any provision of ORS 194.005 to 194.200 or ORS 194.505 to 194.595:

(a) A [*blind*] person **who is blind**, a [*visually impaired individual*] **person with a visual impairment** or a person with a disability who is unable to sign any document because of the disa-

bility may use a signature stamp whenever the signature of the person is required on any document presented for notarization;

(b) In performing any notarial act involving the signature of a person described in paragraph (a) of this subsection, a notarial officer, in the manner prescribed by the Secretary of State by rule, shall witness the use of the signature stamp and accept the stamp in lieu of the signature of the person; and

(c) The notarial certificate of an act signed with a signature stamp shall contain the phrase “signed by stamp before me” or words to that effect.

SECTION 54. ORS 197.663 is amended to read:

197.663. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that [*disabled*] persons **with disabilities** and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for [*disabled*] persons **with disabilities** and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

SECTION 55. ORS 206.315 is amended to read:

206.315. (1) A sheriff is entitled to receive from the county the actual and necessary expenses of the sheriff incurred in transporting and conveying convicts and parole violators to a Department of Corrections institution and [*mentally ill*] persons **with mental illness** to a state mental hospital when conveyed by the sheriff in pursuance of the adjudication of an authorized tribunal of the state, to be audited and allowed as other claims against the county.

(2) All counties are entitled to receive reimbursement from the state in the amounts specified in subsection (3) of this section for the actual and necessary expenses incurred by the sheriff under subsection (1) of this section.

(3) Reimbursement by the state under subsection (2) of this section shall be as follows:

(a) Full reimbursement for transporting and conveying [*mentally ill*] persons **with mental illness** to a state mental hospital.

(b) Full reimbursement for returning a parole violator to the state penitentiary.

(c) Seventy-five percent reimbursement for transporting and conveying a convict to a Department of Corrections institution.

SECTION 56. ORS 236.010 is amended to read:

236.010. (1) An office shall become vacant before the expiration of the term if:

(a) The incumbent dies, resigns or is removed.

(b) The incumbent ceases to be an inhabitant of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office of the incumbent are required to be discharged.

(c) The incumbent is convicted of an infamous crime, or any offense involving the violation of the oath of the incumbent.

(d) The incumbent refuses or neglects to take the oath of office, or to give or renew the official bond of the incumbent, or to deposit such oath or bond within the time prescribed by law.

(e) The election or appointment of the incumbent is declared void by a competent tribunal.

(f) The incumbent is found to be a [*mentally diseased*] person **with a mental illness** by the decision of a competent tribunal.

(g) The incumbent ceases to possess any other qualification required for election or appointment to such office.

(h) Appointment of the incumbent is subject to Senate confirmation under section 4, Article III of the Oregon Constitution, and the appointment is not confirmed.

(2) The provisions of subsection (1)(b) of this section [*shall*] **do** not apply [*where*] **when** residence within the district, county or city for which the incumbent was elected or appointed is not required for such election or appointment.

SECTION 57. ORS 238.350 is amended to read:

238.350. (1)(a) Upon the request by a public employer that its employees be compensated for accumulated unused sick leave with pay in the form of increased retirement benefits upon service or disability retirement, the board shall establish a procedure for adding to the gross amount of salary used in determining final average salary the monetary value of one-half of the accumulated unused sick leave with pay of each retiring employee of the requesting public employer and shall establish benefits of the retiring employee on the basis of a final average salary reflecting that addition.

(b) For employees of a common school district, a union high school district, an education service district or a community college, or employees of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education, or employees of state schools for [*the*] **persons who are** deaf or blind engaged in teaching or other school activity, who are employed under contract for a period of less than 12 consecutive months and who are entitled to sick leave with pay of less than 96 hours for a year, each hour of accumulated unused sick leave with pay shall be valued on the basis of the actual number of contract hours of employment during the last year of contributing membership of an employee before retiring and the salary of the employee during the same period. This paragraph does not apply to any employee who is employed under contract for 12 consecutive months in any of the three or less years used in determining the final average salary of the employee.

(c) For the purpose of this subsection, accumulated unused sick leave with pay includes unused sick leave with pay accumulated by an active member of the system while in the service of any public employer participating in the system that has the request described in paragraph (a) of this subsection in effect at the time of the member's separation from the service of the employer, whether that employer is or is not the employer of the member at the time of the member's retirement.

(d) The board shall establish rules requiring all public employers participating in the system to transmit to the board reports of unused sick leave with pay accumulated by their employees who are members of the system and to provide timely notification to each of those employees of unused sick leave with pay accumulated by the employee and reported to the board.

(2) Accumulated unused sick leave with pay may be considered for the purpose of subsection (1) of this section only in accordance with the following requirements:

(a) Sick leave not credited at the rate actually provided by the public employer may not be considered. The amount of sick leave exceeding an amount credited at the lowest rate in effect for any employee of the public employer who is normally entitled to sick leave, and in any event exceeding an amount credited at a rate of eight hours for each full month worked, may not be considered.

(b) Sick leave credited for periods when an employee was absent from employment on sabbatical leave, educational leave or any leave without pay may not be considered.

(c) Any period during which an employee was absent from employment for illness or injury that was charged against sick leave not qualified for consideration shall be deducted from sick leave qualified for consideration.

(d) Sick leave for any period for which the public employer provides no sick leave with pay for its employees may not be considered.

(e) Sick leave accumulated on and after July 1, 1973, may be considered only to the extent it is supported by records of accumulation and use pursuant to a plan adopted formally by the public employer.

(f) Accumulated unused sick leave for periods before July 1, 1973, may be considered as follows:

(A) If any department, bureau or other organizational unit of a public employer maintained formal records of accumulation and use even though the public employer did not require that those records be maintained, the accumulated unused sick leave shall be considered according to those records.

(B) Where the public employer provided sick leave before July 1, 1973, but formal records of accumulation and use were not required or if required, are unavailable or incomplete, or the sick leave was subject to administrative limitations on total accumulation or transfer between public employers, accumulated unused sick leave for periods before July 1, 1973, may be considered as equal to 2.675 hours for each full month worked or an amount per month equal to the average monthly accumulation by an employee during the period beginning July 1, 1973, and ending at the time of retirement, whichever amount is greater, but reduced by the amount of any accumulated unused sick leave credited to the employee on July 1, 1973.

(g) The written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused sick leave of an employee of the Legislative Assembly, either of its houses or any of its committees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its committees or officers may be considered only to the extent it is supported by records of accumulation and use maintained by the Legislative Administration Committee, or any statutory, standing, special or interim committee of the Legislative Assembly or either house thereof, or any constitutional or statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted formally by the committee or officer.

(3)(a) As used in this subsection, "legislative employee" means any person employed by the Legislative Assembly, either of its houses or any of its committees or officers, but does not include a regular employee of a statutory committee or statutory office of the Legislative Assembly described in ORS 173.005 (1).

(b) Upon the request of a retiring legislative employee who is a member of the system, and the request of the public employer of the legislative employee, that the legislative employee be compensated for accumulated unused vacation with pay for periods of legislative employment in the form of increased retirement benefits upon service or disability retirement, the board shall add to the gross amount of salary used in determining final average salary of the legislative employee the monetary value of one-half of the accumulated unused vacation with pay of the legislative employee and shall establish the benefits of the legislative employee on the basis of a final average salary reflecting that addition.

(c) Accumulated unused vacation with pay may be considered for the purposes of paragraph (b) of this subsection only in accordance with the following requirements:

(A) Vacation not credited at the rate actually provided by the public employer may not be considered.

(B) Amounts of vacation exceeding amounts creditable to employees in the classified service of the state service pursuant to ORS 240.515 (1), and rules adopted pursuant thereto, in effect on June 30, 1981, shall not be considered.

(C) Vacation accumulated before, on and after July 1, 1981, may be considered only to the extent it is supported by records of accumulation and use pursuant to a plan adopted formally by the public employer. However, the written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused vacation of a legislative employee for periods of legislative employment before July 1, 1981.

(4) Employers with plans providing payments on account of sickness in lieu of sick leave with pay may request the board to consider the monetary value of accumulated unused payments on account of sickness as if such payments were an equivalent amount of accumulated unused sick leave with pay under the same terms and conditions specified in subsections (1) and (2) of this section.

SECTION 58. ORS 254.435 is amended to read:

254.435. (1) Subject to ORS 254.485, *[no]* a person *[shall]* **may not** take an official ballot from the polling place, except a board clerk may take a ballot to *[a handicapped]* **an elector with a disability** offering to vote immediately outside the polling place.

(2) An elector who does not vote the ballot before leaving the polling place shall return the ballot to a board clerk. The clerk shall write on the stub "Not voted" and initial the stub. The clerk then shall treat the stub and the ballot as a spoiled ballot. The clerk shall draw a line with pen and ink in the poll book across the signature of the elector and write the words "Not voted."

SECTION 59. ORS 267.240 is amended to read:

267.240. (1) In carrying out its duties under ORS 267.200, the district shall provide, **for persons who are elderly or have disabilities**, a program of transportation *[for persons who are elderly or disabled, which]* **that**:

(a) Is devised in consultation with and after solicitation of the views of persons representative of the communities for which such transportation shall be provided; and

(b) Gives due regard to parity of service.

(2) In carrying out its duties under ORS 267.200 (4), the district shall cause its future facilities and new equipment to be of such types as to make such facilities and equipment accessible to, and usable by, persons who are elderly or *[disabled]* **have disabilities**. However, contracts for equipment are exempt from this requirement until such equipment:

(a) Is available from not less than two manufacturers in mass producible quantities; and

(b) Conforms to designs approved by the Federal Transit Administration of the United States Department of Transportation as providing access to and being usable by persons who are elderly or *[disabled]* **have disabilities**.

(3) Notwithstanding subsection (2) of this section or any other provision of the law of this state, a program for transportation of persons who are elderly or *[disabled]* **have disabilities** shall be deemed to be in compliance with the laws of this state and rules promulgated thereunder if the program satisfies subsection (1) of this section and the federal regulations relating to transportation for persons who are elderly or *[disabled]* **have disabilities** promulgated by the Federal Transit Administration of the United States Department of Transportation.

SECTION 60. ORS 276.594 is amended to read:

276.594. (1) Except for parking facilities located in the garage of the State Capitol and in the area immediately in front of the State Capitol, but south of Court Street, the Oregon Department of Administrative Services shall also manage and determine under what conditions the grounds and parking structures owned, leased, or being acquired through lease purchase or installment purchase agreement by any state agency, which are located in the capitol area in the City of Salem, shall be used. Such grounds and structures include those located either adjacent, on or in close proximity to, though not necessarily contiguous to, leased office quarters defined in ORS 276.420, the Supreme Court Building, the buildings or facilities defined in ORS 276.004 and those grounds owned by the state by and through its Oregon Department of Administrative Services adjacent to the installations and facilities located in the area described in ORS 276.028 except the State Capitol. However, the department shall not exercise such authority over grounds or facilities that are owned, directly leased, or being acquired through lease purchase or installment purchase by another state agency which are outside of the capitol area in the City of Salem.

(2) Based upon its findings, the department shall adopt rules for parking of motor vehicles or other transportation uses of such grounds and facilities for which it is responsible under subsection (1) of this section. Notice of the rules shall be given by appropriate signs posted on the grounds and in the facilities. In adopting the rules, the department shall consider the state policy stated in ORS 276.591.

(3) The department may lease portions of the facilities and grounds described in subsection (1) of this section for the parking of motor vehicles and other transportation uses as it determines are appropriate. However, in such leasing, priority shall first be given to the needs of state officers and employees.

(4) The department shall furnish a space without charge to each statewide elective officer, except those with offices in the State Capitol, and shall designate certain spaces, either free or metered, for use by persons transacting business in state offices. The department may also provide free parking for *[disabled]* employees **with disabilities** who have been issued a disabled person parking permit by the Department of Transportation and who require the use of their vehicle in traveling to and from work. Any spaces not required for leasing to state officers and employees, or for other authorized purposes, may be leased to other persons.

(5) Receipts obtained under this section shall be retained by the Oregon Department of Administrative Services, except that the net receipts from any parking facilities which are located in the capitol area in the City of Salem and which are owned, directly leased, or being acquired through lease purchase or installment purchase agreement by any agency other than the Oregon Department of Administrative Services may be returned to the agency by the department.

SECTION 61. ORS 276.595 is amended to read:

276.595. (1) Each state agency, other than the Oregon Department of Administrative Services, shall manage and determine under what conditions the grounds and parking structures owned, directly leased or being acquired through lease purchase or installment purchase by it, which are outside the capitol area in the City of Salem, may be used by owners and operators of motor vehicles and for other transportation purposes.

(2) Based upon its findings, the state agency shall adopt rules for parking of motor vehicles or other transportation uses of such grounds and facilities for which it is responsible under subsection (1) of this section. Notice of the rules shall be given by appropriate signs posted on the grounds and in the facilities. In adopting the rules, the state agency shall consider the state policy stated in ORS 276.591.

(3) The state agency may lease portions of the facilities and grounds described in subsection (1) of this section for the parking of motor vehicles and other transportation uses as it determines are appropriate. However, in such leasing, priority shall first be given to the needs of state officers and employees. The agency shall designate certain spaces, either free or metered, for use by persons transacting business in state offices. The state agency may also provide free parking for *[disabled]* employees **with disabilities** who have been issued a disabled person parking permit by the Department of Transportation and who require the use of their vehicle in traveling to and from work. Any spaces not required for leasing to state officers and employees, or for other authorized purposes, may be leased to other persons.

SECTION 62. ORS 279.835 is amended to read:

279.835. As used in ORS 279.835 to 279.855:

(1) "Department" means the Oregon Department of Administrative Services.

(2) "Direct labor" includes all work required for preparation, processing and packing, but not supervision, administration, inspection and shipping.

(3) "*[Disabled]* Individual **with a disability**" means an individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.

(4) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(5) "Qualified nonprofit agency for *[disabled individual]* **individuals with disabilities**" means a nonprofit activity center or rehabilitation facility:

(a) Organized under the laws of the United States or of this state and operated in the interest of *[disabled]* individuals **with disabilities**, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) That complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and

(c) That in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS 279.835 to 279.855, during the fiscal year employs [*disabled*] individuals **with disabilities** for not less than 75 percent of the work hours of direct labor required for the manufacture or provision of the products or services.

SECTION 63. ORS 279.840 is amended to read:

279.840. The purpose of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 is to further the policy of this state to encourage and assist [*disabled*] individuals **with disabilities** to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization.

SECTION 64. ORS 279.845 is amended to read:

279.845. (1) It [*shall be*] **is** the duty of the Oregon Department of Administrative Services to:

(a) Determine the price of all products manufactured and services offered for sale to the various public agencies by any qualified nonprofit agency for [*disabled*] individuals **with disabilities**. The price shall recover for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and equipment replacement;

(b) To revise such prices from time to time in accordance with changing cost factors; and

(c) To make such rules regarding specifications, time of delivery and other relevant matters of procedure as shall be necessary to carry out the purposes of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335.

(2) The department shall establish and publish a list of sources or potential sources of products produced by any qualified nonprofit agency for [*disabled*] individuals **with disabilities** and the services provided by any such agency, which the department determines are suitable for procurement by public agencies pursuant to ORS 279.835 to 279.855, 279A.025 (4) and 279C.335. This procurement list and revisions thereof shall be distributed to all public purchasing officers.

(3) The department may not delegate any duty imposed under this section to any person or public agency outside of the department.

SECTION 65. ORS 279.850 is amended to read:

279.850. (1) If any public agency intends to procure any product or service on the procurement list, that public agency shall, in accordance with rules of the Oregon Department of Administrative Services, procure such product or service, at the price established by the department, from a qualified nonprofit agency for [*disabled*] individuals **with disabilities**, provided the product or service is of the appropriate specifications and is available within the period required by that public agency.

(2) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335, it is the intent of the Legislative Assembly that there be close cooperation between the department, public contracting agencies and qualified nonprofit agencies for [*disabled*] individuals **with disabilities**. The department on behalf of public contracting agencies and qualified nonprofit agencies for [*disabled*] individuals **with disabilities** is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 and any other law requiring procurement of products or services.

SECTION 66. ORS 279.855 is amended to read:

279.855. The following may purchase equipment, materials, supplies and services through the Oregon Department of Administrative Services in the same manner as state agencies as provided in ORS 279A.140 to 279A.155 and 279A.250 to 279A.290:

(1) Qualified nonprofit agencies for [*disabled*] individuals **with disabilities** participating in the program set forth in ORS 279.835 to 279.855, 279A.025 (4) and 279C.335.

(2) Residential programs when under contract with the Department of Human Services to provide services to youth in the custody of the state.

(3) Public benefit corporations, as defined in ORS 65.001, that provide public services either under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds.

SECTION 67. ORS 279A.025 is amended to read:

279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(c) Grants;

(d) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(e) Acquisitions or disposals of real property or interest in real property;

(f) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(g) Contracts for the procurement or distribution of textbooks;

(h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

(j) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(k) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(L) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(m) Sponsorship agreements entered into by the State Parks and Recreation Director in accordance with ORS 565.080 (4);

(n) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(o) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS chapters 178, 286, 287, 288, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(p) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(q) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565; or

(r) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the public contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The Oregon University System and member institutions, except as provided in ORS 351.086;

(c) The legislative department;

(d) The judicial department;

(e) Semi-independent state agencies listed in ORS 182.451 and 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(f) Oregon Corrections Enterprises;

(g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(i) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

(j) The Oregon Innovation Council; or

(k) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for *[disabled]* individuals **with disabilities** under ORS 279.835 to 279.855.

SECTION 68. ORS 279A.050 is amended to read:

279A.050. (1) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all rights, powers and authority in accordance with the provisions of the Public Contracting Code.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all of the rights, powers and authority necessary to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all of the rights, powers and authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all of the rights, powers and authority to procure or supervise the procurement of goods, services and personal services related to programs under the direct authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all of the rights, powers and authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The following specific limited authorities are subject to the provisions of the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing;

(A) For [*the chronically mentally ill*] **persons with chronic mental illness**, subject to applicable provisions of ORS 426.504; and

(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The State Department of Fish and Wildlife to procure or supervise the procurement of all goods, services, public improvements and personal services relating to dams, fishways, ponds and related fish and game propagation facilities;

(c) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;

(d) The Oregon Department of Aviation to procure or supervise the procurement of all goods, services, public improvements and personal services related to airports owned or operated by the state;

(e) The Economic and Community Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(f) The Attorney General to enter into contracts as necessary to exercise the authority granted in ORS chapter 180;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services;

(h) The Department of Corrections to procure or supervise the procurement of goods, services and personal services for the construction of all new buildings or additions for its institutions;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority; and

(k) Any state agency to make procurements when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

SECTION 69. ORS 279C.335 is amended to read:

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for [*disabled*] individuals **with disabilities** under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$5,000.

(d) A contract not to exceed \$100,000, or not to exceed \$50,000 in the case of a contract for a highway, bridge or other transportation project, made under procedures for competitive quotes in sections 132 and 133, chapter 794, Oregon Laws 2003.

(e) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(f) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

(g) A public improvement contract awarded under subsection (6) of this section in response to an emergency.

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency shall clearly identify the class using the class's defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the contracting agency's overall construction program. The contracting agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(5)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) After declaring that an emergency exists in accordance with rules adopted under ORS 279A.065, a contracting agency may award a public improvement contract in response to the emergency without using a competitive solicitation.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) Public improvement contracts excepted from competitive bid requirements under subsection (1)(a), (c), (d), (e), (f) or (g) of this section are not subject to the exemption requirements of subsection (2) of this section.

SECTION 70. ORS 279C.335, as amended by section 104, chapter 794, Oregon Laws 2003, section 13, chapter 103, Oregon Laws 2005, and section 59, chapter 625, Oregon Laws 2005, is amended to read:

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for *[disabled]* individuals **with disabilities** under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$5,000.

(d) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(e) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

(f) A public improvement contract awarded under subsection (6) of this section in response to an emergency.

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency shall clearly identify the class using the class's defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the contracting agency's overall construction program. The contracting agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(5)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) After declaring that an emergency exists in accordance with rules adopted under ORS 279A.065, a contracting agency may award a public improvement contract in response to the emergency without using a competitive solicitation.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) Public improvement contracts excepted from competitive bid requirements under subsection (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection (2) of this section.

SECTION 71. ORS 279C.335, as amended by sections 104 and 105a, chapter 794, Oregon Laws 2003, sections 13 and 14, chapter 103, Oregon Laws 2005, and sections 59 and 60, chapter 625, Oregon Laws 2005, is amended to read:

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for [disabled] individuals **with disabilities** under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$5,000.

(d) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(e) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

(f) A public improvement contract awarded under subsection (6) of this section in response to an emergency.

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services or a local contract review board may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency. In making the finding, the director or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency shall clearly identify the class using the class's defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related

class of public improvement contracts from the contracting agency's overall construction program. The contracting agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the director or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(5)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) After declaring that an emergency exists in accordance with rules adopted under ORS 279A.065, a contracting agency may award a public improvement contract in response to the emergency without using a competitive solicitation.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) Public improvement contracts excepted from competitive bid requirements under subsection (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection (2) of this section.

SECTION 72. ORS 285B.746 is amended to read:

285B.746. (1) The Economic and Community Development Department may approve a loan requested in an application filed under ORS 285B.743 if, after investigation, it finds that:

(a) The applicant is enrolled in a small business management program with a small business development center;

(b) The applicant has prepared a business plan for the business, which has been reviewed by a small business development center or other entity certified by the Economic and Community Development Department to review business plans;

(c) The applicant has developed an expenditure plan for the use of the moneys received as a loan for the project under ORS 285B.740 to 285B.758; and

(d) The applicant is not effectively owned or controlled by another business entity or other person that, either by itself or when combined with the applicant, is not eligible for a loan under ORS 285B.740 to 285B.758.

(2) In addition to the requirements for loan approval described in subsection (1) of this section, in order to obtain a loan under ORS 285B.740 to 285B.758, an applicant must also satisfy two of the following conditions:

(a) The business or proposed business, at the time of application, must not have been operating for more than 24 months.

(b) The business must have annual revenues of less than \$100,000 in the 12-month period immediately preceding the date of application.

(c) The business or proposed business is owned in whole or in part by a person certified as [*being severely disabled*] **having a severe disability** by the Department of Human Services or the Commission for the Blind.

SECTION 73. ORS 285B.755 is amended to read:

285B.755. (1) The Economic and Community Development Department shall appoint an Oregon Entrepreneurial Development Loan Fund Advisory Committee of not less than five members to advise the department on the operation of the loan program created by ORS 285B.740 to 285B.758. The individuals appointed to the advisory committee shall be representatives of the private sector financial community, public sector business finance groups, small business support organizations and owners and operators of small businesses. The advisory committee shall include at least one owner or operator of a small business who is a woman or a member of a minority group. The advisory committee shall also include at least one person who is a representative of [*disabled*] Oregonians **with disabilities**.

(2) The Oregon Entrepreneurial Development Loan Fund Advisory Committee shall review all loan forms, contracts and other administrative materials to assure that the loan program created by ORS 285B.740 to 285B.758 operates with administrative simplicity and efficiency to the greatest extent possible.

SECTION 74. ORS 289.005 is amended to read:

289.005. As used in this chapter, unless the context requires otherwise:

(1) "Authority" means the Oregon Facilities Authority created by this chapter.

(2) "Bonds" or "revenue bonds" means revenue bonds, notes, bond anticipation notes and any other evidence of indebtedness of the authority issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by any federally guaranteed security, whether acquired by the authority or by a participating institution, or by mortgage, the full faith and credit or by any other lawfully pledged security of one or more participating institutions.

(3) "Cost" means the cost of:

(a) Construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project;

(b) Demolishing or removing any buildings or structures on land as acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;

(c) All machinery and equipment;

(d) Financing charges, interest prior to, during and for a period after completion of construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements;

(e) Architectural, actuarial engineering, financial and legal services, plans specifications, studies, surveys, estimates of costs and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project; and

(f) Such other expenses as may be necessary or incident to a project, the financing of such project and the placing of the project in operation.

(4) "Cultural institution" means a public or nonprofit institution within this state which engages in the cultural, intellectual, scientific, environmental, educational or artistic enrichment of the people of this state. "Cultural institution" includes, without limitation, aquaria, botanical societies, historical societies, land conservation organizations, libraries, museums, performing arts associations or societies, scientific societies, wildlife conservation organizations and zoological societies. "Cultural institution" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(5) "Health care institution" means a public or nonprofit organization that provides health care and related services, including but not limited to the provision of inpatient and outpatient care, diagnostic or therapeutic services, laboratory services, medicinal drugs, nursing care, assisted living, elderly care and housing, including retirement communities, and equipment used or useful for the provision of health care and related services.

(6) "Housing institution" means a public or nonprofit organization that provides decent, affordable housing to low income persons.

(7) "Institution" means an institution for housing, higher education or prekindergarten through grade 12 education, a school for [*the handicapped*] **persons with disabilities**, a health care institution or a cultural institution within this state.

(8) "Institution for higher education" means a public or nonprofit educational institution within this state authorized by law to provide a program of education beyond the high school level, including community colleges and associate degree granting institutions. "Institution for higher education" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(9) "Institution for prekindergarten through grade 12 education" means an Oregon prekindergarten as defined in ORS 329.170, a public educational institution within this state authorized by law to provide a program of education for kindergarten through grade 12 or a nonprofit educational institution within this state registered as a private school under ORS 345.545 that provides a program of education for prekindergarten through grade 12. "Institution for prekindergarten through grade 12 education" does not mean a school or institution primarily engaged in religious or sectarian activities.

(10) "Nonprofit" means an institution, organization or entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on the effective date of this chapter.

(11) "Participating institution" means a participating institution for health care, housing, higher education, a participating school for [*the handicapped*] **persons with disabilities** or a participating cultural institution.

(12)(a) "Project" means the financing or refinancing, including without limitation, acquisition, construction, enlargement, remodeling, renovation, improvement, furnishing or equipping, of the following:

(A) In the case of a participating institution that is an institution for higher education, an institution for prekindergarten through grade 12 education or a school for [*the handicapped*] **persons with disabilities**, a structure or structures suitable for use as a dormitory or other multiunit housing facility for students, faculty, officers or employees, or a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the structures required or used for the instruction of students, the conducting of research or the operation of an institution for higher education, an institution for prekindergarten through grade 12 education or a school for [*the handicapped*] **persons with disabilities**. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education, an institution for prekindergarten through grade 12 education or a school for [*the handicapped*] **persons with disa-**

bilities, whether or not such items are related to a particular facility or structure financed under this chapter;

(B) In the case of a participating institution that is a housing institution, a structure or structures suitable for use as housing, including residences or multiunit housing facilities, administration buildings, maintenance, storage or utility facilities and other structures or facilities related to any of the structures required or used for the operation of the housing, including parking and other facilities or structures essential or convenient for the orderly provision of such housing. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular housing facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the provision of housing, whether or not such items are related to a particular facility or structure financed under this chapter;

(C) In the case of a participating institution that is a cultural institution, a structure or structures suitable for its purposes, whether or not to be used to provide educational services, or research resources, including use as or in connection with an administrative facility, aquarium, assembly hall, auditorium, botanical garden, exhibition hall, gallery, greenhouse, library, museum, scientific laboratory, theater or zoological facility. It shall also include supporting facilities, landscaping, site preparation, furniture, equipment, machinery and other similar items necessary or convenient for the operation of a cultural institution, whether or not such items are related to a particular facility or structure financed under this chapter, including books, works of art or other items for display or exhibition; and

(D) In the case of a participating institution that is a health care institution, a structure or structures suitable for its purposes, including hospital facilities, inpatient and outpatient clinics, doctors' offices, administration buildings, parking, maintenance, storage or utility facilities, nursing care or assisted living facilities, elderly care and housing facilities, including retirement communities, and other structures or facilities related to any of the structures required or used for the operation of the health care institution, including other facilities or structures essential or convenient for the orderly provision of such health care. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular health care facility or structure in the manner for which its use is intended and shall further include any working capital, furnishings, equipment, machinery and other similar items necessary or convenient for the provision of health care, whether or not such items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of a health care institution.

(b) "Project" also includes any combination of one or more of the projects undertaken jointly by one or more participating institutions with each other or with other parties.

(c) "Project" does not include any facility used or to be used for sectarian instruction or as a place of religious worship or any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(13) "School for [*the handicapped*] **persons with disabilities**" means a public or nonprofit primary, secondary or post-secondary school within this state [*which*] **that** serves students at least 70 percent of whom [*are handicapped*] **have a disability** as determined by one or more appropriate education, rehabilitation, medical or mental health authorities; is accredited by a recognized accrediting body; and is determined by the authority to be a major resource of benefit to [*the handicapped*] **persons with disabilities**. "School for [*the handicapped*] **persons with disabilities**" does not mean any school or any institution primarily engaged in religious or sectarian activities.

SECTION 75. ORS 307.130 is amended to read:

307.130. (1) **As used in this section:**

(a) "Art museum" means a nonprofit corporation organized to display works of art to the public.

(b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 2004.

(c) **“Nonprofit corporation” means a corporation that:**

(A) **Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or**

(B) **Is organized and operated as described under section 501(c) of the Internal Revenue Code.**

(d) **“Volunteer fire department” means a nonprofit corporation organized to provide fire protection services in a specific response area.**

[(1)] (2) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) Except as provided in ORS 748.414, only such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions.

(b) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including inventory. As used in this subsection, “rehabilitation facility” means either those facilities defined in ORS 344.710 or facilities which provide [*physically, mentally or emotionally disabled*] individuals **who have physical, mental or emotional disabilities** with occupational rehabilitation activities of an educational or therapeutic nature, even if remuneration is received by the individual.

(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used to support a welfare program. As used in this subsection, “welfare program” means the providing of food, shelter, clothing or health care, including dental service, to needy persons without charge.

(e) All real and personal property of a retail store if:

(A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

(B) The individuals who operate the retail store are all individuals who work as volunteers; and

(C) The inventory is either distributed without charge as part of a welfare program, or sold to the general public and the sales proceeds used exclusively to support a welfare program. As used in this paragraph, “primarily” means at least one-half of the inventory.

(f) The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art, but not including any portion of the art museum’s real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.

(g) All real and personal property of a volunteer fire department that is used in conjunction with services and activities for providing fire protection to all residents within a fire response area.

[(2)] (3) An art museum or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities.

[(3)] (4) An institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

[(4) *As used in this section:*]

[(a) *“Art museum” means a nonprofit corporation organized to display works of art to the public.*]

[(b) *“Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, 2004.*]

[(c) *“Nonprofit corporation” means a corporation that:*]

[(A) *Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or*]

[(B) *Is organized and operated as described under section 501(c) of the Internal Revenue Code.*]

[(d) "Volunteer fire department" means a nonprofit corporation organized to provide fire protection services in a specific response area.]

SECTION 76. ORS 310.155 is amended to read:

310.155. (1) For purposes of ORS 310.150, taxes are levied or imposed to fund the public school system if the taxes will be used exclusively for educational services, including support services, provided by any unit of government, at any level from prekindergarten through post-graduate training.

(2) Taxes on property levied or imposed by a unit of government whose principal function is to provide educational services shall be considered to be dedicated to fund the public school system unless the sole purpose of a particular, voter approved levy is for other than educational services or support services as defined in this section.

(3) Taxes on property levied or imposed by a unit of government whose principal function is to perform government operations other than educational services shall be considered to be dedicated to fund the public school system only if the sole purpose of a particular, voter approved levy is for educational services or support services as defined in this section.

(4) As used in this section, "educational services" includes:

(a) Establishment and maintenance of preschools, kindergartens, elementary schools, high schools, community colleges and institutions of higher education.

(b) Establishment and maintenance of career schools, adult education programs, evening school programs and schools or facilities for [*the physically, mentally or emotionally disabled*] **persons with physical, mental or emotional disabilities.**

(5) As used in this section, "support services" includes clerical, administrative, professional and managerial services, property maintenance, transportation, counseling, training and other services customarily performed in connection with the delivery of educational services.

(6) "Educational services" does not include community recreation programs, civic activities, public libraries, programs for custody or care of children or community welfare activities if those programs or activities are provided to the general public and not for the benefit of students or other participants in the programs and activities described in subsection (4) of this section.

SECTION 77. ORS 311.666 is amended to read:

311.666. As used in ORS 311.666 to 311.701:

(1) "Department" means the Department of Revenue.

[(2) "Disabled person" means a person who has been determined to be eligible to receive or who is receiving federal Social Security benefits due to disability or blindness, including a person who is receiving Social Security survivor benefits in lieu of Social Security benefits due to disability or blindness.]

[(3)] (2) "Homestead" means the owner occupied principal dwelling, either real or personal property, owned by the taxpayer and the tax lot upon which it is located. If the homestead is located in a multiunit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the tax lot upon which it is built. The percentage is the value of the unit consisting of the homestead compared to the total value of the building exclusive of the common elements, if any.

(3) "**Person with a disability**" means a person who has been determined to be eligible to receive or who is receiving federal Social Security benefits due to disability or blindness, including a person who is receiving Social Security survivor benefits in lieu of Social Security benefits due to disability or blindness.

(4) "Taxpayer" means an individual who has filed a claim for deferral under ORS 311.668 or individuals who have jointly filed a claim for deferral under ORS 311.668.

(5) "Tax-deferred property" means the property upon which taxes are deferred under ORS 311.666 to 311.701.

(6) "Taxes" or "property taxes" means ad valorem taxes, assessments, fees and charges entered on the assessment and tax roll.

SECTION 78. ORS 311.668 is amended to read:

311.668. (1)(a) Subject to ORS 311.670, an individual, or two or more individuals jointly, may elect to defer the property taxes on their homestead by filing a claim for deferral with the county assessor after January 1 and on or before April 15 of the first year in which deferral is claimed if:

(A) The individual, or, in the case of two or more individuals filing a claim jointly, each individual, is 62 years of age or older on April 15 of the year in which the claim is filed; or

(B) The individual is a [*disabled*] person **with a disability** on April 15 of the year in which the claim is filed. In the case of individuals filing a claim jointly, only one individual need be a [*disabled*] person **with a disability** in order to make the election.

(b) In order to make the election described in paragraph (a) of this subsection, the individual must have, or in the case of two or more individuals filing a claim jointly, all of the individuals together must have household income, as defined in ORS 310.630, for the calendar year immediately preceding the calendar year in which the claim is filed of less than \$32,000.

(c) The county assessor shall forward each claim filed under this subsection to the Department of Revenue which shall determine if the property is eligible for deferral.

(2) When the taxpayer elects to defer property taxes for any year by filing a claim for deferral under subsection (1) of this section, it shall have the effect of:

(a) Deferring the payment of the property taxes levied on the homestead for the fiscal year beginning on July 1 of such year.

(b) Continuing the deferral of the payment by the taxpayer of any property taxes deferred under ORS 311.666 to 311.701 for previous years which have not become delinquent under ORS 311.686.

(c) Continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of ORS 311.670 are met.

(3) If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under ORS 311.666 to 311.701, the guardian or conservator may act for such individual in complying with the provisions of ORS 311.666 to 311.701.

(4) If a trustee of an inter vivos trust which was created by and is revocable by an individual, who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under ORS 311.666 to 311.701, owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of ORS 311.666 to 311.701.

(5) Nothing in this section shall be construed to require a spouse of an individual to file a claim jointly with the individual even though the spouse may be eligible to claim the deferral jointly with the individual.

(6) Any person aggrieved by the denial of a claim for deferral of homestead property taxes or disqualification from deferral of homestead property taxes may appeal in the manner provided by ORS 305.404 to 305.560.

(7)(a) For each tax year beginning on or after July 1, 2002, the Department of Revenue shall recompute the maximum household income that may be incurred under an allowable claim for deferral under subsection (1)(b) of this section. The computation shall be as follows:

(A) Divide the average U.S. City Average Consumer Price Index for the first six months of the current calendar year by the average U.S. City Average Consumer Price Index for the first six months of 2001.

(B) Recompute the maximum household income by multiplying \$32,000 by the appropriate indexing factor determined as provided in subparagraph (A) of this paragraph.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) If any change in the maximum household income determined under paragraph (a) of this subsection is not a multiple of \$500, the increase shall be rounded to the nearest multiple of \$500.

SECTION 79. ORS 311.679 is amended to read:

311.679. (1) At the time that the taxpayer elects to defer property taxes under ORS 311.666 to 311.701 or if the taxpayer has elected to defer property taxes prior to January 1, 1990, or between

January 1, 1990 and June 30, 1990, the Department of Revenue shall estimate the amount of property taxes that will be deferred for tax years beginning on or after July 1, 1990, interest thereon and any fees paid to the county clerk by the department in connection with lien recording, release or satisfaction. Thereafter, the department shall have a lien in the amount of the estimate.

(2) The lien created under subsection (1) of this section shall attach to the property to which the election to defer relates on July 1 of the tax year of initial deferral or on July 1, 1990, whichever is applicable.

(3) The lien created under subsection (1) of this section in the amount of the estimate shall have the same priority as other real property tax liens except that the lien of mortgages, trust deeds or security interests which are recorded or noted on a certificate of title prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

(4) If during the period of tax deferment, the amount of taxes, interest and fees exceeds the estimate, the department shall have a lien for the amount of the excess. The liens for the excess shall attach to the property on July 1 of the tax year in which the excess occurs. The lien for the excess shall have the same priority as other real property tax liens, except that the lien of mortgages, trust deeds or security interests recorded or noted on any certificate of title prior in time to the date that the department records an amendment to its estimate to reflect its lien for the excess shall be prior to the lien for the excess.

(5) Notwithstanding ORS 311.675 (2), the notice of lien for deferred taxes recorded as provided in ORS 311.675 (1) and (2) arising on or after October 3, 1989, shall list the amount of the estimate of deferred taxes, interest and fees made by the department under subsection (1) of this section and any amendment to the notice to reflect a lien for excess, as described under subsection (4) of this section, shall list the amount of the excess that the department claims as lien. If notice of lien with respect to any homestead has been recorded as provided under ORS 311.675 (1) and (2) prior to January 1, 1990, and the lien has not been released or satisfied, the department shall cause a further notice of lien to be recorded in the mortgage records of the county. The further notice of lien shall list the amount of the estimate of deferred taxes and interest made by the department under subsection (1) of this section and any amendment to the notice to reflect a lien for excess, described under subsection (4) of this section, and shall list the amount of the excess that the department claims as lien.

(6) A lien created under this section may be foreclosed by the department as if it were a purchase money mortgage under ORS chapter 88. The court may award reasonable attorney fees to the prevailing party in a foreclosure action under this section.

(7) Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes under ORS 311.701.

(8) By means of voluntary payment made as provided under ORS 311.690, the taxpayer may limit the amount of the lien for deferred taxes created under this section. If the taxpayer desires that the limit be reflected in the records of the county, the taxpayer must request, subject to any rules adopted by the department, that the department cause a partial satisfaction of the lien to be recorded in the county. Upon receipt of such a request, the department shall cause a partial satisfaction, in the amount of the voluntary payment, to be so recorded. Nothing in this subsection shall affect the priority of the liens of the department, as originally created under subsections (1) and (4) of this section.

(9) Nothing in this section shall affect any lien arising under ORS 311.666 to 311.701 for taxes assessed before January 1, 1990. However, except as provided under this section, no lien for taxes shall arise under ORS 311.666 to 311.701 for taxes assessed after December 31, 1989.

(10)(a) Notwithstanding any other provision of this section, a lien arising under this section as the result of a deferral of property taxes on the homestead of a [disabled] person **with a disability** who is younger than 62 years of age during the tax year may not exceed 90 percent of the real market value of the homestead.

(b) Property may continue to qualify for property tax deferral under ORS 311.666 to 311.701 even though the amount of property taxes being paid by the department may not increase the amount of the lien arising under this section.

(11) This section first applies to liens for deferred taxes arising on or after October 3, 1989.

SECTION 80. ORS 311.687 is amended to read:

311.687. (1) Property taxes imposed on the homestead of an individual are ineligible for deferral under ORS 311.666 to 311.701 if the basis for deferral was the disability of the individual and the individual [is] no longer [*disabled*] **has a disability** and:

(a) Is younger than 62 years of age; or

(b) Is 62 years of age or older and filed the claim for deferral jointly with an individual who is younger than 62 years of age and who is not a [*disabled*] person **with a disability**.

(2) The property taxes that are ineligible for deferral under subsection (1) of this section are those property taxes attributable to the homestead of the individual for tax years beginning subsequent to the loss of disability, until the individual again qualifies for deferral under ORS 311.666 to 311.701.

(3) Nothing in this section shall affect the continued deferral of taxes that have been deferred for tax years beginning prior to the loss of disability.

SECTION 81. ORS 311.795 is amended to read:

311.795. (1) A county governing body may cancel all delinquent taxes and the interest and penalties thereon accrued upon property donated to any incorporated city or town or any park and recreation district organized and operating under ORS chapter 266 for parks, playgrounds or a city hall. This section does not apply if the city, town or park and recreation district makes any payment to the owner, either directly or indirectly, for the property.

(2) A county governing body may cancel all delinquent real property taxes and interest and penalties due thereon from any taxpayer where the total of the same is less than \$5, when in the judgment of the county governing body the cost of collecting the same will be greater than the amount to be collected.

(3) A county governing body may cancel all delinquent personal property taxes and the interest and penalties thereon due from any taxpayer where the total of the same is less than \$5 and in the judgment of the county governing body the cost of collecting the same will be greater than the amount to be collected.

(4) Property taxes that are deferred under the [*senior or disabled person*] homestead deferral program established under ORS 311.666 to 311.701, special assessments for local improvements that are deferred under ORS 311.702 to 311.735 or property taxes that are deferred under the disaster area tax deferral program established under ORS 311.740 to 311.780 are not delinquent taxes for purposes of this section. A county governing body may not cancel any deferred taxes, deferred special assessments or interest or penalties that accrue with respect to deferred taxes or deferred special assessments described in this subsection.

SECTION 82. ORS 311.796 is amended to read:

311.796. (1) Prior to July 1, 2010, a county governing body may cancel all delinquent taxes and the interest and penalties thereon accrued upon property donated to this state or any municipal corporation or political subdivision of this state or private nonprofit corporation for the purposes of providing low income housing, social services or child care or, in the case of a nonprofit corporation, for the public purposes of the nonprofit corporation. This section does not apply if the state or any municipal corporation or political subdivision of this state or private nonprofit corporation makes any payment to the owner, either directly or indirectly, for the property.

(2) Property taxes that are deferred under the [*senior or disabled person*] homestead deferral program established under ORS 311.666 to 311.701, special assessments for local improvements that are deferred under ORS 311.702 to 311.735 or property taxes that are deferred under the disaster area tax deferral program established under ORS 311.740 to 311.780 are not delinquent taxes for purposes of this section. A county governing body may not cancel any deferred taxes, deferred spe-

cial assessments or interest or penalties that accrue with respect to deferred taxes or deferred special assessments described in this subsection.

SECTION 83. ORS 315.262 is amended to read:

315.262. (1) As used in this section:

(a) "Child care" means care provided to a qualifying child of the taxpayer for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis, except that the term does not include care provided by:

(A) The child's parent or guardian, unless the care is provided in a certified or registered child care facility; or

(B) A person who has a relationship to the taxpayer that is described in section 152(a) of the Internal Revenue Code who has not yet attained 19 years of age at the close of the tax year.

(b) "Child care expenses" means the costs associated with providing child care to a qualifying child of a qualified taxpayer.

(c) "Earned income" has the meaning given that term in section 32 of the Internal Revenue Code.

(d) "Qualified taxpayer" means a taxpayer:

(A) Who is an Oregon resident with at least \$6,000 of earned income for the tax year or who is a nonresident of Oregon with at least \$6,000 of earned income from Oregon sources for the tax year;

(B) With federal adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level;

(C) With Oregon adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level; and

(D) Who does not have more than the maximum amount of disqualified income under section 32(i) of the Internal Revenue Code that is allowed to a taxpayer entitled to the earned income tax credit for federal tax purposes.

(e) "Qualifying child" has the meaning given that term in section 152 of the Internal Revenue Code except that it is limited to an individual who is under 13 years of age, or who is a *[disabled]* child **with a disability**, as that term is defined in ORS 316.099.

(2) A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses (rounded to the nearest \$50).

(3) The applicable percentage to be used in calculating the amount of the credit provided in this section shall be determined in accordance with the following table:

Applicable Percentage	Greater of Oregon Adjusted Gross Income or Federal Adjusted Gross Income, as Percent of Federal Poverty Level
40	200 or less
36	Greater than 200 and less than or equal to 210
32	Greater than 210 and less than or equal to 220
24	Greater than 220 and less than or equal to 230
16	Greater than 230 and less than or equal to 240
8	Greater than 240 and less than

0 or equal to 250
Greater than 250 percent
of federal poverty level

(4) The Department of Revenue may prescribe the form used to claim a credit and the information required on the form.

(5) In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(d) In the case of a qualified taxpayer who is married, a credit shall be allowed under this section only if:

(A) The taxpayer files a joint return;

(B) The taxpayer files a separate return and is legally separated or subject to a separate maintenance agreement; or

(C) The taxpayer files a separate return and the taxpayer and the taxpayer's spouse reside in separate households on the last day of the tax year with the intent of remaining in separate households in the future.

(6) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 (withholding), ORS 316.583 (estimated tax), other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(7)(a) The minimum amount of earned income a taxpayer must earn in order to be a qualified taxpayer shall be adjusted for tax years beginning in each calendar year by multiplying \$6,000 by the ratio of the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year over the monthly averaged index for the second quarter of the calendar year 1998.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) If any adjustment determined under paragraph (a) of this subsection is not a multiple of \$50, the adjustment shall be rounded to the nearest multiple of \$50.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, the adjusted minimum amount of earned income a taxpayer must earn may not exceed the amount an individual would earn if the individual worked 1,040 hours at the minimum wage established under ORS 653.025 and in effect on January 1 of the calendar year in which begins the tax year of the taxpayer, rounded to the next lower multiple of \$50.

SECTION 84. ORS 316.099 is amended to read:

316.099. (1) As used in this section, unless the context requires otherwise:

[(a) "Early intervention services" means programs of treatment and habilitation designed to address a child's developmental deficits in sensory, motor, communication, self-help and socialization areas.]

[(b)] (a) "[Disabled] Child with a disability" means a qualifying child under section 152 of the Internal Revenue Code who has been determined eligible for early intervention services or is diag-

nosed for the purposes of special education as being mentally retarded, multidisabled, visually impaired, **hard of hearing** [*impaired*], deaf-blind, orthopedically impaired or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in accordance with State Board of Education rules.

(b) “Early intervention services” means programs of treatment and habilitation designed to address a child’s developmental deficits in sensory, motor, communication, self-help and socialization areas.

(c) “Special education” means specially designed instruction to meet the unique needs of a [*disabled*] child **with a disability**, including regular classroom instruction, instruction in physical education, home instruction and instruction in hospitals, institutions and special schools.

(2) The State Board of Education shall adopt rules further defining “[*disabled*] child **with a disability**” for purposes of this section. A diagnosis obtained for the purposes of entitlement to special education or early intervention services shall serve as the basis for a claim for the additional credit allowed under subsection (3) of this section.

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent of the taxpayer, there shall be allowed an additional personal exemption credit for a [*disabled*] child **with a disability** if the child is a [*disabled*] child **with a disability** at the close of the tax year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the dependent for state personal income tax purposes for the tax year.

(4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section may claim the credit on the personal income tax return. However, the claim shall be substantiated by any proof of entitlement to the credit as may be required by the state board by rule.

SECTION 85. ORS 316.752 is amended to read:

316.752. For purposes of ORS 316.752 to 316.771:

(1) A person [*is “severely disabled”*] **has a “severe disability”** if the person:

(a) Has lost the use of one or more lower extremities;

(b) Has lost the use of both hands; or

(c) Has a physical or mental condition that limits the abilities of the person to earn a living, maintain a household or provide personal transportation for the person without employing [*special*] orthopedic or medical equipment or outside help.

(2) “Orthopedic or medical equipment” includes, but is not limited to, wheelchairs, braces, prostheses or special crutches.

(3) “Outside help” includes, but is not limited to, unrelated individuals whom the [*severely disabled*] taxpayer **with a severe disability** employs to keep house, maintain the house or yard, or to transport the taxpayer.

SECTION 86. ORS 316.758 is amended to read:

316.758. In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes, there shall be allowed an additional personal exemption credit for the taxpayer if the taxpayer [*is severely disabled*] **has a severe disability** at the close of the taxable year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the taxpayer for state personal income tax purposes for the taxable year.

SECTION 87. ORS 316.765 is amended to read:

316.765. (1) An additional personal exemption credit in the same amount as allowed under ORS 316.758 for a [*severely disabled*] taxpayer **with a severe disability** shall be allowed for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse:

(a) [*Is severely disabled*] **Has a severe disability**;

(b) Has no gross income for the calendar year in which the taxable year of the taxpayer begins; and

(c) Is not the dependent of another taxpayer.

(2) In the case of a joint return, each spouse who [*is severely disabled*] **has a severe disability** shall be allowed the additional credit in the amount provided under ORS 316.758 if the spouse otherwise qualifies under this section.

(3) For purposes of this section, the determination of whether the spouse [*is severely disabled*] **has a severe disability** shall be made as of the close of the taxable year of the taxpayer except that if the spouse dies during such taxable year such determination shall be made as of the time of the death of the spouse.

SECTION 88. ORS 323.455 is amended to read:

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. Amounts necessary to pay the expenses incurred by the Department of Revenue and to reimburse the Oregon State Police and the Department of Justice for the administration and enforcement of ORS 323.005 to 323.482 are continuously appropriated to the Department of Revenue from the suspense account. After the payment of administrative and enforcement expenses and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly **individuals** and [*disabled*] individuals **with disabilities** as provided in ORS 391.800 to 391.830.

(2) The moneys [*so*] appropriated to cities and counties **under subsection (1) of this section** shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

SECTION 89. ORS 323.455, as amended by section 27b, chapter 804, Oregon Laws 2003, is amended to read:

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly **individuals** and [*disabled*] individuals **with disabilities** as provided in ORS 391.800 to 391.830.

(2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund

established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

SECTION 90. ORS 327.013, as amended by section 2, chapter 4, Oregon Laws 2006, is amended to read:

327.013. The State School Fund distributions for school districts shall be computed as follows:

(1) General Purpose Grant = Funding Percentage × Target Grant × District extended ADMw.

(2) The funding percentage shall be calculated by the Superintendent of Public Instruction to distribute as nearly as practicable the total sum available for distribution of money.

(3) Target Grant = Statewide Target per ADMw Grant + Teacher Experience Factor.

(4) Statewide Target per ADMw Grant = \$4,500.

(5) Teacher Experience Factor = $\$25 \times \{\text{District average teacher experience} - \text{statewide average teacher experience}\}$. "Average teacher experience" means the average, in years, of teaching experience of certified teachers as reported to the Department of Education.

(6) District extended ADMw = ADMw or ADMw of the prior year, whichever is greater.

(7)(a) Weighted average daily membership or ADMw = average daily membership + an additional amount computed as follows:

(A) 1.0 for each student in average daily membership eligible for special education as a child with *[disabilities]* a **disability** under ORS 343.035, applicable to not to exceed 11 percent of the district's ADM without review and approval of the Department of Education. Children with disabilities eligible for special education in adult local correctional facilities as defined in ORS 169.005 or adult regional correctional facilities as defined in ORS 169.620 may not be included in the calculation of the 11 percent.

(B) 0.5 for each student in average daily membership eligible for and enrolled in an English as a second language program under ORS 336.079.

(C) 0.2 for each student in average daily membership enrolled in a union high school district or in an area of a unified school district where the district is only responsible for educating students in grades 9 through 12 in that area.

(D) -0.1 for each student in average daily membership enrolled in an elementary district operating kindergarten through grade 6 or kindergarten through grade 8 or in an area of a unified school district where the district is only responsible for educating students in kindergarten through grade 8.

(E) 0.25 times the sum of the following:

(i) The number of children 5 to 17 years of age in poverty families in the district, as determined by the Department of Education from a report of the federal Department of Education based on the most recent federal decennial census, as adjusted by the school district's proportion of students in the county receiving free or reduced price lunches under the United States Department of Agriculture's current Income Eligibility Guidelines if the number is higher than the number determined from census data and only if the school district had an average daily membership of 2,500 or less for the 1995-1996 school year, and as further adjusted by the number of students in average daily membership in June of the year of distribution divided by number of students in average daily membership in the district, or its predecessors, in June of the year of the most recent federal decennial census;

(ii) The number of children in foster homes in the district as determined by the report of the Department of Human Services to the federal Department of Education, "Annual Statistical Report on Children in Foster Homes and Children in Families Receiving AFDC Payments in Excess of the Poverty Income Level," or its successor, for October 31 of the year prior to the year of distribution; and

(iii) The number of children in the district in state-recognized facilities for neglected and delinquent children, based on information from the Department of Human Services for October 31 of the year prior to the year of distribution.

(F) An additional amount as determined by ORS 327.077 shall be added to the ADMw for each remote small elementary school and for each small high school in the district.

(G) All numbers of children used for the computation in this section must reflect any district consolidations that have occurred since the numbers were compiled.

(b) The total additional weight that shall be assigned to any student in average daily membership in a district, exclusive of students described in paragraph (a)(E) and (F) of this subsection shall not exceed 2.0.

(8) High cost disabilities grant = the total amount received by a school district under ORS 327.348, for providing special education and related services to resident pupils with disabilities.

(9)(a) Transportation grant equals:

(A) 70 percent of approved transportation costs for those school districts ranked below the 80th percentile under paragraph (b) of this subsection.

(B) 80 percent of approved transportation costs for those school districts ranked in or above the 80th percentile but below the 90th percentile under paragraph (b) of this subsection.

(C) 90 percent of approved transportation costs for those school districts ranked in or above the 90th percentile under paragraph (b) of this subsection.

(b) Each fiscal year, the Department of Education shall rank school districts based on the approved transportation costs per ADM of each school district, ranking the school district with the highest approved transportation costs per ADM at the top of the order.

(10) Local Revenues are the total of the following:

(a) The amount of revenue offset against local property taxes as determined by the Department of Revenue under ORS 311.175 (3)(a)(A);

(b) The amount of property taxes actually received by the district including penalties and interest on taxes;

(c) The amount of revenue received by the district from the Common School Fund under ORS 327.403 to 327.410;

(d) The amount of revenue received by the district from the county school fund;

(e) The amount of revenue received by the district from the 25 percent of federal forest reserve revenues required to be distributed to schools by ORS 294.060 (1);

(f) The amount of revenue received by the district from state managed forestlands under ORS 530.115 (1)(b) and (c);

(g) Moneys received in lieu of property taxes;

(h) Federal funds received without specific application by the school district and which are not deemed under federal law to be nonsupplantable;

(i) Any positive amount obtained by subtracting the operating property taxes actually imposed by the district, based on the rate certified pursuant to ORS 310.060, from the amount that would have been imposed by the district if the district had certified the maximum rate of operating property taxes allowed by law; and

(j) Any amount distributed to the district in the prior fiscal year under section 4 (3), chapter 695, Oregon Laws 2001, or ORS 327.019 (8).

(11) Notwithstanding subsection (10) of this section, Local Revenues do not include:

(a) If a school district imposes local option taxes pursuant to ORS 280.040 to 280.145, an amount equal to the lesser of:

(A) The amount of revenue actually received by the district from local option taxes imposed pursuant to ORS 280.040 to 280.145;

(B) Fifteen percent of the combined total for the school district of the general purpose grant, the transportation grant, the facility grant and the high cost disabilities grant of the district; or

(C) \$750 per district extended ADMw; and

(b) For a school district with a statutory rate limit on July 1, 2003, that is greater than \$4.50 per \$1,000 of assessed value, the amount of property taxes actually received by the district, including penalties and interest on taxes, that results from an increase in the rate of ad valorem property tax of the district allowed under section 11 (5)(d), Article XI of the Oregon Constitution.

(12)(a) Facility Grant = 8 percent of total construction costs of new school buildings.

(b) A school district shall receive a Facility Grant in the distribution year that a new school building is first used.

(c) As used in this subsection:

(A) "New school building" includes new school buildings, adding structures onto existing school buildings and adding premanufactured structures to a school district if those buildings or structures are to be used for instructing students.

(B) "Construction costs" does not include costs for land acquisition.

(13) Notwithstanding subsection (10)(i) of this section, Local Revenues do not include any amount of operating property tax authority of the district that is:

(a) Attributable to the suspension of ORS 310.239 by section 1, chapter 4, Oregon Laws 2006; and

(b) Not actually imposed by the district.

SECTION 91. ORS 327.013, as amended by sections 2 and 4, chapter 4, Oregon Laws 2006, is amended to read:

327.013. The State School Fund distributions for school districts shall be computed as follows:

(1) General Purpose Grant = Funding Percentage \times Target Grant \times District extended ADMw.

(2) The funding percentage shall be calculated by the Superintendent of Public Instruction to distribute as nearly as practicable the total sum available for distribution of money.

(3) Target Grant = Statewide Target per ADMw Grant + Teacher Experience Factor.

(4) Statewide Target per ADMw Grant = \$4,500.

(5) Teacher Experience Factor = $\$25 \times$ {District average teacher experience - statewide average teacher experience}. "Average teacher experience" means the average, in years, of teaching experience of certified teachers as reported to the Department of Education.

(6) District extended ADMw = ADMw or ADMw of the prior year, whichever is greater.

(7)(a) Weighted average daily membership or ADMw = average daily membership + an additional amount computed as follows:

(A) 1.0 for each student in average daily membership eligible for special education as a child with [disabilities] a **disability** under ORS 343.035, applicable to not to exceed 11 percent of the district's ADM without review and approval of the Department of Education. Children with disabilities eligible for special education in adult local correctional facilities as defined in ORS 169.005 or adult regional correctional facilities as defined in ORS 169.620 may not be included in the calculation of the 11 percent.

(B) 0.5 for each student in average daily membership eligible for and enrolled in an English as a second language program under ORS 336.079.

(C) 0.2 for each student in average daily membership enrolled in a union high school district or in an area of a unified school district where the district is only responsible for educating students in grades 9 through 12 in that area.

(D) -0.1 for each student in average daily membership enrolled in an elementary district operating kindergarten through grade 6 or kindergarten through grade 8 or in an area of a unified school district where the district is only responsible for educating students in kindergarten through grade 8.

(E) 0.25 times the sum of the following:

(i) The number of children 5 to 17 years of age in poverty families in the district, as determined by the Department of Education from a report of the federal Department of Education based on the most recent federal decennial census, as adjusted by the school district's proportion of students in the county receiving free or reduced price lunches under the United States Department of Agriculture's current Income Eligibility Guidelines if the number is higher than the number determined

from census data and only if the school district had an average daily membership of 2,500 or less for the 1995-1996 school year, and as further adjusted by the number of students in average daily membership in June of the year of distribution divided by number of students in average daily membership in the district, or its predecessors, in June of the year of the most recent federal decennial census;

(ii) The number of children in foster homes in the district as determined by the report of the Department of Human Services to the federal Department of Education, "Annual Statistical Report on Children in Foster Homes and Children in Families Receiving AFDC Payments in Excess of the Poverty Income Level," or its successor, for October 31 of the year prior to the year of distribution; and

(iii) The number of children in the district in state-recognized facilities for neglected and delinquent children, based on information from the Department of Human Services for October 31 of the year prior to the year of distribution.

(F) An additional amount as determined by ORS 327.077 shall be added to the ADMw for each remote small elementary school and for each small high school in the district.

(G) All numbers of children used for the computation in this section must reflect any district consolidations that have occurred since the numbers were compiled.

(b) The total additional weight that shall be assigned to any student in average daily membership in a district, exclusive of students described in paragraph (a)(E) and (F) of this subsection shall not exceed 2.0.

(8) High cost disabilities grant = the total amount received by a school district under ORS 327.348, for providing special education and related services to resident pupils with disabilities.

(9)(a) Transportation grant equals:

(A) 70 percent of approved transportation costs for those school districts ranked below the 80th percentile under paragraph (b) of this subsection.

(B) 80 percent of approved transportation costs for those school districts ranked in or above the 80th percentile but below the 90th percentile under paragraph (b) of this subsection.

(C) 90 percent of approved transportation costs for those school districts ranked in or above the 90th percentile under paragraph (b) of this subsection.

(b) Each fiscal year, the Department of Education shall rank school districts based on the approved transportation costs per ADM of each school district, ranking the school district with the highest approved transportation costs per ADM at the top of the order.

(10) Local Revenues are the total of the following:

(a) The amount of revenue offset against local property taxes as determined by the Department of Revenue under ORS 311.175 (3)(a)(A);

(b) The amount of property taxes actually received by the district including penalties and interest on taxes;

(c) The amount of revenue received by the district from the Common School Fund under ORS 327.403 to 327.410;

(d) The amount of revenue received by the district from the county school fund;

(e) The amount of revenue received by the district from the 25 percent of federal forest reserve revenues required to be distributed to schools by ORS 294.060 (1);

(f) The amount of revenue received by the district from state managed forestlands under ORS 530.115 (1)(b) and (c);

(g) Moneys received in lieu of property taxes;

(h) Federal funds received without specific application by the school district and which are not deemed under federal law to be nonsupplantable;

(i) Any positive amount obtained by subtracting the operating property taxes actually imposed by the district, based on the rate certified pursuant to ORS 310.060, from the amount that would have been imposed by the district if the district had certified the maximum rate of operating property taxes allowed by law; and

(j) Any amount distributed to the district in the prior fiscal year under section 4 (3), chapter 695, Oregon Laws 2001, or ORS 327.019 (8).

(11) Notwithstanding subsection (10) of this section, Local Revenues do not include, if a school district imposes local option taxes pursuant to ORS 280.040 to 280.145, an amount equal to the lesser of:

(a) The amount of revenue actually received by the district from local option taxes imposed pursuant to ORS 280.040 to 280.145;

(b) Fifteen percent of the combined total for the school district of the general purpose grant, the transportation grant, the facility grant and the high cost disabilities grant of the district; or

(c) \$750 per district extended ADMw.

(12)(a) Facility Grant = 8 percent of total construction costs of new school buildings.

(b) A school district shall receive a Facility Grant in the distribution year that a new school building is first used.

(c) As used in this subsection:

(A) "New school building" includes new school buildings, adding structures onto existing school buildings and adding premanufactured structures to a school district if those buildings or structures are to be used for instructing students.

(B) "Construction costs" does not include costs for land acquisition.

SECTION 92. ORS 327.023 is amended to read:

327.023. In addition to those moneys distributed through the State School Fund, the Department of Education shall provide from state funds appropriated therefor, grants in aid or support for special and compensatory education programs including:

(1) Special schools for children who are deaf or blind as defined in ORS 346.010.

(2) Medicaid match for administration efforts to secure Medicaid funds for services provided to children with disabilities.

(3) Hospital programs for education services to children who are hospitalized for extended periods of time or who require hospitalization due to severe [*disability*] **disabilities** as described in ORS 343.261.

(4) Private agency programs for education services to children who are placed by the state in long term care or treatment facilities as described in ORS 343.961.

(5) Regional services provided to children with low-incidence disabling conditions as described in ORS 343.236.

(6) Early childhood special education provided to preschool children with disabilities from age three until age of eligibility for kindergarten as described in ORS 339.185, 343.035, 343.041, 343.055, 343.065, 343.157 and 343.455 to 343.534.

(7) Early intervention services for preschool children from birth until age three as described in ORS 339.185, 343.035, 343.041, 343.055, 343.065, 343.157 and 343.455 to 343.534.

(8) Evaluation services for children with disabilities to determine program eligibility and needs as described in ORS 343.146.

(9) Education services to children residing at state hospitals.

(10) Disadvantaged children program under ORS 343.680.

(11) Early childhood education under ORS 329.215 to 329.235.

(12) Child development specialist under ORS 329.255.

(13) Youth care centers under ORS 420.885.

(14) Staff development and mentoring.

(15) Professional technical education grants.

(16) Special science education programs.

(17) Talented and Gifted children program under ORS 343.391 to 343.413.

SECTION 93. ORS 327.348 is amended to read:

327.348. (1) There is established within the State School Fund a High Cost Disabilities Account.

(2) Each fiscal year, the Department of Education shall distribute moneys from the account to school districts as high cost disabilities grants. A school district may receive moneys from the ac-

count if the school district has a resident pupil with *[disabilities]* a **disability** for whom the approved costs to the school district of providing special education and related services, as determined under subsection (4) of this section, exceed \$30,000.

(3) The amount of moneys received by a school district under this section for each resident pupil with *[disabilities]* a **disability** shall equal the approved costs, as determined under subsection (4) of this section, incurred by the school district in providing special education and related services to the pupil minus \$30,000.

(4) The department shall determine the approved costs incurred by a school district in providing special education and related services to a pupil with *[disabilities]* a **disability**. The approved costs incurred by a school district may include costs incurred by an education service district of providing special education and related services to the school district through the resolution process described in ORS 334.175. In determining the approved costs for which a school district may receive moneys under this section, the department shall consider:

(a) How efficiently the special education and related services are provided by the school district; and

(b) The use of available resources by the school district.

(5) If the total approved costs for which school districts are seeking moneys from the account exceed the amount in the account in any fiscal year, the department shall prorate the amount of moneys available for distribution in the account among those school districts that are eligible for moneys from the account.

(6) The department shall distribute any moneys in the account that are not distributed under this section in any fiscal year to school districts based on ORS 327.008 and 327.013.

(7) The State Board of Education may adopt any rules necessary for the administration of this section.

SECTION 94. ORS 336.790 is amended to read:

336.790. As used in ORS 336.790 to 336.815, unless the context requires otherwise:

(1) "Commercial driver training school" means a school operated by a person issued a commercial driver training school certificate by the Department of Transportation under ORS 822.515.

(2) "Facility" means any facility for *[the]* **children who are deaf** operated under ORS 346.010.

(3) "Private school" means a private or parochial high school.

(4) "Public school" means a common or union high school district, education service district and a community college district.

SECTION 95. ORS 339.035 is amended to read:

339.035. (1) As used in this section, "education service district" means the education service district that contains the school district of which the child is a resident.

(2) When a child is taught or is withdrawn from a public school to be taught by a parent, legal guardian or private teacher, as provided in ORS 339.030, the parent, legal guardian or private teacher must notify the education service district in writing. In addition, when a child who is taught by a parent, legal guardian or private teacher moves to a new education service district, the parent, legal guardian or private teacher shall notify the new education service district in writing. The education service district shall acknowledge receipt of any notification in writing.

(3) Children being taught as provided in subsection (2) of this section shall be examined at grades 3, 5, 8 and 10 in accordance with the following procedures:

(a) The State Board of Education shall adopt by rule a list of approved comprehensive examinations that are readily available.

(b)(A) The parent or legal guardian shall select an examination from the approved list and arrange to have the examination administered to the child by a qualified neutral person, as defined by rule by the State Board of Education.

(B) If the child was withdrawn from public school, the first examination shall be administered to the child at least 18 months after the date on which the child was withdrawn from public school.

(C) If the child never attended public or private school, the first examination shall be administered to the child prior to the end of grade three.

- (c) The person administering the examination shall:
 - (A) Score the examination; and
 - (B) Report the results of the examination to the parent or legal guardian.
 - (d) Upon request of the superintendent of the education service district, the parent or legal guardian shall submit the results of the examination to the education service district.
 - (4)(a) If the composite test score of the child places the child below the 15th percentile based on national norms, the child shall be given an additional examination within one year of when the first examination was administered.
 - (b) If the composite test score of the child on the second examination shows a declining score, then the child shall be given an additional examination within one year of when the second examination was administered and the superintendent of the education service district may:
 - (A) Allow the child to continue to be taught by a parent, legal guardian or private teacher; or
 - (B) Place the education of the child under the supervision of a person holding a teaching license who is selected by the parent or legal guardian at the expense of the parent or legal guardian. If the composite test score of the child continues to show a declining score, the superintendent of the education service district may:
 - (i) Allow the child to continue under the educational supervision of a licensed teacher selected by the parent or legal guardian and require that the child be given an additional examination within one year of when the last examination was administered;
 - (ii) Allow the child to be taught by a parent, legal guardian or private teacher and require that the child be given an additional examination within one year of when the last examination was administered; or
 - (iii) Order the parent or legal guardian to send the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.
 - (c) If the parent or legal guardian of the child does not consent to placing the education of the child under the supervision of a licensed teacher who is selected by the parent or legal guardian, then the superintendent of the education service district may order the child to return to school for a period not to exceed 12 consecutive months as determined by the superintendent.
 - (d) If the composite test score of the child on an examination is equal to or greater than the percentile score on the prior test, the child may be taught by a parent, legal guardian or private teacher and for the next examination be examined pursuant to paragraph (a) of this subsection or subsection (3) of this section.
 - (5)(a) Notwithstanding the examination requirements of subsections (3) and (4) of this section, the parent or legal guardian of a child with *[disabilities]* **a disability** who has an individualized education plan and is receiving special education and related services through the school district or who is being educated in accordance with a privately developed plan shall be evaluated for satisfactory educational progress according to the recommendations of the plan.
 - (b) The parent or legal guardian of a child with *[disabilities]* **a disability** who was evaluated by service providers selected by the parent or legal guardian based on a privately developed plan shall submit a report of such evaluation to the education service district in lieu of the examination results required by subsections (3) and (4) of this section.
 - (c) A child with *[disabilities]* **a disability** described in this subsection shall not be subject to the examination requirements of subsections (3) and (4) of this section unless the examination is recommended in the plan in effect for the child.
- SECTION 96.** ORS 339.137 is amended to read:
- 339.137. (1) A student described in ORS 336.580 shall be considered a resident of the school district in which the student resides by reason of the placement under ORS 336.580 for purposes of distribution of the State School Fund.
- (2) A student described in subsection (1) of this section must be admitted to the public schools of the school district where the student is placed pursuant to ORS 336.580.
 - (3) Except as provided in ORS 343.261, 343.961 and 346.010, the school district shall provide or cause to be provided appropriate education to any student described in subsection (1) of this section,

including the identification and evaluation of the student for purposes of determining eligibility as a child with *[disabilities]* **a disability** to receive special education and related services enumerated in ORS 343.035 and services related to a disadvantaged child as defined in ORS 343.650. Suspension or expulsion of a student from the regular school program does not relieve the district of the obligation to provide instruction in the residential program in which the child resides or in another appropriate facility.

SECTION 97. ORS 339.240 is amended to read:

339.240. (1) The State Board of Education in accordance with ORS chapter 183 shall adopt rules setting minimum standards for pupil conduct and discipline and for rights and procedures pertaining thereto that are consistent with orderly operation of the educational processes and with fair hearing requirements. The rules shall be distributed by the Superintendent of Public Instruction to all school districts.

(2) Every district school board shall adopt and attempt to give the widest possible distribution of copies of reasonable written rules regarding pupil conduct, discipline and rights and procedures pertaining thereto. Such rules must comply with minimum standards adopted by the State Board of Education under subsection (1) of this section.

(3) Every district school board shall enforce consistently and fairly its written rules regarding pupil conduct, discipline and rights. This subsection does not apply to a pupil who is eligible for special education as a child with *[disabilities]* **a disability** under ORS 343.035.

SECTION 98. ORS 339.252 is amended to read:

339.252. (1) As used in this section, “child with a disability” has the meaning given that term in ORS 343.035.

(2) A child with a disability continues to be entitled to a free appropriate public education if the child has been removed for disciplinary reasons from the child’s current educational placement for more than 10 school days in a school year.

(3) A disciplinary removal is considered a change in educational placement and the school district shall follow special education due process procedures under ORS 343.155 (5) if:

(a) The removal is for more than 10 consecutive school days; or

(b) The child is removed for more than 10 cumulative school days in a school year, and those removals constitute a pattern based on the length and total time of removals and the proximity of the removals to one another.

(4) A child with a disability shall not be removed for disciplinary reasons under subsection (3) of this section for misconduct that is a manifestation of the child’s disability, except as provided under ORS 343.177.

(5) Notwithstanding ORS 339.250 (9) and (10), a school district shall provide a free appropriate public education in an alternative setting to a child with *[disabilities]* **a disability** even if the basis for expulsion was a weapon violation pursuant to ORS 339.250 (6).

(6) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

SECTION 99. ORS 341.937 is amended to read:

341.937. In preparing budget requests for each biennium, after consultation with the community colleges and their respective representatives of the *[disabled]* community **of persons with disabilities** at the colleges, the State Board of Education shall include amounts for capital improvements that will be applied to the substantial reduction and eventual elimination of barriers to access by *[disabled]* persons **with disabilities**.

SECTION 100. ORS 342.120 is amended to read:

342.120. As used in this chapter, unless the context requires otherwise:

(1) “Administrator” includes all superintendents, assistant superintendents and principals in the public schools or education service districts.

(2) "Approved teacher education institution" is one which meets the standards of the Teacher Standards and Practices Commission for preparation of teachers for preprimary programs and grades 1 through 12.

(3) "Approved teacher education program" is one offered by an approved teacher education institution and is so recognized by the Teacher Standards and Practices Commission, after considering recommendations of the State Board of Education.

(4) "Commission" means the Teacher Standards and Practices Commission.

(5) "Educational assistant" means a classified school employee who does not require a license to teach, who is employed by a school district or education service district and whose assignment consists of and is limited to assisting a licensed teacher in accordance with rules established by the State Board of Education.

(6) "Instruction" includes direction of learning in class, in small groups, in individual situations, in the library and in guidance and counseling, but does not include the provision of related services, as defined in ORS 343.035, to a child identified as a child with [disabilities] a **disability** pursuant to ORS 343.146 to 343.183 when provided in accordance with ORS 343.221.

(7) "Intern teacher" means a regularly enrolled student of an approved teacher education institution who teaches under the supervision of the staff of the institution and of the employing school district in order to acquire practical experience in teaching and for which the student receives both academic credit from the institution and financial compensation from the school district or education service district.

(8) "State board" means the State Board of Education.

(9) "Teacher" includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(10) "Teaching license" means a license issued under ORS 342.125 or 342.144.

SECTION 101. ORS 342.360 is amended to read:

342.360. (1) The membership of the Teacher Standards and Practices Commission shall consist of:

- (a) Four elementary teachers;
- (b) Four junior or senior high school teachers;
- (c) One elementary school administrator;
- (d) One junior or senior high school administrator;
- (e) One superintendent of city schools;
- (f) One county superintendent or a superintendent employed by an education service district board;
- (g) One member from the faculty of an approved private teacher education institution in Oregon;
- (h) One member from the faculty of a state institution of higher education;
- (i) One member who is also a member of a district school board; and
- (j) Two members of the general public.

(2) Except for those members appointed under subsection (1)(i) and (j) of this section, members must have been actively engaged in teaching, supervising or administering in the public schools or in approved teacher education institutions in Oregon for the period of five years immediately preceding appointment. Acting as an elected representative of teachers, supervisors or administrators shall be considered teaching, supervising or administering for the purposes of the five-year experience requirement. In addition, members appointed under subsection (1)(a) to (f) of this section must hold valid Oregon teaching or administrative licenses other than restricted teaching or administrative licenses.

(3)(a) Throughout the term for which appointed, one of the members appointed under subsection (1)(a) to (j) of this section must hold a teaching license with an endorsement in some aspect of special education or have demonstrated knowledge or experience in special education.

(b) As used in this subsection, “special education” means specially designed education to meet the goals of the individual education program of a child with *[disabilities]* **a disability** including regular classroom instruction, instruction in physical education, home instruction, related services and instruction in hospitals, institutions and special schools.

SECTION 102. ORS 343.035 is amended to read:

343.035. As used in this chapter unless the context requires otherwise:

(1) [*“Children with disabilities”*] **“Child with a disability”** means *[those]* **a** school-age *[children]* **child** who *[are]* **is** entitled to a free appropriate public education as specified by ORS 339.115 and who *[require]* **requires** special education because *[they have]* **the child has** been evaluated as having one of the following conditions as defined by rules established by the State Board of Education: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, including blindness, deaf-blindness, emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities.

(2) “Decision” means the decision of the hearing officer.

(3) “Determination” means the determination by the school district concerning the identification, evaluation or educational placement of a child with *[disabilities]* **a disability** or the provision of a free appropriate public education to the child in a program paid for by the district.

(4) “Developmental delay” means:

(a) Delay, at a level of functioning and in accordance with criteria established by rules of the State Board of Education, in one or more of the following developmental areas: Cognitive development; physical development, including vision and hearing; communication development; social or emotional development or adaptive development; or

(b) A disability, in accordance with criteria established by rules of the State Board of Education, that can be expected to continue indefinitely and is likely to cause a substantial delay in a child’s development and ability to function in society.

(5) “Early childhood special education” means free, appropriate, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for kindergarten, where instruction is provided in any of the following settings: Home, hospitals, institutions, special schools, classrooms, and community child care or preschool settings, or both.

(6) “Early intervention services” means services for preschool children with disabilities from birth until three years of age that are:

(a) Designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child’s development;

(b) Selected in collaboration with the parents; and

(c) Provided:

(A) Under public supervision;

(B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and

(C) In conformity with an individualized family service plan.

(7) “Individualized education program” means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established by rules of the State Board of Education for each child eligible for special education and related services under this chapter.

(8) “Individualized family service plan” means a written plan of early childhood special education, related services, early intervention services and other services developed in accordance with criteria established by rules of the State Board of Education for each child eligible for services under this chapter.

(9) “Instruction” means providing families with information and skills that support the achievement of the goals and outcomes in the child’s individualized family service plan and working with preschool children with disabilities in one or more of the following developmental areas: Communi-

cation development, social or emotional development, physical development, including vision and hearing, adaptive development and cognitive development.

(10) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.

(11) "Order" has the meaning given that term in ORS chapter 183.

(12) "Other services" means those services which may be provided to preschool children with disabilities and to their families that are not early childhood special education or early intervention services and are not paid for with early childhood special education or early intervention funds.

(13) "Parent" means the parent, person acting as a parent or a legal guardian, other than a state agency, of the child or the surrogate parent. "Parent" may be further defined by rules adopted by the State Board of Education.

(14) "Preschool [*children*] **child** with [*disabilities*] **a disability**" means [*all children*] **a child** from:

(a) Birth until three years of age who [*are*] **is** eligible for early intervention services because [*they are*] **the child is** experiencing developmental delay or [*have*] **has a** diagnosed mental or physical [*conditions*] **condition** that will result in developmental delay; or

(b) Three years of age to eligibility for entry into kindergarten who [*need*] **needs** early childhood special education services because [*they are*] **the child is** experiencing developmental delay or because [*they have*] **the child has** been evaluated as having one of the conditions listed for **a** school-age [*children*] **child** under subsection (1) of this section.

(15) "Related services" means transportation and such developmental, corrective and other supportive services as are required to assist a child with [*disabilities*] **a disability** to benefit from special education, and includes speech-language and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, medical services for diagnostic or evaluation purposes and parent counseling and training. "Related services" does not include a medical device that is surgically implanted or the replacement of a medical device that is surgically implanted.

(16) "School district" means a common or union high school district or an education service district that is charged with the duty or contracted with by a public agency to educate children eligible for special education.

(17) "Service coordination" means the activities carried out by a service coordinator to assist and enable a preschool child with [*disabilities*] **a disability** and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's early intervention and early childhood special education programs and to coordinate access to other services designated on the individualized family service plan.

(18)(a) "Special education" means specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education.

(b) "Special education" also includes speech-language services, transition services or other related services designated by rule if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(19) "Unaccompanied homeless youth" has the meaning given that term in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6).

(20) "Ward of the state" means a child who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court. "Ward of the state" may be further defined by rules adopted by the State Board of Education.

SECTION 103. ORS 343.155 is amended to read:

343.155. The State Board of Education shall establish by rule procedures to protect the rights of every child with a disability who is eligible for special education and every child who there is a reasonable cause to believe has a disability, including:

(1) Rules providing for the participation of the parents of a child with a disability in meetings regarding the child's identification, evaluation, individualized education program, educational placement and the provision of a free appropriate public education to the child.

(2) Rules governing the procedures for the appointment of a surrogate for the parent and other rules necessary to protect the special educational rights of the child, which shall include, but need not be limited to, rules applicable whenever:

(a) No parent of the child can be identified or located after reasonable efforts;

(b) There is reasonable cause to believe that the child has a disability and is a ward of the state;

(c) The child is an unaccompanied homeless youth; or

(d) The child reaches the age of majority and has been determined not to have the ability to give informed consent regarding the child's education.

(3) Rules prescribing mediation procedures, resolution sessions and hearings procedures if identification, evaluation, individual education program or placement is contested.

(4) Rules prescribing when notice of procedural safeguards must be given to the parents or the child with [*disabilities*] **a disability** who has reached the age of majority, the content of the notice and the language of the notice.

(5) Rules prescribing standards and procedures for disciplinary actions for behavior or misconduct of a child with a disability.

(6) Other procedural safeguards as required by law.

SECTION 104. ORS 343.165 is amended to read:

343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

(a) The parent requests a hearing to contest the determination of the school district concerning the identification, evaluation, individualized education program, educational placement or the provision of a free appropriate public education to the child; or

(b) The school district requests a hearing to obtain a decision regarding whether its identification, evaluation, individualized education program or educational placement of the child is appropriate or whether the district's proposed action is necessary to provide the child with a free appropriate public education.

(2) Notwithstanding subsection (1)(b) of this section, a school district may not request a hearing if a parent refuses consent for placement in a program providing special education and related services.

(3)(a) Except as provided in paragraph (b) of this subsection, a hearing described in subsection (1) of this section must be requested within two years after the date of the act or omission that gives rise to the right to request a hearing under subsection (1) of this section.

(b) The timeline described in paragraph (a) of this subsection does not apply to a parent if the parent was prevented from requesting the hearing due to:

(A) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or

(B) The school district withholding from the parent information that the district was required to provide under this chapter.

(4) The State Board of Education shall adopt rules that establish when a school district is obligated to initiate a contested case hearing to ensure that a student with [*disabilities*] **a disability** is provided with a free appropriate public education.

(5) The board's rules in subsection (1) of this section shall be as consistent as possible with the procedures applicable to a contested case under ORS chapter 183. However, the board's rules shall provide that:

(a) Any party to a hearing has the right to prohibit the introduction of any evidence that has not been disclosed to that party at least five business days before the hearing; and

(b) The hearing officer may prohibit the introduction of any evidence regarding evaluations and recommendations based on those evaluations that a party intends to use at the hearing, if the evidence has not been disclosed to the other party at least five business days before the hearing, unless the other party consents to the introduction of the evidence.

(6) Notwithstanding subsection (5) of this section, in an expedited hearing the evidence must be disclosed to the other party not later than two business days before the hearing.

(7) The parent shall be entitled to have the child who is the subject of the hearing present at the hearing and to have the hearing open to the public.

(8) An expedited hearing shall be held if:

(a) In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or

(b) The school district believes that maintaining the current placement for the child is substantially likely to result in injury to the child or others.

(9) The hearing shall be conducted by an independent hearing officer appointed by the Superintendent of Public Instruction. The hearing officer:

(a) Shall not be:

(A) An employee of a school district involved in the education or care of the child;

(B) An employee of the Department of Education; or

(C) A person having any personal or professional interest that would conflict with the person's objectivity in the hearing.

(b) Shall possess:

(A) Knowledge of, and the ability to understand, the provisions of state and federal special education laws, regulations and legal interpretations by federal and state courts;

(B) The knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and

(C) The knowledge and ability to render and write decisions in accordance with standard legal practice.

SECTION 105. ORS 343.193 is amended to read:

343.193. (1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact officially is a *[disabled]* child **with a disability** who is eligible for but not enrolled in a special education program shall report to the Superintendent of Public Instruction the child's name and the facts leading the official to the belief.

(2) Nothing in ORS 40.225 to 40.295 shall affect the duty to report imposed by subsection (1) of this section except that a physician, licensed psychologist, member of the clergy or attorney shall not be required to report information communicated by an adult if such information is privileged under ORS 40.225 to 40.295.

(3) Upon receipt of a report under subsection (1) of this section, the Superintendent of Public Instruction shall verify whether the child is enrolled in a special education program and may cause an investigation, including an evaluation under ORS 343.146, to be made to determine whether the child is eligible for a program under ORS 343.221.

(4) As used in this section, "public or private official" has the meaning given in ORS 419B.005.

SECTION 106. ORS 343.224 is amended to read:

343.224. School districts shall not be financially responsible for noneducational care of a child with *[disabilities]* **a disability** unless that district has participated in development of the child's individualized education plan that clearly documents such care is prerequisite to the child receiving a free and appropriate education and the placement is for educational program needs, rather than care needs.

SECTION 107. ORS 343.600 is amended to read:

343.600. It shall be the policy of this state that *[blind]* students **who are blind and** who, due to lack of visual acuity or perception, cannot read printed material at a competitive rate of speed and

with facility, or who have a reasonable expectation of visual deterioration, shall be encouraged to learn to read and write Braille.

SECTION 108. ORS 344.511 is amended to read:

344.511. As used in ORS 344.511 to 344.690 and 344.710 to 344.730:

(1) "Department" means the Department of Human Services.

(2) "Director" means the Director of Human Services.

(3) "[*Disabled*] Individual **with a disability**" means [*any person*] **an individual** who has a substantial occupational handicap due to a physical or mental condition except blindness.

(4) "**Individual with a severe disability**" means **an individual with a disability who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.**

[(4)] (5) "Maintenance" means money payments, during vocational rehabilitation, to individuals with occupational handicaps found to require financial assistance with respect thereto in order to effectuate the vocational rehabilitation of such individuals.

[(5)] (6) "Occupational handicap" means a physical or mental condition other than blindness which, regardless of its origin, constitutes, contributes to, or, if not corrected, will probably result in, an obstruction to occupational performance or the condition of being an untrained individual.

[(6)] (7) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in any occupation.

[(7)] (8) "Occupational tools, equipment and supplies" means such customary implements, appliances, apparatus, fixtures and materials as are necessary for the successful prosecution of the employment objective of an individual with an occupational handicap.

[(8)] (9) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially modify an individual's occupational handicap within a reasonable length of time. The term includes but is not limited to medical, psychiatric, dental and surgical treatment, nursing services, hospital and convalescent home care, medical and surgical drugs and supplies, and prosthetic appliances, excluding curative treatment for acute or transitory conditions.

[(9)] (10) "Prosthetic appliance" means any artificial appliance designed to support or take the place of a part of the body or to increase the acuity of a sense organ.

[(10)] (11) "Rehabilitation training" means all training provided, directly or through public or private instrumentalities, to an individual to compensate for the occupational handicap of the individual. The term includes but is not limited to manual, preconditioning, prevocational, vocational and supplementary training and training provided for the purpose of achieving broader and more remunerative skills and capacities.

[(11) "*Severely handicapped individual*" means a disabled individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.]

(12) "Untrained individual" means any person without mental or physical disability who has a substantial occupational handicap due to lack of occupational training, experience, skills or other factors and who is receiving and, in the opinion of the Department of Human Services, probably will continue to receive public assistance because of the occupational handicap of the individual.

(13) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services necessary to enable an individual with an occupational handicap to engage in a remunerative occupation and include, but are not limited to, medical and vocational diagnoses, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, occupational tools, equipment and supplies, maintenance and training books, supplies and materials.

SECTION 109. ORS 344.530 is amended to read:

344.530. Notwithstanding any other provisions of the law, the Department of Human Services shall perform the following vocational rehabilitation functions:

(1) Establish and enforce such rules as may be necessary to:

(a) Carry out ORS 344.511 to 344.690 and 344.710 to 344.730; and

- (b) Safeguard the confidential character of vocational rehabilitation information and records.
- (2) Cooperate with public and private departments, agencies and institutions in:
 - (a) Providing for the vocational rehabilitation of individuals with occupational [*disabilities*] **handicaps**;
 - (b) Studying the problems involved therein; and
 - (c) Establishing, developing and providing, in conformity with ORS 344.511 to 344.690 and 344.710 to 344.730, such programs, facilities and services as may be necessary.
 - (3) Enter into reciprocal agreements with other states relative to the provision of vocational rehabilitation to residents of the states concerned.
 - (4) Conduct research and compile statistics relating to the vocational rehabilitation of individuals with occupational [*disabilities*] **handicaps**.
 - (5) Encourage and assist [*severely disabled*] individuals **with severe disabilities** in the establishment, maintenance and conduct of appropriate home industries within their capacities and in the promotion of the sale and distribution of the products of such home industries. All funds collected or received from such activities shall be deposited in a permanent special fund in the State Treasury and shall be used for the operation of such home industries as determined by the department.
 - (6) For rehabilitation facilities:
 - (a) Establish, conduct and maintain facilities necessary for the sheltered employment of [*severely disabled*] individuals **with severe disabilities**;
 - (b) Pay the individuals employed in the facilities suitable wages;
 - (c) Devise means for the sale and distribution of the products of the facilities;
 - (d) Devise a subsidy program, and include a plan for its funding in each biennial budget submitted to the Legislative Assembly; and
 - (e) Take such other action as may be necessary to [*insure*] **ensure** the successful operation of the facilities established.
 - (7) Deposit in the State Vocational Rehabilitation Account all funds collected or received from activities described in subsection (6) of this section, which shall be used for the operation of facilities necessary for the sheltered employment of [*severely disabled*] individuals **with severe disabilities** as determined by the department.
 - (8) Take such other action as may be necessary to carry out ORS 344.511 to 344.690 and 344.710 to 344.730.

SECTION 110. ORS 344.550 is amended to read:

- 344.550. (1) Vocational rehabilitation services shall be provided to any [*disabled*] individual **with a disability**:
- (a) Who is in the state and files an application therefor and who is not in the state for the sole purpose of receiving vocational rehabilitation services.
 - (b) Who is eligible for vocational rehabilitation service under the terms of an agreement with another state or with the federal government.
- (2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified by the Department of Human Services, the following rehabilitation services shall be provided at public cost only to [*disabled*] individuals **with disabilities** found to require financial assistance with respect thereto:
- (a) Physical restoration.
 - (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.
 - (c) Occupational licenses.
 - (d) Customary occupational tools and equipment.
 - (e) Maintenance.
 - (f) Training books and materials.

SECTION 111. ORS 344.720 is amended to read:

344.720. (1) Upon approval of the rehabilitation facility and within the limits of available funds, the Department of Human Services may make grants to assist rehabilitation facilities.

(2) Applications for grants under subsection (1) of this section shall be made in the manner and form and contain the information required by the department.

(3) The approval of the department required by subsection (1) of this section shall be based on reasonable and satisfactory assurance of:

(a) Provision for vocational training and employment experience to enable [*the disabled or severely disabled*] individuals **with disabilities or severe disabilities** to participate in competitive employment when the physical condition of the [*person*] **individual** warrants such employment[.]; **and**

(b) Compliance with the rules of the department applicable to rehabilitation facilities.

SECTION 112. ORS 344.735 is amended to read:

344.735. (1) There is established a state advisory committee that shall function solely in an advisory capacity to the Director of Human Services on vocational rehabilitation services. The director shall appoint members to the advisory committee. A majority of the advisory committee shall be [*disabled*] persons **with disabilities**.

(2) The director shall include advisory committee recommendations in the Department of Human Services' decision-making process. The advisory committee shall:

(a) Collect and study data and other information and offer advice concerning specialized needs of specific client groups;

(b) Provide liaison between the department and the rehabilitation community;

(c) Review and suggest new and revised legislation affecting the provision of vocational rehabilitation services to [*Oregon's disabled*] **Oregonians with disabilities**;

(d) Study, collect data and offer advice regarding high priority issues identified by the department;

(e) Consider items of statewide concern relayed from regional advisory committees; and

(f) Utilize regional committees as a resource for gathering information as it relates to the individual areas.

(3) Through the advisory committee, the department shall take into account views of individuals and groups who are recipients of vocational rehabilitation services, providers of vocational rehabilitation services and others who are active in the vocational rehabilitation field, in connection with matters of general policy, program development and implementation.

SECTION 113. ORS 346.010 is amended to read:

346.010. (1) Pursuant to rules of the State Board of Education, the Superintendent of Public Instruction shall provide free training and education services for [*deaf or blind*] children **who are deaf or blind**, or children who are both deaf and blind, in facilities located in Marion County.

(2) The Superintendent of Public Instruction shall indicate which facilities shall serve as the school for [*the*] **children who are deaf** and the school for [*the*] **children who are blind**. The superintendent may order a change in all or part in the purpose and use of facilities available under this section whenever the superintendent determines that a change in purpose and use will better enable the state to meet its responsibilities for the education and training of [*deaf or blind*] children **who are deaf or blind**, or children who are both deaf and blind.

(3) The facilities shall be operated primarily for the provision of education and training services for children with sensory disabilities who cannot be efficiently served under the provisions of ORS chapter 343.

SECTION 114. ORS 346.015 is amended to read:

346.015. (1) Prior to convening a meeting to prepare an individual education plan for a [*mentally retarded or developmentally disabled*] child **with mental retardation or a developmental disability** for whom placement at a school under ORS 346.010 may be considered, the agency that is providing the education for the child shall notify the local community mental health and developmental disabilities program. The [*mentally retarded and developmentally disabled program mental health*] case manager **responsible for programs for children with mental retardation or developmental disabilities**, in consultation with the Department of Human Services, shall evaluate whether the child also has needs for alternative residential care or other support services. If the evaluation de-

termines this to be the case, but documents that community resources are not available to meet these needs, the school district may proceed with the meeting to prepare the individual education plan in which placement at a school under ORS 346.010 may be considered.

(2) An agency providing education under subsection (1) of this section may initiate the procedure in subsection (1) of this section for any child who *[is not mentally retarded or developmentally disabled]* **does not have mental retardation or a developmental disability** when in the agency's judgment a treatment or residential issue is prompting proposed placement under ORS 346.010.

(3) *[No]* **A child *[shall]* may not** be placed in a facility operated under ORS 346.010 unless the district superintendent or the superintendent's designee has signed a statement declaring that the district cannot provide a free appropriate public education for the child commensurate with the needs of the child as identified by the individual education plan of the child and that the facility is the least restrictive environment in which the child can be educated.

(4) By rule, the State Board of Education shall determine procedures to be followed by local education agencies in carrying out this section.

SECTION 115. ORS 346.035 is amended to read:

346.035. For *[children]* **a child** who *[are]* **is** enrolled under ORS 346.010 and who *[are mentally retarded or developmentally disabled]* **has mental retardation or a developmental disability**, the Department of Education shall notify the community mental health and developmental disabilities program of the date of the annual review of the individual education plan of the child for the purpose of including in the review the assigned case manager's assessment of community resources that are available for treatment or residential needs the child might have.

SECTION 116. ORS 346.070 is amended to read:

346.070. (1) Subject to subsection (3) of this section, every *[deaf]* student **who is deaf and** who has been a resident of Oregon for the three years immediately preceding application and who is attending any university, college or other suitable school is eligible to apply for a state grant-in-aid to help defray approved expenses. If the student's application for a grant-in-aid is approved by the Superintendent of Public Instruction, the Department of Education may make the grant-in-aid contingent upon the student's attending a school of the superintendent's choice.

(2) The grants-in-aid shall not exceed \$1,000 to any student for any fiscal year and shall be paid out of any funds appropriated to the department for that purpose. The State Board of Education may adopt rules necessary to carry out this section.

(3) *[No deaf student shall]* **A student who is deaf may not** receive a grant-in-aid under subsection (1) of this section for a period exceeding seven years.

SECTION 117. ORS 346.110 is amended to read:

346.110. As used in ORS 346.110 to 346.270:

(1) "Commission" means the Commission for the Blind.

[(2) "Visually impaired individuals" includes individuals who are blind or have seriously impaired vision or who have conditions which might lead to blindness.]

[(3)] (2) "*[Blind]* **Person who is blind**" means a person whose central visual acuity does not exceed 20/200 in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(3) "**Person with a visual impairment**" includes a person who is blind or has seriously impaired vision or who has a condition that might lead to blindness.

SECTION 118. ORS 346.120 is amended to read:

346.120. There is created a commission for *[the]* **persons who are blind and for** the prevention of blindness, to be known as the Commission for the Blind. The commission shall:

(1) Establish and be responsible for the administration of a program or programs for *[the]* **persons who are** blind which will promote, in the manner set forth in ORS 346.110 to 346.270, the welfare of *[visually impaired individuals]* **persons with visual impairments**, including but not limited to cooperation by contract or otherwise with public and private agencies in providing services, programs and facilities for *[visually impaired individuals]* **persons with visual impairments**.

(2) Be responsible for the fiscal oversight of the commission, which includes but is not limited to:

- (a) Regular review of financial statements of the commission;
- (b) Participation in the development of the budget for the commission; and
- (c) Directing the resources of the commission to implement program goals.

SECTION 119. ORS 346.130 is amended to read:

346.130. (1) The Commission for the Blind shall be appointed by the Governor and shall consist of seven members:

(a) Four members who are qualified persons within the legal definition of *[blind]* persons **who are blind**; and

(b) Three members appointed from among the areas of employers, labor, optometry, ophthalmology, and education of *[the]* **persons who are blind**. However, no more than one appointee shall represent the same area during the same term. To the greatest extent possible, appointments from the five areas shall be made on a rotating basis.

(2) The term of office of a member of the commission is two years. Vacancy in the office of a member shall be filled by the Governor for the unexpired term. Any member who is absent from three consecutive commission meetings or more than one-third of the scheduled meetings in one year shall be removed from office and the Governor shall fill the vacancy for the unexpired term. *[No]* **A** person may **not** serve on the commission for more than three consecutive terms of one year or more in length.

(3) All appointments of members of the commission by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(4) The commission shall hold meetings at least once every two months and such additional meetings as it may deem necessary.

(5) Each member is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 120. ORS 346.160 is amended to read:

346.160. The Commission for the Blind shall cause to be compiled and maintained as complete as possible a register of *[the blind]* **persons** in Oregon **who are blind**, which shall describe the extent of blindness, cause of blindness and such other facts in regard to each person so registered as the commission may deem advisable.

SECTION 121. ORS 346.165 is amended to read:

346.165. (1) The Commission for the Blind *[shall]* **may** not disclose or use the contents of the register of *[the]* **persons who are blind** filed and maintained under the provisions of ORS 346.160, or any records, files, papers or communications for purposes other than those directly connected with the programs administered by the commission, and the register of *[the]* **persons who are blind**, the records, files, papers and communications are considered confidential.

(2) Notwithstanding subsection (1) of this section, ORS 346.150 (2) and 346.167, the minutes and records of official actions of the Commission for the Blind, its payroll, books of account and accounts of expenditures are public writings available *[to]* **for** inspection in the manner provided in ORS 192.410 to 192.505.

SECTION 122. ORS 346.169 is amended to read:

346.169. (1) Notwithstanding the provisions of ORS 346.165 and 346.167, whenever a **person who is blind or blind and deaf** *[person]* requests any public or private agency to exchange with another agency the records of the agency concerning the person making the request, the agency shall furnish the records to the designated agency.

(2) The request made under subsection (1) of this section may be made by a guardian of the **person who is blind or blind and deaf** *[person]*.

(3) As used in this section, "record" includes name and address of the **person who is blind or blind and deaf** *[person]*, medical and psychological records, and other information designated by the person requesting the exchange of records.

(4) Where appropriate, a request for an exchange of records made under the provisions of this section shall be subject to the confidentiality and access provisions of ORS 179.495, 326.565, 326.575, 336.187, 341.290, 344.600, 411.320, 419B.035 and 419B.045.

SECTION 123. ORS 346.170 is amended to read:

346.170. (1) The Commission for the Blind shall maintain a program for the conservation and restoration of sight and the prevention of blindness, the objects of which shall be to inaugurate and cooperate in such measures for the prevention of blindness in Oregon as the commission may deem advisable.

(2) The commission in its discretion may arrange for and pay for the examination of the eyes of individual [*visually handicapped*] persons **with visual impairments** and may obtain and pay for medical and surgical treatment and glasses for such persons.

SECTION 124. ORS 346.180 is amended to read:

346.180. The Commission for the Blind shall maintain a program of vocational rehabilitation services. The object of the program shall be to aid [*individuals*] **persons** with visual [*disabilities*] **impairments** in finding employment, to provide such physical restoration as will increase their employability, to establish a program of small business enterprises in which such [*individuals*] **persons** are able to work, to establish individual programs of college and university instruction, also training in trades and occupations which may be followed in their homes and elsewhere, to cooperate with the United States Government in vocational rehabilitation programs for [*the*] **persons who are** blind, including establishment of small business enterprises for them in buildings owned or rented by the federal government and to assist [*individuals*] **persons** with visual [*disabilities*] **impairments**, in whatever manner may seem advisable to the commission, in disposing of the products of their industries.

SECTION 125. ORS 346.190 is amended to read:

346.190. (1) The Commission for the Blind shall establish and maintain a program of industries for [*the*] **persons who are** blind. For that purpose, it shall equip and operate one or more training centers, one or more workshops and home industry activities for the employment of suitable [*blind*] persons **who are blind**, and may devise ways and means for the sale and distribution of the products and services of the Industries for the Blind Program. The commission may conduct such investigation and research as it may deem advisable in selecting new types of industries suitable for [*visually impaired*] workers **with visual impairments**.

(2) The commission shall pay [*visually impaired*] workers **with visual impairments** who have completed their training suitable compensation for their work in the Industries for the Blind Program. The services performed by workers within the Industries for the Blind Program shall be considered services for a nonprofit organization.

(3) The commission may employ [*such sighted*] persons **without visual impairments** as workers in the Industries for the Blind Program as [*are*] necessary to operate the program, to the extent that such [*sighted workers*] **persons** do not constitute more than 25 percent of the total workforce of the program. The services performed by such [*sighted workers*] **persons** shall be considered services for a nonprofit organization.

(4) Except for those persons employed in a supervisory or administrative capacity:

(a) ORS chapter 240 does not apply to workers in the Industries for the Blind Program. However, the commission may allow vacation and sick leave to the employees of the Industries for the Blind Program consistent with the schedules established under the State Personnel Relations Law.

(b) Notwithstanding ORS 238.015, a worker in the Industries for the Blind Program working on July 21, 1973, shall become a member of the Public Employees Retirement System at the beginning of the first full pay period after the worker has completed 12 months' service uninterrupted by a total of more than 30 working days during the 12 months' period. This subsection shall not apply nor extend to workers entering the Industries for the Blind Program after July 21, 1973.

(5) As used in this section, "nonprofit organization" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

SECTION 126. ORS 346.210 is amended to read:

346.210. The Commission for the Blind may, whenever it deems proper, aid [*individual visually impaired*] persons **with visual impairments** or groups of such persons by supplying materials, equipment or machinery to them, and also may assist them in the sale and distribution of their products. The ownership of the materials, equipment or machinery supplied to [*visually impaired*] persons **with visual impairments** may be transferred to such persons by the commission.

SECTION 127. ORS 346.220 is amended to read:

346.220. Whenever any of the products or services, including operation of vending facilities as defined in ORS 346.510 [(2)], of [*visually impaired individuals*] **persons with visual impairments**, produced under the supervision and direction of the Commission for the Blind, meet the requirements of any state department or institution as to quality, quantity and price, such products or services shall have preference and the state departments and institutions shall purchase from the commission such products or services as may be required.

SECTION 128. ORS 346.250 is amended to read:

346.250. The Commission for the Blind may establish a program of social and educational services for the purpose of ameliorating the condition of [*visually impaired individuals*] **persons with visual impairments** by providing instruction [*which*] **that** will assist them in making the best possible adjustment to conditions resulting from loss or impairment of sight, as the commission may deem advisable. Special courses of instruction and training may be established at training centers and workshops for [*visually impaired individuals*] **persons with visual impairments that** [*which*] shall include home economics, household mechanics, orientation to better living and such other instruction as will contribute to the economic and social adjustment of [*visually impaired individuals*] **persons with visual impairments**. [*Sighted*] Persons with whom [*visually impaired individuals*] **persons with visual impairments** are living may, whenever the commission deems necessary, be given instruction that will assist them in caring for such [*visually impaired individuals*] **persons with visual impairments**. The commission through this program also shall cooperate with the Library of Congress and other agencies in the distribution of talking-book machines, sound-reproducing equipment and other devices designed for the use of [*the*] **persons who are blind**, and from time to time may cause to be made and distributed to [*visually impaired individuals*] **persons** in this state **who have visual impairments** specially recorded subjects and Braille publications.

SECTION 129. ORS 346.260 is amended to read:

346.260. The Commission for the Blind shall:

(1) Cooperate with the Department of Human Services in the administration of programs for [*the*] **persons who are blind**; and

(2) When requested by the department, make an investigation of an applicant eligible for programs for [*the*] **persons who are blind** and make recommendations to the department regarding services for the applicant and the employability of the applicant.

SECTION 130. ORS 346.290 is amended to read:

346.290. (1) There is established in the General Fund of the State Treasury an account to be known as the Commission for the Blind Account. Except for Industries for the Blind Program funds designated in ORS 346.230 and funds made available to the commission under ORS 346.270 or deposited pursuant to ORS 346.540, all moneys received by the commission for promoting the welfare of [*visually impaired individuals*] **persons with visual impairments** shall be paid into the State Treasury and credited to the Commission for the Blind Account. All moneys in the Commission for the Blind Account hereby are appropriated continuously for and shall be used by the commission for the respective purposes authorized by law.

(2) The Commission for the Blind shall keep a record of all moneys deposited in the Commission for the Blind Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

SECTION 131. ORS 346.510 is amended to read:

346.510. As used in ORS 346.510 to 346.570, the term:

[1] “Blind person” means a person having not more than 20/200 visual acuity in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. Such blindness shall be certified by a licensed physician who specializes in diseases of the eye.]

[2] “Vending facility” means:]

(a) Such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary or customarily used for the vending of such articles as may be approved by the Commission for the Blind and the agency having care, custody and control of the building or property in or on which the vending facility is located;]

[b) Manual or coin operated vending machines or similar devices for vending such articles; or]

[c) Cafeterias or snack bars for the dispensing of food stuffs and beverages.]

[3] (1) “Operator” means the individual [blind] person **who is blind and who is** responsible for the [day to day] **day-to-day** conduct of the vending facility operation.

(2) “Person who is blind” means a person having not more than 20/200 visual acuity in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. Such blindness shall be certified by a licensed physician who specializes in diseases of the eye.

[4] (3) “Public building” or “property” means any building, land or other real property, owned, leased or occupied by any department or agency of the State of Oregon or any of its political subdivisions except public elementary and secondary schools.

(4) “Vending facility” means:

(a) Such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary or customarily used for the vending of such articles as may be approved by the Commission for the Blind and the agency having care, custody and control of the building or property in or on which the vending facility is located;

(b) Manual or coin operated vending machines or similar devices for vending such articles; or

(c) Cafeterias or snack bars for the dispensing of food stuffs and beverages.

SECTION 132. ORS 346.520 is amended to read:

346.520. (1) For the purposes of providing [blind] persons **who are blind** with remunerative employment, enlarging the economic opportunities of [blind] **those** persons and stimulating [blind persons] **them** to greater efforts to make themselves self-supporting with independent livelihoods, [blind] persons **who are blind and who are** licensed under the provisions of ORS 346.510 to 346.570 by the Commission for the Blind, as set forth in ORS 346.510 to 346.570, shall operate vending facilities in or on any public buildings or properties where, in the discretion of the head of the department or agency in charge of the maintenance of such buildings or properties, such vending facilities may properly and satisfactorily operate.

(2) Notwithstanding ORS 276.385, the department or agency in charge of the maintenance of a public building or property in or on which a vending facility is operated under ORS 346.510 to 346.570 [shall] **may** not charge the Commission for the Blind or [blind] persons **who are blind and who are** licensed under the provisions of ORS 346.510 to 346.570 any amount for:

(a) Rental of the space in or on which the vending facility is operated; or

(b) Utility costs incurred in the operation of the vending facility.

(3) Subsection (2) of this section does not apply to charges imposed by the Department of Transportation. Subject to the availability of funds, the department may refrain from charging any amount for rental of space or utility costs described in subsection (2) of this section.

SECTION 133. ORS 346.540 is amended to read:

346.540. (1) The Commission for the Blind shall:

(a) Make surveys of public buildings or properties to determine their suitability as locations for vending facilities to be operated by [blind] persons **who are blind** and advise the heads of departments or agencies charged with the maintenance of such buildings or properties as to their findings.

(b) With the consent of the head of the department or agency charged with the maintenance of the buildings or properties, establish vending facilities in those locations which the Commission for the Blind has determined to be suitable, and may enter into leases or licensing agreements therefor.

(c) Select, train, license and install qualified [blind] persons **who are blind** as managers of such vending facilities.

(d) Adopt rules as it may from time to time deem necessary to assure the proper and satisfactory operation of such vending facilities, and for the benefit of vending facility operators.

(e) Provide for the continued operation of established vending facilities if a qualified [blind] person **who is blind** is not available until a qualified [blind] person **who is blind** is available for assignment as manager.

(2) If the head of the department or agency charged with the maintenance of buildings or properties does not consent to the establishment of vending facilities in locations in the building or on the property which were determined suitable by the commission, that person shall inform the commission in writing of the reasons why consent is not given.

(3) The commission may establish in the State Treasury a fund from the net proceeds of the operation of vending facilities. Moneys so deposited including the interest thereon shall be credited by the State Treasurer to a special checking account, separate and distinct from the General Fund. Disbursement may be made by check signed by the person designated by the commission. The fund shall be used for the purposes of and are continuously appropriated for maintenance and replacement of equipment, management services, assuring a fair minimum of return to vendors, or for such other purposes necessary and proper for the benefit of operators of vending facilities. Interest earned by the account shall be credited to the account.

SECTION 134. ORS 346.565 is amended to read:

346.565. (1) A [blind] business enterprise manager **who is blind**, as described under ORS 346.510 to 346.570, or a **person who is blind who is an** employee of a private nonprofit Oregon corporation established and authorized by the Commission for the Blind to provide employment to [the] **persons who are blind** may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the manager or [the blind] employee.

(2) A [blind] business enterprise manager **who is blind**, as described under ORS 346.510 to 346.570, may participate in state deferred compensation plan established under ORS 243.401 to 243.507, contingent on participation not affecting the tax exempt status of other contributions to the deferred compensation plan.

(3) For the purposes of subsections (1) and (2) of this section, such managers and employees shall be considered eligible state employees.

SECTION 135. ORS 346.570 is amended to read:

346.570. (1) Those individuals who are operating vending facilities in public buildings or on public properties, as defined in ORS 346.510 prior to August 20, 1957, shall not be affected by ORS 346.510 to 346.570, except and only insofar as provided in ORS 346.530 (2).

(2) Any [blind] person **who is blind and** who is presently operating a vending facility in or on public buildings or properties **and** who desires to make use of the advantages of the program authorized by ORS 346.510 to 346.570 shall have the right to do so; and, in such instance, the Commission for the Blind may negotiate and consummate arrangements for the purchase of such vending facility equipment as it may deem necessary for the satisfactory operation of the vending facility.

SECTION 136. ORS 346.610 is amended to read:

346.610. As used in ORS 346.610 to 346.630:

[1] "*Blind person*" means a person who has vision of 20/200 or less with the best correction or has a visual field of 20 degrees or less.]

[2] (1) "Dog guide" means a dog that is wearing a dog guide harness and is trained to lead or guide a [blind] person **who is blind**.

[3] (2) “Dog guide trainee” means a dog undergoing training to lead or guide a [blind] person **who is blind**.

[4] “Trainer” means a person who trains dogs to lead or guide blind persons.]

[5] (3) “Mode of transportation” means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(4) “Person who is blind” means a person who has vision of 20/200 or less with the best correction or has a visual field of 20 degrees or less.

[6] (5) “Public accommodation” means a place of public accommodation as defined in ORS 659A.400.

(6) “Trainer” means a person who trains dogs to lead or guide persons who are blind.

SECTION 137. ORS 346.620 is amended to read:

346.620. (1) A [blind] person **who is blind** [shall have] **has** the right to have a dog guide with the [blind] person, and a trainer [shall have] **has** the right to have a dog guide or dog guide trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the [blind] person or trainer controls the behavior of the dog.

(2) [No blind person or trainer shall be] **A trainer or a person who is blind is not** required to pay an additional fee or admission charge for the dog guide.

(3) A [blind person or] trainer **or a person who is blind** is liable for any damages done to a place of public [accommodations] **accommodation** or to any mode of transportation by the dog guide.

SECTION 138. ORS 346.630 is amended to read:

346.630. (1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a [blind] person **who is blind** on the basis of the person’s use or possession of a dog guide.

(2) A [blind] person **who is blind has** [shall have] a cause of action to recover compensatory damages or \$200, whichever is greater, from any landlord, as defined in ORS 90.100, who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person’s use or possession of a dog guide. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(3) [No blind] **A person who is blind is not** [shall be] required to pay an additional nonrefundable fee or an excessive deposit for the dog guide.

(4) A [blind] person **who is blind** is liable for any damages done to the dwelling unit by the dog guide.

SECTION 139. ORS 346.640 is amended to read:

346.640. As used in ORS 346.640 to 346.660:

(1) “[Deaf] Person **who is deaf**” means a person whose hearing disability precludes successful processing of linguistic information through audition with or without a hearing aid.

(2) “Hearing ear dog” means a dog that is on an orange leash and that is trained to assist a [deaf] person **who is deaf**.

(3) “Hearing ear dog trainee” means a dog undergoing training to assist a [deaf] person **who is deaf**.

(4) “Mode of transportation” means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(5) “Public accommodation” means a place of public accommodation as defined in ORS 659A.400.

SECTION 140. ORS 346.650 is amended to read:

346.650. (1) A [deaf] person **who is deaf has** [shall have] the right to have a hearing ear dog with the person, and a trainer of a hearing ear dog [shall have] **has** the right to have the hearing ear dog or hearing ear dog trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the [deaf] person or trainer controls the behavior of the dog.

(2) [No deaf person or] **A trainer of a hearing ear dog** [shall be] **or a person who is deaf is not** required to pay an additional fee or admission charge for the hearing ear dog.

(3) A [deaf person or] trainer of a hearing ear dog **or a person who is deaf** is liable for any damages done to a place of public [accommodations] **accommodation** or to any mode of transportation by the hearing ear dog.

SECTION 141. ORS 346.660 is amended to read:

346.660. (1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a [deaf] person **who is deaf** on the basis of the use or possession of a hearing ear dog.

(2) [No deaf] **A person who is deaf [shall be] is not** required to pay an additional nonrefundable fee for the hearing ear dog.

(3) A [deaf] person **who is deaf** is liable for any damages done to the dwelling unit by the hearing ear dog.

SECTION 142. ORS 346.680 is amended to read:

346.680. As used in ORS 346.680 to 346.690:

(1) "Assistance animal" means any animal trained to assist a [physically impaired] person **with a physical impairment** in one or more daily life activities, including but not limited to:

- (a) Dog guides, as defined in ORS 346.610;
- (b) Hearing ear dogs, as defined in ORS 346.640;
- (c) An animal trained to pull a wheelchair;
- (d) An animal trained to fetch dropped items; and
- (e) An animal trained to perform balance work.

(2) "Assistance animal trainee" means any animal undergoing training to assist a [physically impaired] person **with a physical impairment**.

(3) "Daily life activity" includes but is not limited to:

- (a) Self-care;
- (b) Ambulation;
- (c) Communication; or
- (d) Transportation.

(4) "Mode of transportation" means any mode of transportation operating within this state.

(5) "[Physically impaired] Person **with a physical impairment**" means any person who [is permanently physically impaired] **has a permanent physical impairment**, whose physical impairment limits one or more of daily life activities and who has a record of impairment and is regarded by health care practitioners as having such an impairment, requiring the use of an assistance animal including but not limited to blindness, deafness and complete or partial paralysis.

(6) "Public accommodation" means a place of public accommodation as defined in ORS 659A.400 including but not limited to educational institutions, airlines and restaurants. The exception stated in ORS 659A.400 (2) is not an exception under ORS 90.390 and 346.680 to 346.690.

SECTION 143. ORS 346.685 is amended to read:

346.685. (1) A [physically impaired] person **with a physical impairment** has the right to have an assistance animal with the [physically impaired] person, and a trainer has the right to have an assistance animal or assistance animal trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the [physically impaired] person or trainer controls the behavior of the animal.

(2) [No physically impaired person or trainer shall be] **A trainer or a person with a physical impairment is not** required to pay an additional fee or admission charge for the assistance animal.

(3) The assistance animal shall be allowed to accompany its owner in an ambulance or other mode of [transport] **transportation** in the event of a medical emergency. If the owner is unconscious, the assistance animal shall be placed in an emergency veterinary clinic until the person regains consciousness and can make arrangements for the animal, or a relative responsible for the injured person is contacted and can make arrangements for the animal, or until the injured person dies, in which case the authorities will attempt to contact the school, where the animal was trained, for further action.

(4) A [*physically impaired person or*] trainer **or a person with a physical impairment** is liable for any damages done to a place of public [*accommodations*] **accommodation** or to any mode of transportation by the assistance animal.

SECTION 144. ORS 346.687 is amended to read:

346.687. (1) In addition to and not in lieu of any other penalty provided by state law, a [*physically impaired*] person **with a physical impairment** who uses an assistance animal or the owner of an assistance animal may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the assistance animal. The [*physically impaired*] person **with a physical impairment** or owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks an assistance animal. The action authorized by this subsection may be brought by the [*physically impaired*] person **with a physical impairment** or owner even if the assistance animal was in the custody or under the supervision of another person when the theft or attack occurred.

(2) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as an assistance animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained assistance animal, without any differentiation for the age or the experience of the animal. In addition, the [*physically impaired*] person **with a physical impairment** or owner may recover any other costs and expenses, including, but not limited to, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, incurred as a result of the theft of or injury to the animal.

(3) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen but is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the veterinary medical expenses, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, and any other costs and expenses incurred by the [*physically impaired*] person **with a physical impairment** or owner as a result of the theft of or injury to the animal.

(4) [*No*] **A** cause of action [*arises*] **does not arise** under this section if the [*physically impaired*] person **with a physical impairment**, owner or the person having custody or supervision of the assistance animal was committing a criminal or civil trespass at the time of the theft of or attack on the assistance animal.

(5) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

SECTION 145. ORS 346.690 is amended to read:

346.690. (1) A landlord, as defined in ORS 90.100, [*shall*] **may** not refuse to rent a dwelling unit, as defined in ORS 90.100, to a [*physically impaired*] person **with a physical impairment** on the basis of the person's use or possession of an assistance animal.

(2) A [*physically impaired*] person **with a physical impairment has** [*shall have*] a cause of action to recover compensatory damages or \$200, whichever is greater, from any landlord who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person's use or possession of an assistance animal. The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(3) [*No physically impaired*] **A** person **with a physical impairment is not** [*shall be*] required to pay an additional nonrefundable fee or an excessive deposit for the assistance animal.

(4) A [*physically impaired*] person **with a physical impairment** is liable for any damages done to the dwelling unit by the assistance animal.

SECTION 146. ORS 348.270 is amended to read:

348.270. (1) In addition to any other scholarships provided by law, the Oregon Student Assistance Commission shall award scholarships in any state institution under the State Board of Higher Education, in the Oregon Health and Science University, in any community college operated under ORS chapter 341, or in any Oregon-based regionally accredited independent institution, to any student applying for enrollment or who is enrolled therein, who is:

(a) The natural **child**, adopted **child** or stepchild of any public safety officer who, in **the** line of duty, was killed or so disabled, as determined by the Oregon Student Assistance Commission, that the income of the [*disabled*] public safety officer is less than that earned by public safety officers performing duties comparable to those performed at the highest rank or grade attained by the [*disabled parent*] **public safety officer**; or

(b) A former foster child who enrolls in an institution of higher education as an undergraduate student not later than three years from the date the student was removed from the care of the Department of Human Services, the date the student graduated from high school or the date the student received the equivalent of a high school diploma, whichever date is earliest.

(2) Scholarships awarded under this section to students who are dependents of public safety officers or who are former foster children shall equal the amount of tuition and all fees levied by the institution against the recipient of the scholarship. However, scholarships awarded to students who attend independent institutions shall not exceed the amount of tuition and all fees levied by the University of Oregon.

(3) If the student who is the dependent of a deceased public safety officer continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education and four years of post-graduate education.

(4) If the student **who is a former foster child** or who is the dependent of a [*disabled*] public safety officer [*or who is a former foster child*] **with a disability** continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education.

(5) The Oregon Student Assistance Commission may require proof of the student's relationship to a [*deceased or disabled*] public safety officer described in subsection (1) of this section or proof that the student is a former foster child.

(6) As used in this section:

(a) "Former foster child" means an individual who, for a total of 12 or more months while between the ages of 16 and 21, was a ward of the court pursuant to ORS 419B.100 (1)(b) to (e) and in the legal custody of the Department of Human Services for out-of-home placement.

(b) "Public safety officer" means:

(A) A firefighter or police officer as those terms are defined in ORS 237.610.

(B) A member of the Oregon State Police.

SECTION 147. ORS 352.015 is amended to read:

352.015. (1) [*Within 60 days after September 29, 1991,*] Every institution under the jurisdiction of the State Board of Higher Education shall convene a physical access committee to identify barriers to access by [*disabled*] persons **with disabilities** on **the campus of** each institution [*campus*]. The committee shall include, but not be limited to:

(a) One or more students [*who are disabled*] **with disabilities** or, if there are no [*disabled*] students **with disabilities** willing to participate, a [*disabled*] person **with a disability** who uses the institution's facilities;

(b) One or more members of the faculty or staff who [*are disabled*] **have disabilities**;

(c) The coordinator of *[disabled student]* services **for students with disabilities** for the institution;

(d) One or more administrators of the institution; and

(e) One or more members of the physical plant staff of the institution.

(2) The physical access committee shall present its findings and recommendations to the administration of the institution listing access needs and priorities for meeting those needs. These findings and recommendations shall identify the barriers to access that prevent *[disabled]* persons **with disabilities** from meaningfully utilizing campus facilities related to instruction, academic support, assembly and residence life.

(3) In preparing budget requests for each biennium *[beginning on and after July 1, 1993]*, each institution under the jurisdiction of the State Board of Higher Education shall include amounts for capital improvement that will be applied to the substantial reduction and eventual elimination of barriers to access by *[disabled]* persons **with disabilities** as identified by the physical access committee.

(4) Nothing in this section and ORS 185.155 and 341.937 requires an institution to undertake projects for accessibility that are not otherwise required unless such projects are funded specifically by the Legislative Assembly.

SECTION 148. ORS 353.070 is amended to read:

353.070. (1) As used in this section:

(a) "Direct labor" includes all work required for preparation, processing and packing, but not supervision, administration, inspection or shipping.

(b) "[*Disabled*] Individual **with a disability**" means an individual who, because of the nature of the individual's *[disabilities]* **disability**, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.

(c) "Qualified nonprofit agency for *[disabled]* individuals **with disabilities**" means a nonprofit activity center or rehabilitation facility:

(A) Organized under the laws of the United States or of this state and operated in the interest of *[disabled]* individuals **with disabilities**, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) That complies with any applicable occupational health and safety standards required by the laws of the United States or of this state; and

(C) That in the manufacture of products and in the provision of services during the fiscal year employs *[disabled]* individuals **with disabilities** for not less than 75 percent of the work hours of direct labor required for the manufacture or provision of the products or services.

(2) The Oregon Health and Science University Board of Directors shall further the policy of this state to encourage and assist *[disabled]* individuals **with disabilities** to achieve maximum personal independence through useful and productive gainful employment by ensuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing the dignity and capacity of *[disabled]* individuals **with disabilities** for self-support and minimizing their dependence on welfare and need for costly institutionalization.

(3) It shall be the duty of Oregon Health and Science University to:

(a) Determine the price of all products manufactured and services offered for sale to the university by any qualified nonprofit agency for *[disabled]* individuals **with disabilities**. The price shall recover for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and equipment replacement;

(b) Revise such prices from time to time in accordance with changing cost factors;

(c) Make such rules regarding specifications, time of delivery and other relevant matters of procedure as shall be necessary; and

(d) Utilize prices and specifications, in its discretion, established by the Oregon Department of Administrative Services.

(4) The university shall establish and publish a list of sources or potential sources of products produced by any qualified nonprofit agency for *[disabled]* individuals **with disabilities** and the ser-

vices provided by any such agency that the university determines are suitable for its procurement. The university, in its discretion, may utilize any list established and published by the Oregon Department of Administrative Services.

(5) If the university intends to procure any product or service on the procurement list, the university shall procure such product or service at the price established by the university from a qualified nonprofit agency for *[disabled]* individuals **with disabilities**, provided the product or service is of the appropriate specifications and is available at the location and within the period required by the university.

(6) It is the intent of the Legislative Assembly that there be close cooperation between the board, the university and qualified nonprofit agencies for *[disabled]* individuals **with disabilities**. The university, on behalf of the board, is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be necessary for effective coordination and efficient realization of the objectives of this section.

SECTION 149. ORS 353.130 is amended to read:

353.130. The Oregon Health and Science University subscribes to the policy set forth under ORS 279A.015 regarding public contracting, and shall develop contract policies that support openness, impartiality and competition in the awarding of contracts in accordance with that provision. The university subscribes to the intent of the social policies of ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C and shall develop contract policies that are appropriate to the university and are designed to encourage affirmative action, recycling, inclusion of art in public buildings, the purchase of services and goods from *[disabled]* individuals **with disabilities**, the protection of workers through the payment of prevailing wages as determined by the Bureau of Labor and Industries, the provision of workers' compensation insurance to workers on contracts and the participation of emerging small businesses and businesses owned by women and minorities.

SECTION 150. ORS 353.210 is amended to read:

353.210. (1) The Oregon Health and Science University shall convene a physical access committee to identify barriers to access by *[disabled]* persons **with disabilities** at the university. The committee shall include, but not be limited to:

(a) One or more students *[who are disabled]* **with disabilities or**, *[or]* if there are no *[disabled]* students **with disabilities** willing to participate, a *[disabled]* person **with a disability** who uses the university's facilities;

(b) One or more members of the faculty or staff *[who are disabled]* **with disabilities**;

(c) The coordinator of *[disabled student]* services **for students with disabilities** for the university;

(d) One or more administrators of the university; and

(e) One or more members of the physical plant staff of the university.

(2) The physical access committee shall present its findings and recommendations to the administration of the university, listing access needs and priorities for meeting those needs. These findings and recommendations shall identify the barriers to access that prevent *[disabled]* persons **with disabilities** from meaningfully utilizing campus facilities related to instruction, academic support, assembly and residence life.

(3) In preparing budget requests for each biennium, the university shall include amounts for capital improvement that will be applied to the substantial reduction and eventual elimination of barriers to access by *[disabled]* persons **with disabilities** as identified by the physical access committee.

(4) Nothing in this section and ORS 185.155 and 341.937 requires the university to undertake projects for accessibility that are not otherwise required unless such projects are funded specifically by the Legislative Assembly.

SECTION 151. ORS 358.543 is amended to read:

358.543. (1) Any additions made that are historically accurate reconstructions of once extant features or necessary for safety or *[disabled]* access **for persons with disabilities** or required by building code requirements may be classified as not being "new construction" by the State Historic

Preservation Officer if the State Historic Preservation Officer so determines after request is made by the owner.

(2) A request to have an addition classified as not being “new construction” must be made in writing and must be accompanied by written documentation that demonstrates that the addition is a historically accurate reconstruction of once extant features, necessary for safety or *[disabled]* access **for persons with disabilities** or required by building code requirements.

(3) Except as provided in subsection (4) of this section, if new construction takes place with respect to property classified as historic property under ORS 358.480 to 358.545, the new construction may not be considered classified as historic and may not receive the special valuation accorded historic property under ORS 358.505. The new construction shall be valued for ad valorem property tax purposes at its real market value and shall be assessed as provided in ORS 308.146 (1) to (3).

(4)(a) If new construction takes place on or after January 1, 2002, with respect to historic property for which a certificate has been filed under ORS 358.495 (2), the new construction shall be subject to the maximum assessed value and assessed value of the historic property under ORS 358.505 if the new construction is approved by the State Historic Preservation Officer and:

(A) Is used primarily for residential purposes; or

(B) Is used primarily for nonresidential purposes. New construction that is used primarily for nonresidential purposes shall be subject to the maximum assessed value and assessed value of the historic property under ORS 358.505 only to the extent the square footage of the new construction, when added to the total net rentable area of the existing historic property, is less than or equal to the total net rentable area of the property that existed prior to the new construction.

(b) New construction that is not approved for historic property assessment under paragraph (a) of this subsection shall be assessed as provided in ORS 308.146 (1) to (3).

(c) The State Historic Preservation Officer may adopt rules establishing procedures for requesting and obtaining the approval of the State Historic Preservation Officer under this subsection.

(d) For purposes of this subsection, net rentable area shall be measured in square feet.

(5) Any notice required under ORS 358.528 to be sent by a public official or agency with regard to a change in classification to or from historic property classification shall be given by the county assessor and to the State Historic Preservation Officer.

(6) As used in this section, “new construction” includes, but is not limited to:

(a) An additional new building, structure or other improvement outside the building envelope, including but not limited to a parking area to be or in use for commercial purposes.

(b) An enlargement of the exterior perimeters of an existing building, structure or improvement.

(c) Any story or stories added to an existing building, structure or improvement.

SECTION 152. ORS 366.486 is amended to read:

366.486. When a new roadside rest area is established adjacent to or within the right of way of a state highway, or when rest room facilities are constructed in an existing roadside rest area adjacent to or within the right of way of a state highway, a separate rest room facility for *[disabled]* persons **with disabilities** of both sexes shall be constructed. The facility shall meet all requirements of ORS 447.210 to 447.280.

SECTION 153. ORS 366.487 is amended to read:

366.487. (1) If a roadside rest area adjacent to or within the right of way of a state highway does not have a separate rest room facility for *[disabled]* persons **with disabilities** of both sexes, a *[disabled]* person **with a disability** and a person of the opposite sex who is accompanying a *[disabled]* person **with a disability** for the purpose of assisting the *[disabled]* person **with a disability** in using the rest room may enter any existing rest room. Prior to entering the rest room, the assisting person shall receive permission from anyone who is in the rest room.

(2) A sign shall be posted outside all rest room facilities subject to the provisions of subsection (1) of this section stating that attendants of the opposite sex may accompany or be accompanied by *[disabled]* persons **with disabilities** into any rest room. The sign shall include appropriate graphics.

SECTION 154. ORS 391.815 is amended to read:

391.815. (1) After the requirements of ORS 391.810 have been satisfied, the Department of Transportation shall set aside and transfer the remainder of the moneys in the Elderly and Disabled Special Transportation Fund to a discretionary grant account established as an account in the Elderly and Disabled Special Transportation Fund.

(2) The moneys in the discretionary grant account established under this section are continuously appropriated to the department for the purpose of distribution for ultimate use for transportation and services to *[the]* elderly **individuals** and *[disabled]* **individuals with disabilities** as described under ORS 391.830 (4). The department may distribute moneys from the discretionary grant account only as directed by the Oregon Transportation Commission under this section.

(3)(a) A district, Indian tribe or county described in ORS 391.810 (1) may make application to the department for a distribution from the discretionary grant account established under this section. The application shall describe the purposes for which the grant is to be used and the monetary amount that is required to carry out those purposes.

(b) Upon receipt of an application, the department shall cause the application to come to the attention of the commission, which shall, after consideration, approve or deny the application, in whole or in part.

(c) The commission shall approve only those grants applied for under paragraph (a) of this subsection that are for use for the purposes set forth in ORS 391.830 (4).

(4) Upon approval of an application, in whole or in part, the commission shall direct the department to distribute the dollar amount approved to the applying district, Indian tribe or county.

SECTION 155. ORS 391.820 is amended to read:

391.820. (1) The governing body of each mass transit district, transportation district, Indian tribe or county that receives moneys from the Elderly and Disabled Special Transportation Fund under ORS 391.810 shall appoint an advisory committee to advise and assist the governing body in carrying out the purposes of ORS 391.800 to 391.830. The number and terms of the members of an advisory committee appointed under this section shall be determined by the appointing governing body.

(2) To be qualified to serve on an advisory committee of a district or county, an individual must reside within the boundaries of the district, the county within which a district or part thereof is located or the county in which no part of a district is located and must be:

(a) A person who is an elderly **individual** or *[disabled]* **an individual with a disability** and uses transportation services in the district or county;

(b) A person who is an elderly **individual** or *[disabled]* **an individual with a disability** and lives in an area of the district or county where there are no public transportation services;

(c) An individual engaged in providing transportation services to *[the]* elderly **individuals** or *[disabled]* **individuals with disabilities** in the district or county;

(d) A representative of elderly individuals; or

(e) A representative of *[disabled]* **individuals with disabilities**.

(3) To be qualified to serve on an advisory committee of an Indian tribe, an individual must be able to represent the transportation needs of elderly **individuals** and *[disabled persons]* **individuals with disabilities** served by the Indian tribe as determined by the governing body of the Indian tribe.

(4) An advisory committee appointed under this section shall review the distribution of moneys by the governing body of a district, Indian tribe or county under ORS 391.830. The advisory committee may propose any changes to the policies or practices of the governing body relating to the distribution that the advisory committee considers necessary or desirable.

SECTION 156. ORS 391.830 is amended to read:

391.830. (1)(a) Each mass transit district and transportation district that receives moneys from the Department of Transportation under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a), shall distribute the moneys to providers of transportation for the purpose of financing and improving transportation programs and services for *[the]* elderly **individuals** and *[disabled residents of]* **individuals with disabilities, who reside in** the district and the county in which all or a portion of the district is located. The moneys received under ORS 391.810 (1) and (2)(b) and distributed to providers of transportation in areas

within the counties in which the district is located but outside the boundaries of the district shall be that share of all moneys received by the district as the population of those counties residing outside the district, as determined by the last federal decennial census, bears to the total population of the counties.

(b) Each county that receives moneys from the department under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a) shall distribute the moneys to providers of transportation for the purpose of financing and improving transportation programs and services for *[the]* elderly **individuals** and *[disabled residents of]* **individuals with disabilities, who reside in** the county.

(c) Each Indian tribe that receives moneys from the department under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a), shall use the moneys for the purpose of financing and improving transportation programs and services for elderly **individuals** and *[disabled]* individuals **with disabilities, who are** served by the Indian tribe.

(2) The governing body of a district, Indian tribe or county, after consultation with the advisory committee it appointed under ORS 391.820, shall determine the amount of money to be distributed to a provider of transportation and the purposes for which the money must be used. Moneys received under ORS 391.810 (2)(c) shall be used for the purposes for which received as indicated in the directive from the Oregon Transportation Commission as described under ORS 391.815. All moneys received under ORS 391.810 shall be distributed and used consistent with rules adopted by the Department of Transportation under ORS 391.810 (4).

(3) A provider of transportation receiving funds prior to January 1, 1986, from a governmental unit or agency for purposes related to the transportation needs of *[the]* elderly **individuals** or *[disabled]* **individuals with disabilities** is eligible to receive moneys from a district, Indian tribe or county under this section.

(4) Moneys distributed to providers of transportation under this section may be used for the following purposes:

(a) Maintenance of existing transportation programs and services for *[the]* elderly **individuals** or *[disabled]* **individuals with disabilities**.

(b) Expansion of such programs and services.

(c) Creation of new programs and services.

(d) Planning for, and development of, access to transportation for elderly **individuals** and *[disabled]* individuals **with disabilities** who are not currently served by transportation programs and services.

(5) Except in the case of a uniform budget reduction or upon order or other authorization of the department, the increase in moneys received under ORS 391.810 under this section and ORS 323.030, 323.455, 391.810 and 391.815 may not be used to supplant moneys currently appropriated by counties, Indian tribes or districts for *[elderly and disabled]* transportation projects **for elderly individuals or individuals with disabilities**.

(6) As used in this section, "provider of transportation" includes a city, county, district, Indian tribe or any other person or agency, whether public or private, that maintains, operates or sponsors vehicles and facilities for the transportation of passengers for profit or on a nonprofit or voluntary basis.

SECTION 157. ORS 401.395 is amended to read:

401.395. If an emergency service worker sustains an injury, benefits shall be paid in the same manner as provided for injured workers under the workers' compensation laws of this state, except that:

(1) If the injury results in temporary partial disability, no benefits shall accrue to the injured emergency service worker on account of loss of wages due to such disability.

(2) Costs of rehabilitation services to *[disabled]* emergency service workers **with disabilities** shall be paid from funds specifically appropriated therefor in an amount approved by the Office of Emergency Management, which shall be the reasonable and necessary cost of such services, in-

cluding services of a physician or rehabilitation facility specially qualified to render rehabilitation services. Expenses of rehabilitation may include travel, board and room, when necessary.

(3) The maximum amount payable for medical, surgical or hospital expenses, compensation and rehabilitation on any one claim shall not exceed \$20,000.

SECTION 158. ORS 401.710 is amended to read:

401.710. As used in ORS 305.823 and 401.710 to 401.816, unless the context requires otherwise:

(1) "Account" means the Emergency Communications Account.

(2) "Central office" means a utility that houses the switching and trunking equipment serving telephones in a defined area.

(3) "Department" means the Department of Revenue.

(4) "Emergency call" means a telephone request that results from a situation where prompt service is essential to preserve human life or property.

(5) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a network, database and on-premises equipment that provides automatic display at the designated public safety answering point of the address and telephone number at the time of receiving an incoming 9-1-1 call.

(6) "Exchange access services" means:

(a) Telephone exchange access lines or channels that provide local access by a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in paragraph (a) of this subsection.

(7) "Governing body" means the board of county commissioners of a county, city council of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1 jurisdiction.

(8) "Local government" has the meaning given that term in ORS 190.710.

(9) "Office" means the Office of Emergency Management of the Department of State Police.

(10) "Provider" means a utility or other vendor or supplier of telecommunications service or equipment that provides telecommunications with access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means.

(11) "Public or private safety agency" means any unit of state or local government, a special-purpose district or a private firm that provides or has authority to provide fire-fighting, police, ambulance or emergency medical services.

(12) "Public safety answering point" means a 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area. A "primary public safety answering point" receives all calls directly from the public. A "secondary public safety answering point" only receives calls from a primary public safety answering point on a transfer or relay basis.

(13) "Subscriber" means a person who has telecommunication access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means.

(14) "TTY" means a telephone-typewriter used by a **person with a** hearing or speech [*impaired person*] **impairment** to communicate with another device or individual.

(15) "Utility" means a utility as defined in ORS 759.005, a telecommunications carrier as defined in ORS 133.721 or a municipality or any provider of exchange access services.

(16) "Vendor" means any corporation, company, individual or association, providing telephone customer premises equipment or equipment specific to the operation of enhanced 9-1-1 telephone service.

(17) "9-1-1 emergency reporting system" means a telephone service that provides the users of a public telephone system the ability to reach a primary public safety answering point by calling 9-1-1.

(18) "9-1-1 jurisdiction" means an entity created under ORS chapter 190, a county service district established under ORS chapter 451 to provide an emergency communications system, an emergency communications district created under ORS 401.818 to 401.857 or a group of public or private safety agencies who have agreed in writing to jointly plan the installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

(19) "9-1-1 service area" means the geographical area that contains the entire central office serving area from which the primary public safety answering point will have the capability to answer calls placed to 9-1-1.

SECTION 159. ORS 401.773 is amended to read:

401.773. All public safety answering points shall be capable of receiving 9-1-1 emergency calls from *[the]* **persons with** hearing or speech *[impaired]* **impairments** through a TTY.

SECTION 160. ORS 408.570 is amended to read:

408.570. When a veteran who has been adjudged mentally ill is eligible for treatment in a United States veterans facility and commitment is necessary for the proper care and treatment of such veteran, the Department of Human Services or community mental health and developmental disabilities program director, as provided under ORS 426.060, may, upon receipt of a certificate of eligibility from the United States Department of Veterans Affairs, assign the person to the United States Department of Veterans Affairs for care, custody and treatment in a United States veterans facility. Upon admission to any such facility, the veteran shall be subject to the rules and regulations of the United States Department of Veterans Affairs and provisions of ORS 426.060 to 426.395 and related rules and regulations of the Department of Human Services. The chief officer of such facility shall be vested with the same powers exercised by superintendents of state hospitals for *[the mentally ill]* **persons with mental illness** within this state with reference to the retention, transfer, trial visit or discharge of the veteran so assigned. The commitment of a veteran to a veterans facility within this state by a court of another state under a similar provision of law has the same force and effect as if the veteran was committed to a veterans facility within that other state.

SECTION 161. ORS 409.010 is amended to read:

409.010. (1) The Department of Human Services is created.

(2) The department is responsible for the delivery and administration of programs and services relating to:

(a) Children and families, including but not limited to child protective services, foster care, residential care for children and adoption services;

(b) Elderly persons and *[disabled]* persons **with disabilities**, including but not limited to social, health and protective services and promotion of hiring of otherwise qualified persons who are certifiably disabled;

(c) Persons who, as a result of the person's or the person's family's economic, social or health condition, require financial assistance, institutional care, rehabilitation or other social and health services;

(d) Health and health-related affairs, including but not limited to medical assistance and services, public health services, migrant health services, licensing of health facilities and coordination of the activities of professional and occupational licensing boards;

(e) Mental health and developmental disabilities;

(f) Vocational rehabilitation for individuals with disabilities;

(g) Alcohol abuse, drug abuse, addiction and chemical dependency problems;

(h) Licensing and regulation of individuals, facilities and programs providing health and human services, in accordance with the provisions of state and federal law; and

(i) Any other health and human service programs and functions delegated to the department by or in accordance with the provisions of state and federal law.

(3) The department shall be the recipient of all federal funds paid or to be paid to the state to enable the state to provide the programs and services assigned to the department.

(4)(a) All personnel of the department, including those engaged in the administration of vocational rehabilitation programs, public assistance programs and services to families or children in compliance with the federal Social Security laws, shall be subject to the merit system prescribed in the State Personnel Relations Law. For purposes of the State Personnel Relations Law, the department is the appointing authority of all employees in the department.

(b) The Director of Human Services, in conformity with the State Personnel Relations Law, may appoint and employ such personnel as may be necessary for the department, and may appoint and fix the compensation of all assistants and employees of the department.

(c) The director may authorize reimbursement of such expenses as are approved by the department and incurred by assistants and employees of the department, and by volunteers or other persons not employed by the department, in carrying out duties assigned or authorized by the department.

(5) The director may designate employees to be custodians of records within any of the organizational units of the department, and persons so designated shall have the duties and powers of custodians of public records as prescribed by law. Such designation shall be in writing and notice thereof shall be filed in the office of the Secretary of State, with the director and in the organizational unit to which the authorization applies.

SECTION 162. ORS 409.610 is amended to read:

409.610. It is the goal of the Legislative Assembly to provide programs to make child care services more affordable, to improve the quality of services offered and to increase the number of child care providers. Programs should be tailored to the needs of local communities and should include a combination of actions that will address both targeted populations, such as teen parents or *[disabled]* children **with disabilities**, and low-income working or student parents.

SECTION 163. ORS 410.010 is amended to read:

410.010. (1) The Legislative Assembly finds and declares that, in keeping with the traditional concept of the inherent dignity of the individual in our democratic society, the older citizens of this state are entitled to enjoy their later years in health, honor and dignity, and *[disabled]* citizens **with disabilities** are entitled to live lives of maximum freedom and independence.

(2) The Legislative Assembly declares that the policy of this state is to provide and encourage programs necessary to fulfill the commitment stated in subsection (1) of this section and that the purpose of policies stated in this section and ORS 410.020 is to provide a guide for the establishment and implementation of programs for older citizens and *[disabled]* citizens **with disabilities** in this state. It further declares that the programs shall be initiated, promoted and developed through:

- (a) Volunteers and volunteer groups;
- (b) Partnership with local governmental agencies;
- (c) Coordinated efforts of state agencies;
- (d) Coordination and cooperation with federal programs;
- (e) Partnership with private health and social service agencies;

(f) A designated state agency that will encourage and work with older citizens and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for older Oregon citizens; and

(g) A designated state agency that will encourage and work with *[disabled]* citizens **with disabilities** and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for *[disabled]* Oregon citizens **with disabilities**.

(3) The Legislative Assembly declares that it shall be the policy of this state to give special attention to the special concerns of our most frail and vulnerable older citizens. Furthermore, it shall be the policy of this state to support strongly the full development and participation of *[disabled]* citizens **with disabilities** in all aspects of social, political and community life.

(4) Recognizing the diversity in geography, economy and life styles in Oregon and the diversity of local senior citizen networks, the Legislative Assembly declares that it is the policy of this state to avoid complete uniformity in planning and administering programs for older citizens and to encourage and emphasize local control to achieve the most effective blend of state and local authority, not precluding the ability of the state to perform its mandated responsibilities for planning and administration. Multipurpose senior centers may be considered as focal points for the delivery of services to older citizens in each community where practicable. Disability services should also be

consolidated where possible to provide efficient and convenient delivery of services to *[disabled]* citizens **with disabilities**.

SECTION 164. ORS 410.020 is amended to read:

410.020. In carrying out the policies stated in ORS 410.010, the state shall:

(1) Coordinate the effective and efficient provision of community services to older citizens and *[disabled]* citizens **with disabilities** so that the services will be readily available to the greatest number over the widest geographic area; assure that information on these services is available in each locality, utilizing whenever possible existing information services; and assure that each new service receives maximum publicity at the time it is initiated.

(2) Assure that older citizens and *[disabled]* citizens **with disabilities** retain the right of free choice in planning and managing their lives; by increasing the number of options in life styles available to older citizens and *[disabled]* citizens **with disabilities**; by aiding older citizens and *[disabled]* citizens **with disabilities** to help themselves; by strengthening the natural support system of family, friends and neighbors to further self-care and independent living; and by encouraging all programs that seek to maximize self-care and independent living within the mainstream of life.

(3) Assure that health and social services be available that:

(a) Allow the older citizen and *[disabled]* citizen **with a disability** to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization.

(b) Encourage, by expansion of existing programs for older citizens and *[disabled]* citizens **with disabilities**, by school programs, by meals-on-wheels, by counseling or by other means, public and private development of nutrition programs for older citizens and *[disabled]* citizens **with disabilities** that prevent or minimize illness or social isolation.

(c) Assure that if institutionalization is necessary, the institution should be of the highest quality where the older citizen and *[disabled]* citizen **with a disability** may live in dignity.

(d) Protect the older citizen and *[disabled]* citizen **with a disability** from physical and mental abuse and from fraudulent practices.

(4) Foster both preventive and primary health care, including mental and physical health care, to keep older citizens and *[disabled]* citizens **with disabilities** active and contributing members of society; and encourage full restorative services for those older citizens and *[disabled]* citizens **with disabilities** who require institutional care to increase the possibility of their return to independent living.

(5) Encourage public and private development of suitable housing for older citizens and *[disabled]* citizens **with disabilities**, designed and located consistent with their special needs and available at costs they can afford.

(6) In implementing subsections (1) to (5) of this section, develop and seek support for plans to assure access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income.

(7) Recognize the necessity for a variety of ways to help older citizens and *[disabled]* citizens **with disabilities** maintain sufficient income to meet their needs.

(8) Encourage local transportation systems and volunteer groups to meet the daily transportation needs of older citizens and *[disabled]* citizens **with disabilities** and to make accessible to them a broad range of services and programs, including social, health and religious services and programs.

(9) Encourage and develop meaningful employment opportunities for older citizens and *[disabled]* citizens **with disabilities** in positions commensurate with their abilities; eliminate discrimination to such employment; and whenever possible, employ older citizens in programs that affect older citizens and *[disabled]* citizens **with disabilities** in programs that affect *[disabled]* citizens **with disabilities**.

(10) Involve older citizens and *[disabled]* citizens **with disabilities** in the decision-making process for programs affecting their lives. Recognizing the ability of older citizens and *[disabled]* citizens **with disabilities** to be advisors to the Legislative Assembly, agencies and professional staff, the

Legislative Assembly intends that whenever possible older citizens and *[disabled]* citizens **with disabilities** should assist in the development of policies affecting their lives.

(11) Assure to older citizens and *[disabled]* citizens **with disabilities** the right to pursue activities within the widest range of civic, cultural, entertainment and recreational opportunities by opening such opportunities to participation by older citizens and *[disabled]* citizens **with disabilities**, by encouraging older citizens and *[disabled]* citizens **with disabilities** to utilize their capabilities by participating in government and by assuring them the right to serve.

(12) Make public educational facilities available to older citizens and *[disabled]* citizens **with disabilities** and their organizations so older citizens and *[disabled]* citizens **with disabilities** may pursue their educational interests; and encourage all institutions of learning and other appropriate agencies to develop and provide by outreach as well as by traditional means special education programs to meet the needs and interests of older citizens by addressing the problems and opportunities of aging and by responding to older citizens' interests in liberal arts as well as their interests in hobby and recreation courses.

(13) Encourage the development of barrier-free construction and the removal of architectural barriers so that more facilities are accessible to older citizens and *[disabled]* citizens **with disabilities**.

(14) Promote development of programs to educate persons who work with older citizens in gerontology and geriatrics and encourage qualified persons to seek such education.

(15) Encourage immediate application by both public and private agencies of knowledge acquired from research that can sustain and improve the health and happiness of older citizens and *[disabled]* citizens **with disabilities**.

(16) Recognize that older citizens who retire should be able to do so in honor and dignity.

(17) Encourage and support:

(a) Distribution of literature which accurately presents facts concerning aging and disabilities of citizens.

(b) Efforts of schools, churches and other institutions, in teaching children and youth about the process of aging and disabilities of citizens so as to correct fallacies handed down from one generation to another.

(c) Intergenerational programming and participation by community organizations and institutions to promote better understanding and warm social interaction and to counteract the tendency to isolation of individuals who are elderly or *[disabled]* **who have disabilities**.

(d) Correction of stereotyping of individuals who are elderly or *[disabled]* **who have disabilities** in school texts and other books, newspapers, magazines, radio and television by encouraging review and analysis of these media by publishers, company ownership or other appropriate agencies.

(e) Efforts which show that many misconceptions and stereotypes have no basis in fact so older citizens and *[disabled]* citizens **with disabilities** will be freed from the destructive tendency to socially conform by embracing these fallacies.

SECTION 165. ORS 410.030 is amended to read:

410.030. The Legislative Assembly of the State of Oregon finds the following regarding older citizens and *[disabled]* citizens **with disabilities**:

(1) That there are many older *[or disabled]* Oregonians **and Oregonians with disabilities** who face difficulties in maintaining self-care and independent living within the mainstream of life, and who have not yet exhausted their financial resources. These persons are often dependent upon providers of care for advice regarding 24-hour care. These persons and providers are not always aware of options to, or within, such care;

(2) That inappropriate or premature institutionalization of persons who have not exhausted their financial resources often leads to exhaustion of those resources, and to the expectation by these persons and providers that continued financing of inappropriate institutional care shall be available under Title XIX. However, under these circumstances, transfer of the person to appropriate, less costly noninstitutional or alternative institutional care, if available, is necessary in order that lim-

ited public funds can be utilized to provide appropriate care to as many persons in need as possible; and

(3) That to minimize the need for such disruptive transfers, it is in the interest of older [or *disabled*] Oregonians **and Oregonians with disabilities** and of providers of care that the Department of Human Services, or any designated state agency, develop plans for assuring access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income.

SECTION 166. ORS 410.040 is amended to read:

410.040. As used in ORS 409.010, 410.040 to 410.320, 411.590 and 441.630:

(1) "Appropriate living arrangement" means any arrangement for an elderly [*citizen or disabled citizen*] **person or a person with a disability** in a residential setting which is appropriate for the [*individual*] **person** considering, in order of priority, the following criteria:

(a) [*Personal*] **The** desires and goals of the [*individual*] **person**;

(b) The right of the [*individual*] **person** to live as independently as possible, in the least restrictive environment; and

(c) The cost of the living arrangement compared to other types of living arrangements, based on the criteria in paragraphs (a) and (b) of this subsection.

(2) "Area agency" means:

(a) An established or proposed type A or type B Area Agency on Aging within a planning and service area designated under Section 305 of the Older Americans Act; or

(b) Any public or nonprofit private agency which is designated as a type A or type B Area Agency on Aging under Section 305 of the Older Americans Act.

(3) "Area agency board" means the local policy-making board which directs the actions of the area agency within state and federal laws and regulations.

(4) "Department" means the Department of Human Services.

[(5) "*Disabled person*" means a person with a physical or mental disability:]

[(a) *Who is eligible for Supplemental Security Income or for general assistance; and*]

[(b) *Who meets one of the following criteria:*]

[(A) *Is mentally retarded, developmentally disabled or mentally or emotionally disturbed and resides in or needs placement in a residential program administered by the department.*]

[(B) *Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the department.*]

[(C) *Has a physical or mental disability other than those described in subparagraphs (A) and (B) of this paragraph.*]

[(6)] (5) "Elderly **person**" [or "*elderly persons*"] means [*persons who are*] **a person who is** served by a type A area [*agencies*] **agency** or type B area [*agencies*] **agency** or by the department and who [*are*] **is** 60 years of age or older.

[(7)] (6) "Local government" means a political subdivision of the state whose authority is general or a combination of units of general purpose local governments.

(7) "**Person with a disability**" means **a person with a physical or mental disability:**

(a) **Who is eligible for Supplemental Security Income or for general assistance; and**

(b) **Who meets one of the following criteria:**

(A) **Has mental retardation or a developmental disability or is mentally or emotionally disturbed, and resides in or needs placement in a residential program administered by the department.**

(B) **Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the department.**

(C) **Has a physical or mental disability other than those described in subparagraphs (A) and (B) of this paragraph.**

(8) "Preadmission screening" means a professional program within the department or type B area agencies, with staff that includes registered nurses and social workers, that assesses the needs

of clients and recommends appropriate placements in residential programs administered by the department or type B area agencies.

(9) "Protective services" means a service to be provided by the department directly or through type B area agencies, in response to the need for protection from harm or neglect to elderly persons and *[disabled]* persons **with disabilities**.

(10) "Title XIX" means long term care and health services programs in Title XIX of the Social Security Act available to elderly persons and *[disabled]* persons **with disabilities**.

(11) "Type A area agency" means an area agency:

(a) For which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX; and

(b) That provides a service to elderly persons.

(12) "Type B area agency" means an area agency:

(a) For which the local government agrees to accept local administrative responsibility for Title XIX;

(b) That provides a service to elderly persons or to elderly persons and *[disabled]* persons **with disabilities** who require services similar to those required by elderly persons; and

(c) That uses the term "disabled services" or "disability services" in its title to communicate the fact that it provides services to both populations described in paragraph (b) of this subsection.

SECTION 167. ORS 410.060 is amended to read:

410.060. (1) It is the policy of the State of Oregon that *[disabled]* persons **with disabilities** served by the Department of Human Services shall also receive necessary services, as appropriate for their needs, from other state agencies.

(2) In carrying out the provisions in subsection (1) of this section, the Department of Human Services shall negotiate interagency agreements and coordinate services with the Employment Department and the Department of Education for the provision of appropriate services to *[disabled]* clients of the Department of Human Services **who have disabilities**.

(3)(a) Prior to approval of an appropriate living arrangement, as defined in ORS 410.040, administered by the Department of Human Services, all *[disabled]* persons **with disabilities** shall be assessed by preadmission screening to *[insure]* **ensure** the appropriateness of the living arrangement.

(b) If a *[disabled]* person **with a disability** is diagnosed as, or is reasonably believed to be, *[mentally retarded or developmentally disabled]* **a person with mental retardation or a developmental disability**, preadmission screening shall include an assessment by the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104.

(4) The Department of Human Services in coordination with the Department of Education shall work with nursing homes *[which]* **that** have one or more residents under 18 years of age to develop a program appropriate to the needs of *[such]* **those** residents.

SECTION 168. ORS 410.070 is amended to read:

410.070. (1) The Department of Human Services shall:

(a) Serve as the central state agency with primary responsibility for the planning, coordination, development and evaluation of policy, programs and services for elderly persons and *[disabled]* persons **with disabilities** in Oregon.

(b) Function as the designated state unit on aging, as defined in the Older Americans Act of 1965.

(c) With the advice of the Governor's Commission on Senior Services and the Oregon Disabilities Commission, develop long-range state plans for programs, services and activities for elderly persons and *[disabled]* persons **with disabilities**. State plans should be revised biennially and should be based on area agency plans, statewide priorities and state and federal requirements.

(d) Have the authority to transfer state and federal funds, except Title III of the Older Americans Act funds, from one area agency to another area agency or from one program or service to another program or service after consultation with the area agencies involved in the transfer.

However, no area agency shall suffer a reduction in state or federal funds due to increased local funds.

(e) Receive and disburse all federal and state funds allocated to the department and solicit, accept and administer grants, including federal grants or gifts made to the department or to the state and enter into contracts with private entities for the purpose of providing or contracting for case management services for long term care insurance for the benefit of elderly persons and *[disabled]* persons **with disabilities** in this state.

(f) Provide technical, training and program assistance to area agencies and assist them to provide such assistance to public and private agencies and organizations.

(g) Assist area agencies to stimulate more effective use of existing resources and services for elderly persons and develop programs, opportunities and services which are not otherwise provided for elderly persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to elderly persons.

(h) Assist local department offices and area agencies which have assumed responsibility for disabled services to stimulate more effective use of existing resources and to develop programs, opportunities and services which are not otherwise provided for *[disabled]* persons **with disabilities**, with the aim of developing a comprehensive and coordinated system for the delivery of social services to *[disabled]* persons **with disabilities**.

(i) Serve within government and in the state at large as an advocate for elderly persons and *[disabled]* persons **with disabilities** by holding hearings and conducting studies or investigations concerning matters affecting the health, safety and welfare of elderly persons and *[disabled]* persons **with disabilities** and by assisting elderly persons and *[disabled]* persons **with disabilities** to assure their rights to apply for and receive services and to be given fair hearings when such services are denied.

(j) Process fiscal and client data for all area agencies.

(k) Conduct regulatory functions with regard to program operation, by adopting rules for providing social services, including protective services, to elderly persons and *[disabled]* persons **with disabilities** who need services that the department or area agencies are authorized to provide and rules for standard rate setting and quality assurance.

(L) Provide information and technical assistance to the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council and keep the commissions and the council continually informed of the activities of the department.

(m) Make recommendations for legislative action to the Governor and to the Legislative Assembly, after consultation with the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council.

(n) Conduct research and other appropriate activities to determine the needs of elderly persons and *[disabled]* persons **with disabilities** in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons and *[disabled]* persons **with disabilities** to meet those needs.

(o) Maintain a clearinghouse for information related to the needs and interests of elderly persons and *[disabled]* persons **with disabilities**.

(p) Provide area agencies with assistance in applying for federal, state and private grants and identifying new funding sources.

(2) In addition to the requirements of subsection (1) of this section, the department shall:

(a) Determine type A and type B area agencies annual budget levels for Oregon Project Independence and Title III of the Older Americans Act expenditures.

(b) For type B area agencies:

(A) Determine annual budget levels for planning Title XIX reimbursed services. In determining the budget levels, the department shall retain contingency reserves against overruns and transfers in use of Title XIX funds.

(B) Provide timely management information so the area agencies and the department's disability services units can manage Title XIX reimbursements within budgeted levels.

(C) Determine annual budget levels for planning and administering programs relating to social, health, independent living and protective services for *[disabled]* persons **with disabilities** for the department's disability services units and type B area agencies which have assumed local responsibility for the programs and clients transferred under section 2 (2), chapter 787, Oregon Laws 1989.

(c) Make payments for services within a central processing system for:

(A) A type A area agency, at the request of the agency, for Oregon Project Independence or Title III of the Older Americans Act expenditures, or both.

(B) A type B area agency, for Title XIX and Oregon Project Independence expenditures, and at the request of the agency, for Title III of the Older Americans Act expenditures.

(d) Assume program responsibility for Title XIX programs in areas served by type A area agencies and in areas where no area agency is designated.

(e) Assume planning and program responsibilities for *[disabled]* persons **with disabilities** in areas served by type A area agencies, in areas served by type B agencies that serve only elderly persons and in areas where no area agency exists.

(3) When developing programs affecting elderly persons, the department shall consult with the Governor's Commission on Senior Services.

(4) When developing programs affecting *[disabled]* persons **with disabilities**, the department shall consult with the Oregon Disabilities Commission.

SECTION 169. ORS 410.100 is amended to read:

410.100. (1) In the event that a local government withdraws the designation of an area agency, or the Department of Human Services withdraws the area agency designation in accordance with the Older Americans Act, the department shall administer the services to clients previously performed by the area agency until a new area agency is designated.

(2) The department may withdraw any particular program or service, except Title III of the Older Americans Act programs, from the area agency, and administer such programs and services. Before such action is taken, the department must consult with the director of the area agency and the chief elected official of the affected local government. Such action shall be taken by the department only when it can be shown **that** the federal or state laws or rules have not been complied with, **that** state or federal funds are not being expended for the purposes for which they were intended, or *[the]* **that** elderly **persons** are not receiving appropriate services within available resources. Withdrawal of any particular program or service is appealable to the Governor after requesting a reconsideration by the Director of Human Services.

SECTION 170. ORS 410.210 is amended to read:

410.210. (1) Each area agency shall have an area agency advisory council, with members appointed by the area agency board.

(a) For a type A area agency, membership of the council shall include consumers of services provided primarily to elderly persons under Department of Human Services programs, including low income and minority persons.

(b) A type B area agency that serves elderly **persons** and *[disabled]* persons **with disabilities** shall have two advisory councils. One shall include persons described in paragraph (a) of this subsection. The second shall be a disability services advisory council. That council shall have as a majority of its members *[disabled]* persons **with disabilities** and shall include consumers of services and other interested persons. Any disability services advisory council in existence at the time the area agency assumes responsibility for providing services to *[disabled]* persons **with disabilities** shall become the disability services advisory council for the area agency.

(2) Each area agency advisory council shall:

(a) Recommend basic policy guidelines for the administration of the activities of the area agencies on behalf of elderly persons or *[disabled]* persons **with disabilities**, and advise the area agency on questions of policy.

(b) Advise the area agency with respect to development of the area plan and budget, and review and comment on the completed area plan and budget before its transmittal to the Director of Human Services.

(c) Review and evaluate the effectiveness of the area agency in meeting the needs of elderly persons or [disabled] persons **with disabilities** in the planning and service area.

(d) Meet at least quarterly. The meetings are subject to ORS 192.610 to 192.690.

SECTION 171. ORS 410.230 is amended to read:

410.230. Nothing in ORS 409.010, 410.040 to 410.320, 411.590 and 441.630 requires an area agency or local governmental unit to expend local funds for the purpose of maintaining or expanding services to elderly **persons** and [disabled] persons **with disabilities**.

SECTION 172. ORS 410.270 is amended to read:

410.270. (1) A local government shall be responsible for all actions of a type B area agency in its jurisdiction, including but not limited to the accountability for funds and compliance with federal and state laws and rules. Such responsibility shall include all geographic areas in which the type B area agency is designated to operate.

(2) The respective local government shall appoint a director of the type B area agency in its jurisdiction who must meet minimum qualifications established by the Department of Human Services. The director shall serve with the continuing approval of the Director of Human Services. Continuing approval may be withdrawn by the Director of Human Services only when it can be shown that the state or federal rules have not been complied with by the type B area agency, **that** state or federal funds are not being expended for the purposes for which they were intended or [the] **that** elderly **persons** are not receiving appropriate services within available funds. Withdrawal of continuing approval is appealable to the Governor by the local government after requesting a reconsideration by the Director of Human Services.

SECTION 173. ORS 410.290 is amended to read:

410.290. (1) Prior to the designation of an area agency as a type B area agency, the area agency, the responsible unit of local government and the Department of Human Services must jointly agree upon a plan under which the area agency will operate.

(2) The plan described in subsection (1) of this section shall:

(a) Establish an administrative structure and qualifications for key personnel that reflect the population to be served.

(b) Be developed in coordination with the appropriate local mental health authority.

(c) Include any necessary interagency agreements regarding which agency is to have responsibility for each specific group of clients under 60 years of age.

(d) Address necessary transfers of staff, available equipment and administrative and service funds.

(e) Be prepared with the participation of potentially affected clients, staff and other individuals at the local level, including but not limited to [physically disabled] individuals **with physical disabilities**.

SECTION 174. ORS 410.295 is amended to read:

410.295. (1) The Director of Human Services may delegate the following functions pertaining to regulation of adult foster homes for elderly persons and [disabled] persons **with disabilities** to a type B area agency:

(a) Conducting inspections and issuing and renewing licenses under ORS 443.735;

(b) Investigating complaints under ORS 443.765; and

(c) Other regulatory functions designated by the director by rule.

(2) This section does not apply to adult foster homes in counties that have been granted an exemption under ORS 443.780.

(3) As used in this section, "adult foster home" has the meaning given that term in ORS 443.705.

SECTION 175. ORS 410.320 is amended to read:

410.320. (1) The Governor's Commission on Senior Services is created. The commission shall consist of at least 21 members appointed by the Governor for terms of three years.

(2) Prior to making appointments, the Governor shall request and consider recommendations from the area agencies on aging and other interested senior organizations. The Governor shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two years with such duties as the Governor shall prescribe. The membership of the commission shall be composed of persons broadly representative of major public and private agencies who are experienced in or have demonstrated particular interest in the special needs of elderly persons, including persons who have been active in organizations and advocates on behalf of elderly persons. Additionally, membership shall include persons who are active in advocacy organizations representing the interests of *[disabled]* persons **with disabilities** who are served in programs under the Department of Human Services and consumers of services provided primarily to elderly persons and *[disabled]* persons **with disabilities** under department programs, including low income **persons**, *[minority]* **minorities** and *[disabled]* persons **with disabilities**. At least a majority of members shall be 60 years of age or older.

(3) The Governor's Commission on Senior Services shall advise the Governor and the Director of Human Services on needs of elderly persons, and recommend actions by the Governor, the Department of Human Services, other governmental entities and the private sector, appropriate to meet such needs.

(4) The commission shall have authority to study programs and budgets of all state agencies that affect elderly persons. After such study, the commission shall make recommendations to the Governor and to the agencies involved. Such recommendations shall be designed to provide coordination of programs for elderly persons, to avoid unnecessary duplication in provision of services, and to point out gaps in provision of services. The commission shall also recommend development of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the commission shall coordinate its efforts with other advisory groups within the Department of Human Services to avoid duplication of effort.

(5) The commission shall promote responsible statewide advocacy for elderly persons.

(6) Members of the commission, other than legislators, shall be entitled to compensation and expenses as provided in ORS 292.495.

SECTION 176. ORS 410.490 is amended to read:

410.490. (1) To provide greater flexibility and availability of services, the Department of Human Services shall apply for waiver of federal statutory and regulatory requirements to make adult day care services available under ORS chapter 414.

(2) The Department of Human Services shall adopt rules consistent with the rules adopted under ORS 410.495, that include a provision identifying adult day care as a service available for recipients eligible for medical assistance.

(3) As used in ORS 410.485 and this section, "adult day care" means community-based group programs designed to meet the needs of *[functionally and cognitively impaired]* adults **with functional or cognitive impairments** through individual plans of care that are structured, comprehensive and provide a variety of health, social and related support services in protective settings during part of the day but provide less than 24-hour care.

SECTION 177. ORS 410.495 is amended to read:

410.495. (1) The Department of Human Services shall develop a registry of all adult day care programs in Oregon.

(2) The department shall adopt rules, to be followed voluntarily, substantially consistent with standards established by the Oregon Association of Adult Day Care Services regarding adult day care programs. Each program in the registry shall indicate for inclusion in the registration data the extent to which the program agrees to operate in conformity with the rules adopted under this section.

(3) As used in this section, "adult day care" means a community-based group program designed to meet the needs of *[functionally or cognitively impaired]* adults **with functional or cognitive impairments** through an individual plan of care. "Adult day care" means a structured, comprehen-

sive program that provides a variety of health, social and related support services in a protective setting during part of a day but for less than 24 hours.

SECTION 178. ORS 410.600 is amended to read:

410.600. As used in ORS 410.600 to 410.614:

(1) “Activities of daily living” includes but is not limited to the following:

- (a) Bathing and personal hygiene;
- (b) Dressing and grooming;
- (c) Eating;
- (d) Mobility;
- (e) Bowel and bladder management; and
- (f) Cognition.

(2) “Area agency” has the meaning given that term in ORS 410.040.

(3) “Commission” means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.614.

[4] “*Disabled person*” has the meaning given that term in ORS 410.040.]

[5] (4) “Elderly **person**” has the meaning given that term in ORS 410.040.

[6] (5) “Home care services” means assistance with activities of daily living and self-management provided by a home care worker in the home of an elderly **person** or [*disabled*] person **with a disability**.

[7] (6) “Home care worker” means a person:

- (a) Who is hired directly by an elderly person or [*disabled*] person **with a disability** who receives moneys from the Department of Human Services for that purpose;
- (b) Whose compensation is paid in whole or in part by the department, an area agency or other public agency that receives moneys from the department for that purpose; and
- (c) Who provides either hourly or live-in home care services.

(7) “**Person with a disability**” has the meaning given that term in ORS 410.040.

(8) “Self-management” includes but is not limited to the following activities, other than activities of daily living, required by an individual to continue living independently in the individual’s own home:

- (a) Medication and oxygen management;
- (b) Transportation;
- (c) Meal preparation;
- (d) Shopping; and
- (e) Client focused general household work.

SECTION 179. ORS 410.602 is amended to read:

410.602. (1) The Home Care Commission is created, consisting of nine members appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members shall be elderly **persons** or [*disabled*] persons **with disabilities** who are receiving or who have received home care services. One member shall be appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

- (a) Governor’s Commission on Senior Services;
- (b) Department of Human Services;
- (c) Oregon Disabilities Commission; and
- (d) Oregon Association of Area Agencies on Aging and Disabilities.

(2) The members shall be appointed for terms of three years. A member is eligible for reappointment and may serve no more than three consecutive terms. When making appointments to the commission, the Governor may consider recommendations from the entities listed in subsection (1) of this section and other organizations representing the interests of elderly **persons** and [*disabled*] persons **with disabilities**.

(3) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The commission shall exercise all powers necessary to effectuate the purposes of ORS 410.600 to 410.614.

(5) The Governor shall select annually from the membership of the commission a chairperson who serves at the pleasure of the Governor. The chairperson or majority of the members of the commission then in office shall have the power to call regular or special meetings of the commission. The commission shall meet at a place, date and hour determined by the commission.

(6) Members of the commission shall be paid compensation and expenses as provided in ORS 292.495 from such funds as may be available to the commission.

(7) Meetings of the commission shall be open and public in accordance with ORS 192.610 to 192.690. Records of the commission shall be open and available to the public in accordance with ORS 192.410 to 192.505. The commission shall meet regularly with the executive director of the Home Care Commission to make recommendations and set policy, to approve or reject reports of the director, to adopt rules and to transact other business.

(8) A quorum of the commission shall consist of a majority of the members of the commission then in office. All decisions of the commission shall be made by a majority of all the members then in office.

(9) The commission shall, in accordance with ORS chapter 183, adopt and enforce rules to carry out the provisions of ORS 410.600 to 410.614.

SECTION 180. ORS 410.604 is amended to read:

410.604. (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services as the single state Medicaid agency;

(b) Providing training opportunities for home care workers and elderly **persons** and *[disabled]* persons **with disabilities** who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2) The commission shall employ an executive director who is appointed by the Governor and who shall serve at the pleasure of the Governor. The commission may employ other staff as may be necessary to carry out its functions. An employee of the commission is not an employee of the State of Oregon for any purpose.

(3) When conducting its activities, and in making decisions relating to those activities, the commission shall first consider the effect of its activities and decisions on:

(a) Improving the quality of service delivered by home care workers; and

(b) Ensuring adequate hours of service are provided to elderly **persons** and *[disabled]* persons **with disabilities** by home care workers.

(4) The commission has the authority to contract, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

SECTION 181. ORS 410.608 is amended to read:

410.608. (1) An elderly **person** or *[disabled]* a person **with a disability** who hires a home care worker has the right to select the *[elderly or disabled person's own]* home care worker, including a family member.

(2) An elderly **person** or *[disabled]* a person **with a disability** who hires a home care worker has the right to terminate the employment of the home care worker at any time and for any reason.

(3) The Department of Human Services shall determine the eligibility of an elderly **person** or *[disabled]* a person **with a disability** to receive home care services under the Medicaid program and state-funded long term care services.

SECTION 182. ORS 410.715 is amended to read:

410.715. It is the policy of the state that any person experiencing an injury defined as an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living shall be considered a person with *[disabilities]* a **disability**.

SECTION 183. ORS 410.730 is amended to read:

410.730. (1) The Self-Sufficiency Trust Fund is established, separate and distinct from the General Fund, in the State Treasury. Interest earned, if any, shall inure to the benefit of this fund. The purpose of the Self-Sufficiency Trust Fund is to provide a life-care planning option to meet the supplemental service needs of individuals with disabilities by enabling parents, families and others to plan more secure futures for their *[disabled]* dependents **with disabilities** or other named *[disabled]* beneficiaries **with disabilities** without fear of loss of benefits or invasion of trust principal.

(2) The State Treasurer shall be custodian of the Self-Sufficiency Trust Fund, and the Oregon Department of Administrative Services shall direct payments from the trust fund upon vouchers properly certified by the Director of Human Services.

(3) The Director of Human Services may accept money from a self-sufficiency trust described in subsection (8) of this section for deposit in the Self-Sufficiency Trust Fund pursuant to an agreement with the trust. The Department of Human Services shall maintain separate accounting records in the Self-Sufficiency Trust Fund for each named beneficiary and shall promptly credit to each account moneys deposited in the Self-Sufficiency Trust Fund by a self-sufficiency trust described in subsection (8) of this section on behalf of a named beneficiary.

(4) The agreement, naming one or more beneficiaries residing in this state who *[are developmentally disabled, mentally ill or physically disabled persons]* **have developmental disabilities, mental illness or physical disabilities** or persons otherwise eligible for benefits or services due to disability, shall specify the supplementary care, support or treatment to be provided for each named beneficiary with the moneys deposited in the Self-Sufficiency Trust Fund.

(5) The State Treasurer shall credit interest on the Self-Sufficiency Trust Fund to the fund, and the Department of Human Services shall allocate the interest pro rata to the respective accounts of the named beneficiaries of the Self-Sufficiency Trust Fund.

(6) The moneys in each account together with any accumulated interest on that account shall be expended only to provide supplementary care, support and treatment for the named beneficiary in accordance with the terms of the agreement. The moneys from each account shall not be expended to provide supplementary care, support and treatment unless the named beneficiary is 18 years of age or older or is emancipated, or the parents of the beneficiary have died, or in cases of extreme, unforeseen hardship. If the agreement so provides, the moneys in each account may be expended for purposes other than providing supplementary care, support and treatment upon a showing of extreme, unforeseen hardship. The Department of Human Services shall by rule establish criteria for determining what conditions constitute extreme, unforeseen hardship allowing expenditure of moneys for purposes other than providing supplementary care, support and treatment.

(7) In the event that the Director of Human Services determines that the money in the account of a named beneficiary cannot be used for supplementary care, support or treatment of the beneficiary in a manner consistent with the agreement, the remaining money in the account, together with any accumulated interest, shall be promptly returned to the self-sufficiency trust which deposited the money in the Self-Sufficiency Trust Fund.

(8) A nonprofit corporation that is a 501-C-3 organization under the United States Internal Revenue Code of 1954 and that is organized under the Nonprofit Corporation Act, Title 13-B, may establish a self-sufficiency trust for the purpose of providing for supplementary care, support or treatment of one or more *[developmentally disabled, mentally ill or physically disabled]* persons **who have developmental disabilities, mental illness or physical disabilities** or persons otherwise eligible for benefits or services due to disability by depositing the proceeds in the Self-Sufficiency Trust Fund established under subsections (1) to (7) of this section.

(9) The receipt by a beneficiary of supplementary care, support or treatment provided with money from the Self-Sufficiency Trust Fund shall not in any way reduce, impair or diminish the benefits to which the beneficiary is otherwise entitled by law. No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary. Furthermore, because of the special needs of the beneficiary, no part of the corpus thereof, nor principal nor undistributed income shall be subject to the claims of voluntary or involuntary creditors for the provision of care and services, including residential care, by any public entity, office, department or agency of the State of Oregon or of any other state, or of the United States or any other governmental agency.

(10) The Director of Human Services shall serve as the official who implements the provision of care, support or treatment for the beneficiary from moneys maintained in the Self-Sufficiency Trust Fund in the beneficiary's name. The director shall adopt rules necessary for the administration and the implementation of this subsection.

SECTION 184. ORS 410.732 is amended to read:

410.732. (1) The Disabilities Trust Fund is established, separate and distinct from the General Fund, in the State Treasury. The purpose of the Disabilities Trust Fund is to provide supplemental services to meet the needs of low income and indigent individuals with disabilities.

(2) The State Treasurer shall be custodian of the Disabilities Trust Fund and the Oregon Department of Administrative Services, subject to appropriations, shall direct payments for the benefit of low income and indigent people with disabilities or recipients of services from the Department of Human Services, or both, from the trust fund as recommended by the Director of Human Services.

(3) The Director of Human Services may accept for deposit in the Disabilities Trust Fund:

(a) Moneys left to the Disabilities Trust Fund by donors of a self-sufficiency trust described in ORS 410.730 (8) at the death of the [*disabled*] beneficiary **with a disability**; and

(b) Bequests and contributions from private donors, corporations or foundations.

(4) The State Treasurer shall credit interest on the Disabilities Trust Fund to the fund.

(5) Moneys in the Disabilities Trust Fund shall be expended only to provide supplemental services to meet the need for care, support or treatment for low income or indigent individuals with developmental disabilities, mental illness or physical disabilities or who are otherwise eligible to receive services or benefits because of disability.

(6) The receipt by a beneficiary of supplementary care, support or treatment provided with money from the Disabilities Trust Fund shall not in any way reduce, impair or diminish the benefits to which the beneficiary is otherwise entitled by law. No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary. Furthermore, because of the special needs of the beneficiary, no part of the corpus thereof, nor principal nor undistributed income shall be subject to the claims of voluntary or involuntary creditors for the provision of care and services, including residential care, by any public entity, office, department or agency of the State of Oregon or of any other state, or of the United States or any other governmental agency.

(7) The Director of Human Services shall serve as the official who implements the provision of care, support or treatment for the beneficiary from moneys available from the Disabilities Trust Fund. The director shall adopt rules necessary for the administration and implementation of this section.

(8) The care, support or treatment provided under ORS 410.730 and this section must conform to the waiver requirements of the federal Centers for Medicare and Medicaid Services.

(9) Upon the death of a named beneficiary of a self-sufficiency trust established under ORS 410.730 (8), the balance of any money deposited to the account of the beneficiary in the Self-Sufficiency Trust Fund shall be transferred to the Disabilities Trust Fund for the purposes described in subsection (1) of this section unless the agreement entered into between the Director of Human Services and the self-sufficiency trust under ORS 410.730 (3) provides otherwise. The Director of Human Services shall enter into no agreement under ORS 410.730 (3) unless the agreement provides that at least 50 percent of any moneys credited to the account of the named beneficiary at the time

of the beneficiary's death be transferred from the Self-Sufficiency Trust Fund to the Disabilities Trust Fund upon the death of the beneficiary.

SECTION 185. ORS 410.740 is amended to read:

410.740. (1) The Oregon Deaf and Hard-of-Hearing Services Program is created in the Department of Human Services. The purpose of the program is to assist members of the public and state agencies in making agency programs available and accessible to individuals who are deaf or [*hard-of-hearing*] **hard of hearing**.

(2) The program may also provide the following:

(a) Identification and publicity of the needs and concerns of **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** as their needs and concerns relate to the full achievement of economic, social, legal and political equity.

(b) Advice to the Department of Human Services, the Governor, the Legislative Assembly and appropriate state agency administrators on how state services for **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** might be improved or better coordinated to meet the needs of these individuals.

(c) [*Provision of*] Information to **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** about where they may obtain assistance in rehabilitation and employment and about laws prohibiting discrimination in employment as a result of disability.

(d) Cooperation with and assistance to interest groups in rehabilitation and employment of **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** and encouragement of public and private employers to undertake affirmative action to ensure equitable employment of **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing**.

(e) Promotion of a continuous program of information and education to employers and the general public to increase awareness of and sensitivity to the needs of **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** for equitable education and training that will ensure for these individuals their full vocational potential.

(f) Promotion of a continuous information program for placement of **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing** in suitable employment.

(3)(a) The Director of Human Services shall appoint an advisory committee to advise the director regarding the program. The director shall consult with the advisory committee regarding the services described in this section.

(b) The director shall appoint to the advisory committee 12 individuals who have experience in issues that affect **individuals who are deaf or [*hard-of-hearing individuals*] hard of hearing**.

SECTION 186. ORS 410.851 is amended to read:

410.851. (1) The Legislative Assembly finds and declares that patients admitted to and cared for by long term care facilities in Oregon are more impaired than in the past. In keeping with the traditional commitment of the State of Oregon to the care and protection of its [*frail, elderly and handicapped*] citizens **who are frail or elderly or who have disabilities**, as expressed in ORS 410.020 (1) to (6), the Legislative Assembly declares that a patient-based reimbursement system emphasizing quality incentives is appropriate for long term care facilities. Such a system would reward long term care facilities for outcomes, such as maintaining or improving a patient's condition, and meet the legitimate costs of caring for patients.

(2) "Patient-based reimbursement" means reimbursement for direct patient care according to the needs of the patient, based on multiple levels of patient health, functioning and impairment. Notwithstanding the above, patient-based reimbursement does not require the Department of Human Services to assess each patient and reimburse long term care facilities according to the constantly changing conditions of the patients except for changes between skilled and intermediate levels of care which shall result in prompt readjustment of rates.

(3) The Department of Human Services shall establish by rule definitions of levels of care and the payment rates for the patient-based reimbursement system.

SECTION 187. ORS 411.704 is amended to read:

411.704. As used in this section and ORS 411.120, 411.706 and 411.708:

- (1) "Assistance" means:
- (a) Cash payments made under ORS 411.706 to or on behalf of a needy person who is a resident of this state and who is blind, *[disabled]* **has a disability** or **is** 65 years of age or older; or
 - (b) Special need allowances for one-time or ongoing needs.
- (2) "Blind" means having:
- (a) Visual acuity with corrective lenses that does not exceed 20/200 in the better eye, or vision in the better eye that is restricted to a field that subtends an angle of not greater than 20 degrees; or
 - (b) An equivalent visual impairment, as determined by the Department of Human Services after examination by:
 - (A) An ophthalmologist licensed to practice medicine and surgery in Oregon or in another state or territory of the United States having qualifications substantially similar to those of the State of Oregon; or
 - (B) An optometrist licensed and practicing in Oregon or in another state or territory of the United States having qualifications substantially similar to those of the State of Oregon.
- (3) "*[Disabled]* **Disability**" means *[having]* a physical or mental impairment that:
- (a) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and
 - (b) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the individual with the physical or mental impairment.
- (4)(a) "Income" means net income in cash or in kind available to the applicant or recipient, the receipt of which is regular and predictable enough to afford security in the sense that the applicant or recipient may rely upon it to contribute toward meeting the needs of the applicant or recipient.
- (b) "Income" does not include:
 - (A) Earnings or other income that may be exempted in compliance with federal laws and regulations; or
 - (B) Premiums on life insurance policies, whether paid by the applicant, recipient or other person.
- (5) "Recipient" means a person who is receiving assistance provided by the Oregon Supplemental Income Program.
- (6) "Resources" means an asset that may be applied toward meeting the needs of the applicant or recipient, including real and personal property holdings contributing to the maintenance of the applicant or recipient or representing investments or savings that may be drawn upon for maintenance purposes.

SECTION 188. ORS 411.706 is amended to read:

411.706. (1) The Oregon Supplemental Income Program shall:

- (a) Provide supplemental cash payments to recipients of Supplemental Security Income; and
 - (b) Grant special need allowances for one-time or ongoing needs.
- (2) The program shall grant assistance to eligible persons who are blind, *[disabled]* **have disabilities** or **are** 65 years of age or older. Persons granted assistance under this section shall receive medical assistance as defined in ORS 414.025.
- (3) The program shall grant assistance according to the rules of the Department of Human Services and on the basis of need, taking into account the income and resources available to the applicant or recipient.

SECTION 189. ORS 411.708 is amended to read:

411.708. (1) The amount of any assistance paid under ORS 411.706 is a claim against the property or interest in the property belonging to and a part of the estate of any deceased recipient. If the deceased recipient has no estate, the estate of the surviving spouse of the deceased recipient, if any, shall be charged for assistance granted under ORS 411.706 to the deceased recipient or the surviving spouse. There shall be no adjustment or recovery of assistance correctly paid on behalf of any deceased recipient under ORS 411.706 except after the death of the surviving spouse of the deceased

recipient, if any, and only at a time when the deceased recipient has no surviving child who is under 21 years of age or who is blind or [*disabled*] **has a disability**. Transfers of real or personal property by recipients of assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(2) Except when there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or [*disabled*] **has a disability**, the amount of any assistance paid under ORS 411.706 is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) Nothing in this section authorizes the recovery of the amount of any assistance from the estate or surviving spouse of a recipient to the extent that the need for assistance resulted from a crime committed against the recipient.

SECTION 190. ORS 414.025 is amended to read:

414.025. As used in this chapter, unless the context or a specially applicable statutory definition requires otherwise:

(1) "Category of aid" means assistance provided by the Oregon Supplemental Income Program, temporary assistance for needy families granted under ORS 418.035 to 418.125 or federal Supplemental Security Income payments.

(2) "Categorically needy" means, insofar as funds are available for the category, a person who is a resident of this state and who:

(a) Is receiving a category of aid.

(b) Would be eligible for, but is not receiving a category of aid.

(c) Is in a medical facility and, if the person left such facility, would be eligible for a category of aid.

(d) Is under the age of 21 years and would be a dependent child under the program for temporary assistance for needy families except for age and regular attendance in school or in a course of professional or technical training.

(e)(A) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child who would be a dependent child under the program for temporary assistance for needy families except for age and regular attendance in school or in a course of professional or technical training; or

(B) Is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

(f) Is under the age of 21 years, is in a foster family home or licensed child-caring agency or institution under a purchase of care agreement and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(g) Is a spouse of an individual receiving a category of aid and who is living with the recipient of a category of aid, whose needs and income are taken into account in determining the cash needs of the recipient of a category of aid, and who is determined by the Department of Human Services to be essential to the well-being of the recipient of a category of aid.

(h) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child receiving temporary assistance for needy families or is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

(i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(j) Is under the age of 21 years and is in an intermediate care facility which includes institutions for [*the mentally retarded*] **persons with mental retardation**; or is under the age of 22 years and is in a psychiatric hospital.

(k) Is under the age of 21 years and is in an independent living situation with all or part of the maintenance cost paid by the Department of Human Services.

(L) Is a member of a family that received temporary assistance for needy families in at least three of the six months immediately preceding the month in which such family became ineligible for such assistance because of increased hours of or increased income from employment. As long as the member of the family is employed, such families will continue to be eligible for medical assistance

for a period of at least six calendar months beginning with the month in which such family became ineligible for assistance because of increased hours of employment or increased earnings.

(m) Is an adopted person under 21 years of age for whom a public agency is assuming financial responsibility in whole or in part.

(n) Is an individual or is a member of a group who is required by federal law to be included in the state's medical assistance program in order for that program to qualify for federal funds.

(o) Is an individual or member of a group who, subject to the rules of the department and within available funds, may optionally be included in the state's medical assistance program under federal law and regulations concerning the availability of federal funds for the expenses of that individual or group.

(p) Is a pregnant woman who would be eligible for temporary assistance for needy families including such aid based on the unemployment of a parent, whether or not the woman is eligible for cash assistance.

(q) Would be eligible for temporary assistance for needy families pursuant to 42 U.S.C. 607 based upon the unemployment of a parent, whether or not the state provides cash assistance.

(r) Except as otherwise provided in this section and to the extent of available funds, is a pregnant woman or child for whom federal financial participation is available under Title XIX of the federal Social Security Act.

(s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the federal Social Security Act or is not a full-time student in a post-secondary education program as defined by the Department of Human Services by rule, but whose family income is less than the federal poverty level and whose family investments and savings equal less than the investments and savings limit established by the department by rule.

(3) "Income" has the meaning given that term in ORS 411.704.

(4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the Department of Human Services may establish by rule that are available to the applicant or recipient to contribute toward meeting the needs of the applicant or recipient.

(5) "Medical assistance" means so much of the following medical and remedial care and services as may be prescribed by the Department of Human Services according to the standards established pursuant to ORS 414.065, including payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of medical care:

- (a) Inpatient hospital services, other than services in an institution for mental diseases;
- (b) Outpatient hospital services;
- (c) Other laboratory and X-ray services;
- (d) Skilled nursing facility services, other than services in an institution for mental diseases;
- (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere;
- (f) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (g) Home health care services;
- (h) Private duty nursing services;
- (i) Clinic services;
- (j) Dental services;
- (k) Physical therapy and related services;
- (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter 689;
- (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (n) Other diagnostic, screening, preventive and rehabilitative services;

(o) Inpatient hospital services, skilled nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(p) Any other medical care, and any other type of remedial care recognized under state law;

(q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their physical or mental impairments, and such health care, treatment and other measures to correct or ameliorate impairments and chronic conditions discovered thereby;

(r) Inpatient hospital services for individuals under 22 years of age in an institution for mental diseases; and

(s) Hospice services.

(6) "Medical assistance" includes any care or services for any individual who is a patient in a medical institution or any care or services for any individual who has attained 65 years of age or is under 22 years of age, and who is a patient in a private or public institution for mental diseases. "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance" does not include care or services for an inmate in a nonmedical public institution.

(7) "Medically needy" means a person who is a resident of this state and who is considered eligible under federal law for medically needy assistance.

(8) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "resources" does not include charitable contributions raised by a community to assist with medical expenses.

SECTION 191. ORS 414.105 is amended to read:

414.105. (1) The Department of Human Services may recover from any person the amounts of medical assistance incorrectly paid on behalf of such person.

(2) Medical assistance pursuant to this chapter paid on behalf of an individual who was 55 years of age or older when the individual received such assistance, or paid on behalf of a person of any age who was a permanently institutionalized inpatient in a nursing facility, intermediate care facility for [*the mentally retarded*] **persons with mental retardation** or other medical institution, may be recovered from the estate of the individual or from any recipient of property or other assets held by the individual at the time of death including the estate of the surviving spouse. Claim for such medical assistance correctly paid to the individual may be established against the estate, but there shall be no adjustment or recovery thereof until after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under 21 years of age or who is blind or permanently and totally disabled. Transfers of real or personal property by recipients of such aid without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(4) In any action or proceeding under this section to recover medical assistance paid, it shall be the legal burden of the person who receives the property or other assets from a Medicaid recipient to establish the extent and value of the Medicaid recipient's legal title or interest in the property or assets in accordance with rules established by the department.

(5) As used in this section, "estate" includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement.

SECTION 192. ORS 414.211 is amended to read:

414.211. (1) There is established a Medicaid Advisory Committee consisting of not more than 15 members appointed by the Governor.

(2) The committee shall be composed of:

(a) A physician licensed under ORS chapter 677;

(b) Two members of health care consumer groups that include Medicaid recipients;

(c) Two Medicaid recipients, one of whom shall be a [*disabled*] person **with a disability**;

(d) The Director of Human Services or designee;

- (e) Health care providers;
- (f) Persons associated with health care organizations, including but not limited to managed care plans under contract to the Medicaid program; and
- (g) Members of the general public.

(3) In making appointments, the Governor shall consult with appropriate professional and other interested organizations. All members appointed to the committee shall be familiar with the medical needs of low income persons.

(4) The term of office for each member shall be two years, but each member shall serve at the pleasure of the Governor.

(5) Members of the committee shall receive no compensation for their services but, subject to any applicable state law, shall be allowed actual and necessary travel expenses incurred in the performance of their duties from the Public Welfare Account.

SECTION 193. ORS 414.424 is amended to read:

414.424. (1) As used in this section:

(a) "Person with a serious mental illness" means a person who is diagnosed by a psychiatrist, a licensed clinical psychologist or a certified nonmedical examiner as [*suffering from*] **having** dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a disorder caused primarily by substance abuse.

(b) "Public institution" means:

- (A) A state hospital as defined in ORS 162.135;
- (B) A local correctional facility as defined in ORS 169.005;
- (C) A Department of Corrections institution as defined in ORS 421.005; or
- (D) A youth correction facility as defined in ORS 162.135.

(2) Except as provided in subsection (6) of this section, the Department of Human Services shall suspend the medical assistance of a person with a serious mental illness when:

- (a) The person receives medical assistance because of a serious mental illness; and
- (b) The person becomes an inmate residing in a public institution.

(3) The department shall continue to determine the eligibility of the person as categorically needy as defined in ORS 414.025.

(4) Upon notification that a person described in subsection (2) of this section is no longer an inmate residing in a public institution, the department shall reinstate the person's medical assistance if the person is otherwise eligible for medical assistance.

(5) This section does not extend eligibility to an otherwise ineligible person or extend medical assistance to a person if matching federal funds are not available to pay for medical assistance.

(6) Subsection (2) of this section does not apply to a person with a serious mental illness residing in a state hospital as defined in ORS 162.135 who is under 22 years of age or who is 65 years of age or older.

SECTION 194. ORS 414.708 is amended to read:

414.708. (1) A person is eligible to receive the health services described in ORS 414.707 (1)(b) when the person is a resident of this state who:

(a) Is 65 years of age or older, or is blind or [*disabled*] **has a disability** as those terms are defined in ORS 411.704;

(b) Has a gross annual income that does not exceed the standard established by the Department of Human Services; and

(c) Is not covered under any public or private prescription drug benefit program.

(2) A person receiving prescription drug services under ORS 414.707 (1)(b) shall pay up to a percentage of the Medicaid price of the prescription drug established by the department by rule and the dispensing fee.

SECTION 195. ORS 414.710 is amended to read:

414.710. The following services are available to persons eligible for services under ORS 414.025, 414.036, 414.042, 414.065 and 414.705 to 414.750 but such services are not subject to ORS 414.720:

(1) Nursing facilities and home- and community-based waived services funded through the Department of Human Services;

(2) Medical assistance to eligible persons who receive assistance under ORS 411.706 or to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to 657A.460;

(3) Institutional, home- and community-based waived services or community mental health program care for persons with mental retardation, [a] developmental [*disability*] **disabilities** or [a] severe mental illness and for the treatment of alcohol and drug dependent persons; and

(4) Services to children who are wards of the Department of Human Services by order of the juvenile court and services to children and families for health care or mental health care through the department.

SECTION 196. ORS 418.015 is amended to read:

418.015. (1) The Department of Human Services may, in its discretion, accept custody of children and may provide care, support and protective services for children who are dependent[,] **or** neglected, [*mentally or physically disabled*] **who have mental or physical disabilities** or who for other reasons are in need of public service.

(2) The department shall accept any child placed in its custody by a court under, but not limited to ORS chapter 419B or 419C, and shall provide such services for the child as the department finds to be necessary.

(3) All children in the legal custody of the department who, in the judgment of the Director of Human Services or the authorized representative for the director are in need of care or treatment services, may be placed with any person or family of good standing or any child caring agency for such services under an agreement pursuant to ORS 418.027.

SECTION 197. ORS 418.032 is amended to read:

418.032. (1) Whenever the Department of Human Services has accepted custody of a child under the provisions of ORS 418.015 and is required to provide financial assistance for the care and support of the child, the state shall, by operation of law, be assignee of and subrogated to any right to support from any other person including any sums that may have accrued, up to the amount of assistance provided by the department. If the right to support is contained in a judgment or order that requires a single gross monthly payment for the support of two or more children, the assignment and right of subrogation shall be of such child's proportionate share of the gross amount. The assignment shall be as provided in ORS 418.042.

(2) The department shall attempt to enter into agreements with any person who voluntarily gives custody of a child with a mental or physical [*disabilities*] **disability** to the department. Any agreement entered into shall set out the timely and nonadversarial settlement of child support obligations that the person may have with respect to the child.

SECTION 198. ORS 418.205 is amended to read:

418.205. As used in ORS 418.205 to 418.310 and 418.992 to 418.998, unless the context requires otherwise:

(1) "Child" means an unmarried person under 18 years of age.

(2)(a) "Child-caring agency" means any private agency or private organization providing:

(A) Day treatment for [*disturbed*] children **with emotional disturbances**;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs; or

(E) Other similar services for children.

(b) "Child-caring agency" does not include residential facilities or foster care homes certified or licensed by the Department of Human Services under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services.

(3)(a) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) "Outdoor youth program" does not include any program, facility or activity:

(A) Operated by a governmental entity;

(B) Operated or affiliated with the Oregon Youth Conservation Corps; or

(C) Licensed by the Department of Human Services under other authority of the department.

(4) "Private" means not owned, operated or administered by any governmental agency or unit.

SECTION 199. ORS 419B.504 is amended to read:

419B.504. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

(1) Emotional illness, mental illness or mental [*deficiency*] **retardation** of the parent of such nature and duration as to render the parent incapable of providing proper care for the child or ward for extended periods of time.

(2) Conduct toward any child of an abusive, cruel or sexual nature.

(3) Addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired.

(4) Physical neglect of the child or ward.

(5) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make it possible for the child or ward to safely return home within a reasonable time or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.

(6) Criminal conduct that impairs the parent's ability to provide adequate care for the child or ward.

SECTION 200. ORS 420.500 is amended to read:

420.500. [No] **A** youth offender in a youth correction facility may **not** be transferred to an institution for [*the mentally ill or mentally deficient*] **persons with mental illness or mental retardation** for a period of more than 14 days unless the youth offender has been committed to an institution for [*the mentally ill or mentally deficient*] **persons with mental illness or mental retardation** in the manner specified in ORS 420.505 and 420.525.

SECTION 201. ORS 420.505 is amended to read:

420.505. (1) A youth offender at a youth correction facility may apply for admission to a hospital or facility designated by the Department of Human Services. The application may be made on behalf of the youth offender by the parents or legal guardian of the youth offender. However, the superintendent shall not be required to cause the examination of a youth offender who applies under this section more often than once in six months.

(2) Within five working days after receipt of the application, the superintendent of the youth correction facility shall cause the youth offender to be examined by one or more qualified persons at the facility and shall request the examination of the youth offender by one or more qualified persons employed or designated by the department. The examination conducted or authorized by the department shall take place within five working days after receipt of the request from the superintendent. The examiners shall prepare separate reports and shall submit such reports to the superintendent. A copy of the reports shall be given to the applicant.

(3) If the superintendent finds that there is a probable cause to believe that the youth offender [*is mentally ill*] **has a mental illness** and that it would be in the best interests of the youth offender to be admitted to a hospital or facility designated by the department, the superintendent shall notify the department and shall order the youth offender transferred pursuant to ORS 179.473.

(4) No youth offender at a youth correction facility voluntarily admitted to a hospital or facility designated by the department shall be detained therein more than 72 hours after the youth offender is of the age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and physical custody of the youth offender and has given notice in writing of the desire of the youth offender to be released. If the youth offender is under the age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and physical custody of the youth offender, the youth offender may be returned to the youth correction facility after notice in writing has been given by the parent or legal guardian of the youth offender, that such parent or guardian desires that the youth offender be discharged from the hospital or facility designated by the department.

SECTION 202. ORS 421.084 is amended to read:

421.084. (1) The Corrections Education Advisory Committee shall assist in the development, and the Administrator of Correctional Education shall design a functional literacy program for all individuals in the custody of the Department of Corrections. The program shall:

(a) Test individuals for functional literacy level. Testing for basic intelligence, learning disabilities, developmental disabilities and adaptive behavior skills shall be administered as needed except that the administrator may accept equivalent test results from other sources;

(b) Except as provided in subsection (2) of this section, be mandatory for all individuals testing below a functional literacy level which is defined as a score of 230 on the Oregon Basic Adult Skills Inventory System functional literacy test or a 8.0 grade equivalency on other standardized tests;

(c) Consist of a minimum of 90 days of instruction in functional literacy consisting of one and one-half hours of instruction per day for five days per week, provide progress testing and certification and provide for voluntary attendance beyond the 90-day minimum program;

(d) Provide strong incentives for entering and successfully completing the literacy program and for continuing in the program beyond the 90-day minimum period; and

(e) Maintain records of an individual's achievement in the program and make those records available to the State Board of Parole and Post-Prison Supervision.

(2) Testing for functional literacy level and participation in the functional literacy program are not required for inmates:

(a) Sentenced to less than one year;

(b) Sentenced to life imprisonment without parole;

(c) Sentenced to death; or

(d) [*Who are developmentally disabled*] **With developmental disabilities.**

(3) For the purposes of this section, "functional literacy" means those educational skills necessary to function independently in society, including but not limited to, reading, writing, comprehension and arithmetic computation.

SECTION 203. ORS 426.005 is amended to read:

426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) "Department" means the Department of Human Services.

(b) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the department determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for committed mentally ill persons.

(d) "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(C) A person [*who*]:

- (i) [*Is chronically mentally ill*] **With a chronic mental illness**, as defined in ORS 426.495;
- (ii) **Who**, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the department under ORS 426.060;
- (iii) **Who** is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and
- (iv) **Who**, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either [*or both*] subparagraph (A) or (B) of this paragraph **or both**.

(e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the department to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(f) "Prehearing period of detention" means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health and developmental disabilities program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties.

SECTION 204. ORS 426.180 is amended to read:

426.180. (1) This section applies to commitments of a person from a reservation for land-based tribes of Native Americans when, under federal law, the state does not have jurisdiction of commitments on the reservation.

(2) When this section is applicable as provided under subsection (1) of this section, a person alleged to be mentally ill by affidavit of two other persons may be admitted to a state hospital for [*the mentally ill*] **persons with mental illness** for emergency treatment, care and custody, provided such affidavit includes or is accompanied by all of the following:

- (a) The circumstances constituting the emergency.
 - (b) Written application for admission to the hospital, executed in duplicate.
 - (c) A certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization.
 - (d) A medical history, including the name, condition, sex and age of the person.
 - (e) The name and address of the nearest relative or legal guardian, if any, of the person.
- (3) The certificates, applications and medical histories shall be made upon forms prescribed by the Department of Human Services and shall be executed by the county health officer or by two physicians licensed by the Board of Medical Examiners, none of whom shall be related to the person by blood or marriage.

(4) When a person is admitted to a state hospital under this section, any physician treating the person shall give the person the warning under ORS 426.123.

(5) This section may be applied as provided by agreement with the ruling body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250.

SECTION 205. ORS 426.220 is amended to read:

426.220. (1) Pursuant to rules and regulations promulgated by the Department of Human Services, the superintendent of any state hospital for the treatment and care of [*the mentally ill*] **persons with mental illness** may admit and hospitalize therein as a patient, any person who may [*be suffering from*] **have a** nervous disorder or **a** mental illness, and who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Except when a period of longer hospitalization has been imposed as a condition of admission, pursuant to rules and regulations of the department, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of a desire

to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state hospital pursuant to this section may upon application and notice to the superintendent of the hospital concerned, be granted a temporary leave of absence from the hospital if such leave, in the opinion of the superintendent, will not interfere with the successful treatment or examination of the applicant for leave.

(3) Upon admission or discharge of a minor to or from a state hospital the superintendent shall immediately notify the parent or guardian.

SECTION 206. ORS 426.330 is amended to read:

426.330. The special funds authorized for the use of the superintendents of the Oregon State Hospital, the Eastern Oregon Psychiatric Center and the Eastern Oregon Training Center to better enable them promptly to meet the advances and expenses necessary in the matter of transferring patients to the state hospitals are continued in existence. The superintendents shall present their claims monthly with proper vouchers attached, showing the expenditures from the special funds during the preceding month, which claims, when approved by the Department of Human Services, shall be paid by warrant upon the State Treasurer against the fund appropriated to cover the cost of transporting *[the mentally diseased]* **these patients.**

SECTION 207. ORS 426.490 is amended to read:

426.490. It is declared to be the policy and intent of the Legislative Assembly that the State of Oregon shall assist in improving the quality of life of *[chronically mentally ill]* persons **with chronic mental illness** within this state by *[insuring]* **ensuring** the availability of an appropriate range of residential opportunities and related support services.

SECTION 208. ORS 426.495 is amended to read:

426.495. (1) As used in ORS 426.490 to 426.500, unless the context requires otherwise:

[(1)] **(a)** "Case manager" means a person who works on a continuing basis with *[the chronically mentally ill]* **a person with a chronic mental illness** and is responsible for assuring the continuity of the various services called for in the discharge plan of the *[chronically mentally ill]* person **with a chronic mental illness** including services for basic personal maintenance, mental and personal treatment, and appropriate education and employment.

[(2)] "Chronically mentally ill" means an individual who is:

[(a)] Eighteen years of age or older; and]

[(b)] Diagnosed by a psychiatrist, a licensed clinical psychologist or a nonmedical examiner certified by the Department of Human Services as suffering from chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse. For purposes of providing services in the community, the department may adopt rules consistent with this section and accepted professional practices in the fields of psychology and psychiatry more specifically to specify other criteria for determining who is chronically mentally ill.]

[(3)] **(b)** "Discharge plan" means a written plan prepared jointly with the *[chronically mentally ill]* person **with a chronic mental illness**, mental health staff and case manager prior to discharge, prescribing for the basic and special needs of the person upon release from the hospital.

(c) "Person with a chronic mental illness" means an individual who is:

(A) Eighteen years of age or older; and

(B) Diagnosed by a psychiatrist, a licensed clinical psychologist or a nonmedical examiner certified by the Department of Human Services as having chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse.

(2) For purposes of providing services in the community, the department may adopt rules consistent with accepted professional practices in the fields of psychology and psychiatry to specify other criteria for determining who is a person with a chronic mental illness.

SECTION 209. ORS 426.500 is amended to read:

426.500. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the Department of Human Services shall:

(1) Adopt rules for the administration of ORS 426.490 to 426.500;

(2) Prepare a written discharge plan for each [*chronically mentally ill*] person **with a chronic mental illness** who is a patient at a state mental institution or who is committed to the department pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380;

(3) Ensure that case managers are provided for each [*chronically mentally ill*] person **with a chronic mental illness** described in subsection (2) of this section; and

(4) Disburse from any available funds:

(a) Funds for one LINC model in the area served by F. H. Dammasch State Hospital and one LINC model in the area served by the Oregon State Hospital licensed under ORS 443.415;

(b) Discretionary funds for services necessary to implement a discharge plan, including but not limited to transportation, medication, recreation and socialization; and

(c) Funds to provide day treatment services, community psychiatric inpatient services, and work activity services for [*chronically mentally ill*] persons **with chronic mental illness** [*where*] **when** needed.

SECTION 210. ORS 426.502 is amended to read:

426.502. As used in ORS 426.502 to 426.508:

[1] "*Chronically mentally ill*" has the meaning given that term in ORS 426.495.]

[2] (1) "Community housing" means property and related equipment that are used or could be used to house [*chronically mentally ill*] persons **with chronic mental illness** and their care providers. "Community housing" includes single-family housing and multiple-unit residential housing.

[3] (2) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes to install equipment and to prepare a site.

[4] (3) "Department" means the Department of Human Services.

[5] (4) "Equipment" means furnishings, fixtures or appliances that are used or could be used to provide care in community housing.

[6] (5) "Multiple-unit residential housing" means housing that provides two or more living units and spaces for common use by the occupants in social and recreational activities. "Multiple-unit residential housing" may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the department, improve the quality of the housing.

(6) "**Person with a chronic mental illness**" has the meaning given that term in ORS 426.495.

(7) "Single-family housing" means a detached living unit with common living room and dining facilities for at least three occupants with chronic mental illness. "Single-family housing" may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the department, improve the quality of the housing.

SECTION 211. ORS 426.504 is amended to read:

426.504. (1) The Department of Human Services may, through contract or otherwise, acquire, purchase, receive, hold, exchange, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of housing [*chronically mentally ill*] persons **with chronic mental illness**.

(2) The department may dispose of community housing acquired under subsection (1) of this section in a public or private sale, upon such terms and conditions as the department considers advisable to increase the quality and quantity of community housing available for [*chronically mentally ill*] persons **with chronic mental illness**. Except as provided in subsection (3) of this section, in any instrument conveying fee title to community housing, the department shall include language that restricts the use of the community housing to housing for [*chronically mentally ill*] persons **with chronic mental illness**. Such restriction is not a violation of ORS 93.270.

(3) If the department determines that community housing acquired under subsection (1) of this section is no longer suitable for use as community housing, the department may sell or otherwise dispose of the community housing without including in any instrument conveying fee title to the

community housing any language that restricts the use of the community housing. Proceeds from the sale or disposition of community housing under this subsection are considered proceeds described in ORS 426.506 (4)(c).

(4) When exercising the authority granted to the department under this section, the department is not subject to ORS chapter 273 or ORS 270.100 to 270.190, 276.900 to 276.915 or 279A.250 to 279A.290.

SECTION 212. ORS 426.506 is amended to read:

426.506. (1) There is created in the State Treasury, separate and distinct from the General Fund, the Community Mental Health Housing Fund. All earnings on investments of moneys in the Community Mental Health Housing Fund shall accrue to the fund. Interest earned on moneys in the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Department of Human Services to carry out the provisions of ORS 426.504.

(2) The Community Mental Health Housing Fund shall be administered by the department to provide housing for [*chronically mentally ill*] persons **with chronic mental illness**. As used in this subsection, "housing" may include acquisition, maintenance, repair, furnishings and equipment.

(3)(a) There is established within the Community Mental Health Housing Fund a Community Housing Trust Account. Notwithstanding the provisions of ORS 270.150, the department shall deposit into the account the proceeds, less costs to the state, received by the department from the sale of F. H. Dammasch State Hospital property under ORS 426.508. The department may expend, for the purposes set forth in ORS 426.504, any earnings credited to the account, including any interest earned on moneys deposited in the account, and up to five percent of the sale proceeds initially credited to the account by the Oregon Department of Administrative Services. At least 95 percent of the sale proceeds shall remain in the account in perpetuity. Proceeds deposited in the account may not be commingled with proceeds from the sale of any surplus real property owned, operated or controlled by the Department of Human Services and used as a state training center.

(b) Interest earned on moneys in the Community Housing Trust Account may be expended in the following manner:

(A) Seventy percent of interest earned on deposits in the account shall be expended for community housing purposes; and

(B) Thirty percent of interest earned on deposits in the account shall be expended for institutional housing purposes.

(c) Interest earned on deposits in the account shall not be used to support operating expenses of the department.

(4) The Community Mental Health Housing Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Sale proceeds and earnings from the account under subsection (3) of this section;

(c) Proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the department and used as community housing;

(d) Moneys reallocated from other areas of the department's budget;

(e) Interest and earnings credited to the fund; and

(f) Gifts of money or other property from any source, to be used for the purposes of developing housing for [*chronically mentally ill*] persons **with chronic mental illness**.

(5) The department shall adopt policies:

(a) To establish priorities for the use of moneys in the Community Mental Health Housing Fund for the sole purpose of developing housing for [*chronically mentally ill*] persons **with chronic mental illness**;

(b) To match public and private moneys available from other sources for developing housing for [*chronically mentally ill*] persons **with chronic mental illness**; and

(c) To administer the fund in a manner that will not exceed the State Treasury's maximum cost per transaction.

(6) The Department of Human Services shall collaborate with the Housing and Community Services Department to ensure the highest return and best value for community housing from the Community Mental Health Housing Fund.

(7) The Department of Human Services shall provide a report of revenues to and expenditures from the Community Mental Health Housing Fund as part of its budget submission to the Governor and Legislative Assembly under ORS chapter 291.

SECTION 213. ORS 426.508 is amended to read:

426.508. (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to 421.630, the Department of Corrections shall transfer the real property known as the F. H. Dammasch State Hospital and all improvements to the Oregon Department of Administrative Services to be sold for the benefit of the Department of Human Services.

(2)(a) Notwithstanding ORS 270.100 to 270.190, and except as provided in subsection (4) of this section, the Oregon Department of Administrative Services shall sell or otherwise convey the real property known as the F. H. Dammasch State Hospital in a manner consistent with the provisions of this section. Conveyance shall not include transfer to a state agency. The sale price of the real property shall equal or exceed the fair market value of the real property. The Oregon Department of Administrative Services shall engage the services of a licensed real estate broker or principal real estate broker to facilitate the sale of the real property.

(b) The Oregon Department of Administrative Services shall retain from the sale or other conveyance of the real property those costs incurred by the state in selling or conveying the real property, including costs incurred by the Department of Corrections in transferring the real property to the Oregon Department of Administrative Services. The remaining proceeds from the sale or other conveyance shall be transferred to the Community Housing Trust Account created under ORS 426.506 (3).

(3) Redevelopment of the real property formerly occupied by the F. H. Dammasch State Hospital shall be consistent with the Dammasch Area Transportation Efficient Land Use Plan developed by Clackamas County, the City of Wilsonville, the Oregon Department of Administrative Services, the Department of Land Conservation and Development, the Department of Transportation, the State Housing Council, the Department of Human Services and the Department of State Lands.

(4) The Oregon Department of Administrative Services shall reserve from the sale of the real property under subsection (2) of this section not more than 10 acres. The real property reserved from sale shall be transferred to the Department of Human Services for use by the Department of Human Services to develop community housing for [*chronically mentally ill*] persons **with chronic mental illness**. The Oregon Department of Administrative Services and the Department of Human Services shall jointly coordinate with the City of Wilsonville to identify the real property reserved from sale under this subsection.

SECTION 214. ORS 426.650 is amended to read:

426.650. (1) Pursuant to rules promulgated by the Department of Human Services, the superintendent of any state hospital for the treatment and care of [*the mentally ill*] **persons with mental illness** may admit and hospitalize therein as a patient any person in need of medical or mental therapeutic treatment as a sexually dangerous person who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Pursuant to rules and regulations of the department, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state facility pursuant to this section may upon application and notice to the superintendent of the institution concerned, be granted a temporary leave

of absence from the institution if such leave, in the opinion of the chief medical officer, will not interfere with the successful treatment or examination of the applicant.

SECTION 215. ORS 427.005 is amended to read:

427.005. As used in this chapter:

(1) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(2) "Care" means:

(a) Supportive services, including, but not limited to, provision of room and board;

(b) Supervision;

(c) Protection; and

(d) Assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(3) "Department" means the Department of Human Services.

(4) "Developmental period" means the period of time between birth and the 18th birthday.

(5) "Director of the facility" means the superintendent of a state training center, or the person in charge of care, treatment and training programs at other facilities.

(6) "Facility" means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facility or program as the department approves to provide necessary services to [*mentally retarded*] persons **with mental retardation**.

(7) "Incapacitated" means a person is unable, without assistance, to properly manage or take care of personal affairs or is incapable, without assistance, of self-care.

(8) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(9) "Integration" means:

(a) Use by persons with mental retardation or developmental disabilities of the same community resources that are used by and available to other persons; [*and*]

(b) Participation **by persons with mental retardation or developmental disabilities** in the same community activities in which [*nondisabled*] persons **without disabilities** participate, together with regular contact with [*nondisabled*] persons **without disabilities**[,] and

(c) Residence by persons with developmental disabilities in homes or in home-like settings [*which*] **that** are in proximity to community resources, together with regular contact with [*nondisabled*] persons **without disabilities** in their community.

(10) "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

(11) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered [*mentally retarded*] **to have mental retardation** if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(12) "Minor" means an unmarried person under 18 years of age.

(13) "Physician" means a person licensed by the Board of Medical Examiners for the State of Oregon to practice medicine and surgery.

(14) "Productivity" means engagement in income-producing work by a person with mental retardation or a developmental [*disabilities*] **disability** which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or a developmental [*disabilities*] **disability** in work contributing to a household or community.

(15) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the department.

(16) "Significantly subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(17) "State training center" means Eastern Oregon Training Center and any other facility operated by the department for the care, treatment and training of [*the mentally retarded*] **persons with mental retardation**.

(18) "Training" means [*the*]:

(a) **The** systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or

(b) The planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual and social growth.

(19) "Treatment" means the provision of specific physical, mental, social interventions and therapies which halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions.

SECTION 216. ORS 427.007 is amended to read:

427.007. (1) The Legislative Assembly finds and declares that a significant number of persons with mental retardation or other developmental disabilities currently reside in state-operated hospitals and training centers or lack needed services simply because appropriate community-based services, including residential facilities, day programs, home care and other support, care and training programs, do not exist. The Legislative Assembly further finds that families are the major providers of support, care, training and other services to their members with mental retardation or other developmental disabilities who live at home, and many of these families experience exceptionally high financial outlays and extraordinary physical and emotional challenges due to the unavailability of appropriate family support services. Such services pertain to the needs of the person with [*disabilities*] **a disability**, the needs of other family members related to their care-giving and nurturing capacity, and specialized needs for environmental accommodation to reduce dependency of the family member with mental retardation or [*other*] **another** developmental [*disabilities*] **disability**. Therefore, the Department of Human Services is directed to facilitate the development of appropriate community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, in an orderly and systematic manner. The role of state-operated hospitals and training centers in Oregon shall be as specialized back-up facilities to a primary system of community-based services for persons with mental retardation or other developmental disabilities.

(2) In carrying out the directive in subsection (1) of this section, the department shall develop a biennial plan in conjunction with the budgeting process for review by each Legislative Assembly. In developing this plan, the department shall meet with and consider the input of representatives from the following constituencies: Consumer organizations, parent-family organizations, advocacy organizations, unions representing workers in state-operated hospitals and training centers, community provider organizations, state and local education officials and community mental health departments or programs. Such plans shall include, where appropriate:

(a) Proposals for the decrease in the number of persons with mental retardation or other developmental disabilities to be served in state-operated hospitals and training centers at a steady and planned rate until such time that the Legislative Assembly shall determine that each person served in programs or facilities operated or supported by the department is being served according to the best contemporary professional practices in the least restrictive environment, with preference given to the community-based setting over the institutional. However, no person shall be moved from any facility until a comprehensive assessment of the person's medical, treatment, training and support service needs has been completed, the move determined to be in the person's best interest and appropriate service alternatives procured.

(b) Proposals for the orderly development of community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, to accommodate persons coming out of state-operated hospitals and training centers and to

serve persons already in the community waiting for services. The proposals shall include services developed for persons in the community waiting for services that are at least equal in number to those services developed for those coming out of state-operated hospitals and training centers, and shall include services for all persons who are leaving the public education system, in order to further prevent unnecessary institutionalization of persons with mental retardation or other developmental disabilities. Funding for these services shall be commensurate with individual need. These proposals may include provisions for an array of both publicly and privately operated services and shall include specific implementation plans requiring that new services developed are designed to significantly increase the independence, productivity and integration into the community of persons with mental retardation *[and]* **or** developmental disabilities.

(c) Proposals for the location of community-based services for persons with mental retardation or other developmental disabilities in proximity to family, friends, supportive services and home communities whenever possible.

(3) In further carrying out the directive in subsection (1) of this section, the department shall develop monitoring and evaluation systems which *[insure]* **ensure** competent management, program quality and cost-effectiveness of community-based services. Such systems shall include, where appropriate:

(a) A comprehensive system of case management which assures an orderly movement of persons with mental retardation or other developmental disabilities from state-operated hospitals and training centers to community-based services, and between community-based service alternatives, and assures an effective system of service delivery to persons with mental retardation or other developmental disabilities living in the community, based on individualized planning and close cooperation with consumers, families and guardians.

(b) An annual progress assessment of every person with mental retardation or *[other]* **another** developmental *[disabilities]* **disability** served in programs or facilities operated or supported by the department. This assessment shall measure the degree to which a family with a member with mental retardation or *[other]* **another** developmental *[disabilities]* **disability** demonstrates enhanced caregiving and nurturing capacities, and the degree to which the independence, productivity and integration into the community of each person with mental retardation or *[other]* **another** developmental *[disabilities]* **disability** has been increased as a result of receiving such services. The overall results of these assessments shall annually be aggregated and analyzed for each program or facility operated or supported by the department, and shall be made available for public inspection and review by the Legislative Assembly.

(c) The development of specific standards for each component within the array of services, for persons with mental retardation or other developmental disabilities, either operated or supported by the department and assure the competent management, program quality and cost-effectiveness of such services.

(4) Subject to available funds, the department shall *[insure]* **ensure** that each family with a member with mental retardation or *[other]* **another** developmental *[disabilities]* **disability** has access to family support services, and that each person with mental retardation or a developmental *[disabilities]* **disability** living in the community, including those leaving the public education system, has access to community-based services necessary to enable the person to strive to achieve independence, productivity and integration. Specific services proposed for the person shall be identified in an individual habilitation plan or in a family support service plan.

(5) Subject to available funds, the department shall determine the content of individual habilitation plans and family support service plans, and the process whereby such plans are developed and updated.

(6) The department shall establish grievance procedures for mediation of disputes concerning eligibility for or appropriateness of services in individual cases.

SECTION 217. ORS 427.010 is amended to read:

427.010. (1) Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Eastern Oregon Training Center in Pendleton, Umatilla County, shall be used for the

care, treatment and training of [*such mentally retarded*] persons [*as*] **with mental retardation** who are assigned to the care of the institution by the department according to procedures defined in ORS 427.185 or who were residents on October 3, 1979.

(2) Upon receipt of an application approved by the department or its designee, pursuant to its rules, a [*mentally retarded*] person **with mental retardation** may be entitled to admission to the state training center for emergency, respite or part-time care. Part-time care means presence of the person at the facility less than 24 hours per day and may include day or night care. Admission for emergency care or respite care [*shall in no case*] **may not** exceed 90 days. Admission for part-time care may exceed 90 days. The fee schedule for such care, training and treatment in the training center shall be established by the department in the same manner as for other residents. The fees shall be charged and collected by the department in the same manner as charges are collected under ORS 179.610 to 179.770.

(3) The superintendent of the training center named in subsection (1) of this section shall be a person the department considers qualified to administer the training center. If the superintendent of the training center is a physician licensed by the Board of Medical Examiners for the State of Oregon, the superintendent shall serve as chief medical officer. If not a physician, the superintendent shall appoint a physician to serve as chief medical officer who shall be in the unclassified service.

SECTION 218. ORS 427.041 is amended to read:

427.041. The superintendent of a state training center [*for the care, treatment and training of the mentally retarded*] may grant a temporary leave of absence to any resident of the state training center pursuant to the rules of the Department of Human Services. The state training center, the superintendent and the chief medical officer thereof, and the Director of Human Services shall not be liable for a resident's expenses while on temporary leave of absence nor shall they be liable for any damages whatsoever that are sustained by a person on account of the actions or misconduct of a resident while on leave of absence.

SECTION 219. ORS 427.051 is amended to read:

427.051. [*No*] A person admitted to a state training center [*for the treatment and training of the mentally retarded shall*] **may not** be considered by virtue of the admission to be incompetent.

SECTION 220. ORS 427.205 is amended to read:

427.205. (1) The Director of Human Services shall appoint a State Training Center Review Board composed of three members. The Oregon Association for Retarded Citizens, the Fairview Parents Association and the Oregon Developmental Disabilities Council or their successor organizations may each recommend three persons to the director. The director may select one person from each list to serve as a member of the board. Each board member shall have had at least five years of involvement and active interest in programs for [*mentally retarded*] persons **with mental retardation**. [*None shall*] **A board member may not** be an employee of the Department of Human Services.

(2) The term of office of each member is two years. The director may remove any member for misconduct or neglect of duty. Replacement of board members shall be accomplished by the same procedure as that used in subsection (1) of this section for selection. The director shall request a new list of three persons from the organization whose nominee for board member is to be replaced.

(3) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole and Post-Prison Supervision for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred by the member in the performance of official duties.

(4) The board shall perform the following duties:

(a) Review decisions of the Developmental Disability Diagnosis and Evaluation Service regarding admissions to training centers that have been appealed by the applicant or, if a minor or inca-

pacitated person, by the person applying on the behalf of the minor or incapacitated person and advise the director regarding the appropriateness for the admission.

(b) Review decisions of the department pursuant to ORS 427.300 (2) when the resident, parent of the resident, guardian or person entitled to custody has appealed the decision and advised the director regarding the appropriateness of the decision.

(c) Annually review state training center plans for continuing residential care and training of residents pursuant to ORS 427.020.

(5) The board shall operate pursuant to rules [*promulgated*] **adopted** by the department.

SECTION 221. ORS 427.330 is amended to read:

427.330. As used in ORS 427.330 to 427.345:

(1) "Care provider" means an individual, family member or entity that provides care.

(2)(a) "Community housing" includes:

(A) Real property, including but not limited to buildings, structures, improvements to real property and related equipment, that is used or could be used to house and provide care for individuals with mental retardation or other developmental [*disability*] **disabilities**; and

(B) A single-family home or multiple-unit residential housing that an individual with mental retardation or other developmental disability shares with other inhabitants, including but not limited to family members, care providers or friends.

(b) "Community housing" does not include the Eastern Oregon Training Center.

(3) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes to install equipment and to prepare a site.

(4) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological handicapping condition or severe physical impairment that requires training similar to that required by [*mentally retarded*] persons **with mental retardation**, and the disability:

(a) Originates before the person attains the age of 22 years;

(b) Has continued or can be expected to continue indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society.

(5) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or could be used to provide care in community housing.

(6) "Family member" means an individual who is related by blood or marriage to an individual with mental retardation or other developmental disability.

(7) "Financial assistance" means a grant or loan to pay expenses incurred to provide community housing.

(8) "Housing provider" means an individual or entity that provides community housing.

SECTION 222. ORS 427.335 is amended to read:

427.335. (1) The Department of Human Services may, through contract or otherwise, acquire, purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of providing care to individuals with mental retardation or other developmental [*disability*] **disabilities**.

(2) The department may dispose of community housing acquired under subsection (1) of this section in a public or private sale, upon such terms and conditions as the department considers advisable to increase the quality and quantity of community housing for individuals with mental retardation or other developmental [*disability*] **disabilities**. The department may include in any instrument conveying fee title to community housing language that restricts the use of the community housing to provide care for individuals with mental retardation or other developmental [*disability*] **disabilities**. Such restriction is not a violation of ORS 93.270. Any instrument conveying fee title to community housing under this subsection shall provide that equipment in the community housing is a part of and shall remain with the real property unless such equipment was modified or designed specifically for an individual's use, in which case such equipment shall follow the individual.

(3) The department may provide financial assistance to a housing provider or a care provider that wishes to provide community housing for individuals with mental retardation or other developmental [*disability*] **disabilities** under rules promulgated by the department.

(4) The department may transfer its ownership of equipment to care providers.

(5) When exercising the authority granted to the department under this section, the department is not subject to ORS 276.900 to 276.915 or 279A.250 to 279A.290 or ORS chapters 270 and 273.

SECTION 223. ORS 428.205 is amended to read:

428.205. It is declared to be the policy and intent of the Legislative Assembly that whenever a person physically present in the State of Oregon is in need of institutionalization by reason of mental illness or mental [*deficiency*] **retardation**, the person shall be eligible for care and treatment in an institution of the State of Oregon irrespective of the residence of the person, settlement or citizenship qualifications.

SECTION 224. ORS 428.270 is amended to read:

428.270. (1) Any person, except an officer, agent or employee of a common carrier acting in the line of duty, who brings or in any way aids in bringing into this state any patient without the written authorization of the Department of Human Services, shall be liable to this state for all expenses incurred in the care of such patient and in the transportation of such patient to the other state where the patient legally resides.

(2) Hospitals and sanitariums, other than state hospitals, [*which*] **that** care for and treat [*mentally ill and mentally deficient*] persons **with mental illness or mental retardation** shall be responsible for the return of [*mentally ill or mentally deficient*] **those** persons to their places of residence or domicile outside the state if they are brought into this state for treatment and care and are discharged from such institutions without being fully recovered.

(3) Failure to comply with the provisions of subsection (2) of this section shall render the person operating the hospital or sanitarium liable to reimburse the state for all expenses incurred in the care, maintenance and return of the [*mentally ill or mentally deficient*] persons **with mental illness or mental retardation** to their places of residence or domicile outside the state.

SECTION 225. ORS 430.010 is amended to read:

430.010. As used in ORS 430.010 to 430.050, 430.140 to 430.170, 430.265, 430.270 and 430.610 to 430.695:

(1) "Department" means the Department of Human Services.

(2) "Health facility" means a facility licensed as required by ORS 441.015 or a facility accredited by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed to admit persons requiring 24-hour nursing care.

(3) "Residential facility" or "day or partial hospitalization program" means a program or facility providing an organized full-day or part-day program of treatment. Such a program or facility shall be licensed, approved, established, maintained, contracted with or operated by the department under:

(a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(c) ORS 430.610 to 430.880 for mental or emotional [*disturbance*] **disturbances**.

(4) "Outpatient service" means:

(a) A program or service providing treatment by appointment and by medical or osteopathic physicians licensed by the Board of Medical Examiners for the State of Oregon under ORS 677.010 to 677.450; psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010 to 675.150; nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010 to 678.410; or clinical social workers licensed by the State Board of Clinical Social Workers under ORS 675.510 to 675.600; or

(b) A program or service providing treatment by appointment that is licensed, approved, established, maintained, contracted with or operated by the department under:

(A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(C) ORS 430.610 to 430.880 for mental or emotional [*disturbance*] **disturbances**.

SECTION 226. ORS 430.021 is amended to read:

430.021. Subject to ORS 417.300 and 417.305:

(1) The Department of Human Services shall:

(a) Direct, promote, correlate and coordinate all the activities, duties and direct services for [*the mentally or emotionally disturbed, mentally retarded and developmentally disabled, alcoholic and drug-dependent persons*] **persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence**; and

(b) Promote, correlate and coordinate the mental health and developmental disabilities activities of all governmental organizations throughout the state in which there is any direct contact with mental health and developmental disabilities programs.

(2) The department shall develop cooperative programs with interested private groups throughout the state to effect better community awareness and action in the field of mental health and developmental disabilities, and encourage and assist in all necessary ways community general hospitals to establish psychiatric services.

(3) To the greatest extent possible, the least costly settings for treatment, outpatient services and residential facilities shall be widely available and utilized except when contraindicated because of individual health care needs. State agencies that purchase treatment for mental or emotional disturbances shall develop criteria consistent with this policy. In reviewing applications for certificates of need, the Director of Human Services shall take this policy into account.

(4) The department shall establish, coordinate, assist and direct a community mental health and developmental disabilities program in cooperation with local government units and integrate such a program with the total state mental and developmental disabilities health program.

(5) The department shall promote public education in the state concerning mental health and developmental disabilities and act as the liaison center for work with all interested public and private groups and agencies in the field of mental health and developmental disabilities services.

(6) The department shall accept the custody of persons committed to its care by the courts of this state.

SECTION 227. ORS 430.050 is amended to read:

430.050. (1) The Director of Human Services, with the approval of the Governor, shall appoint at least 15 but not more than 20 members of a Mental Health Advisory Board, composed of both lay and professionally trained individuals, qualified by training or experience to study the problems of mental health and make recommendations for the development of policies and procedures with respect to the state mental health programs. The membership shall provide balanced representation of program areas and shall include persons who represent the interests of children. At least four members of the board shall be [*disabled*] persons **with disabilities** who shall serve as the Disability Issues Advisory Committee which is hereby established. The members of the board shall serve for terms of four years and are entitled to compensation and expenses as provided in ORS 292.495. The director may remove any member of the board for misconduct, incapacity or neglect of duty.

(2) The Department of Human Services shall adopt rules specifying the duties of the board. In addition to those duties assigned by rule, the board shall assist the department in planning and preparation of administrative rules for the assumption of responsibility for psychiatric care in state and community hospitals by community mental health and developmental disabilities programs, in accordance with ORS 430.630 (3)(e).

(3) The board shall meet at least once each quarter.

(4) The director may make provision for technical and clerical assistance to the Mental Health Advisory Board and for the expenses of such assistance.

(5) The Disability Issues Advisory Committee shall meet at least once annually to make recommendations to the Mental Health Advisory Board.

(6) As used in this section, “[*disabled*] person **with a disability**” means any person who:

(a) Has a physical or mental impairment which substantially limits one or more major life activities;

- (b) Has a record of such an impairment; or
- (c) Is regarded as having such an impairment.

SECTION 228. ORS 430.610 is amended to read:

430.610. It is declared to be the policy and intent of the Legislative Assembly that:

(1) Subject to the availability of funds, mental health services should be available to all [*mentally or emotionally disturbed, mentally retarded and developmentally disabled, alcohol abuser, alcoholic, drug abuser and drug-dependent*] persons **with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers**, regardless of age, county of residence or ability to pay;

(2) The Department of Human Services and other state agencies shall conduct their activities in the least costly and most efficient manner so that delivery of services to [*the mentally or emotionally disturbed, mentally retarded and developmentally disabled, alcohol abuser, alcoholic, drug abuser and drug-dependent*] persons **with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers**, shall be effective and coordinated;

(3) To the greatest extent possible, mental health services shall be delivered in the community where the person lives in order to achieve maximum coordination of services and minimum disruption in the life of the person; and

(4) The State of Oregon shall encourage, aid and financially assist its county governments in the establishment and development of community mental health and developmental disabilities programs, including but not limited to, treatment and rehabilitation services for [*the mentally or emotionally disturbed, mentally retarded and developmentally disabled, alcohol abuser, alcoholic, drug abuser and drug-dependent persons*] **persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers**, and prevention of these problems through county administered community mental health and developmental disabilities programs.

SECTION 229. ORS 430.625 is amended to read:

430.625. (1) If any local mental health program has an advisory committee, [*disabled*] persons **with disabilities**, as defined in ORS 430.050 (6), and older adults shall be appointed to serve on the advisory committee.

(2) The [*disabled*] persons **with disabilities** described in subsection (1) of this section shall meet separately as a disability issues advisory committee.

SECTION 230. ORS 430.630 is amended to read:

430.630. (1) In addition to any other requirements that may be established by rule by the Department of Human Services and subject to the availability of funds, each community mental health and developmental disabilities program shall provide the following basic services to persons with mental retardation [*and*], developmental disabilities [*and alcohol abuse*], alcoholism[, *drug abuse and*] **or drug dependence, and persons who are alcohol or drug abusers**:

- (a) Outpatient services;
- (b) Aftercare for persons released from hospitals and training centers;
- (c) Training, case and program consultation and education for community agencies, related professions and the public;
- (d) Guidance and assistance to other human service agencies for joint development of prevention programs and activities to reduce factors causing mental retardation, [*and*] developmental disabilities, [*and*] alcohol abuse, alcoholism, drug abuse and drug dependence; and
- (e) Age-appropriate treatment options for older adults.

(2) As alternatives to state hospitalization, it is the responsibility of the community mental health and developmental disabilities program to ensure that, subject to the availability of funds, the following services for [*the mentally retarded and developmentally disabled, alcohol abuser, alcoholic, drug abuser and drug-dependent*] persons **with mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers**, are available when needed and approved by the Department of Human Services:

(a) Emergency services on a 24-hour basis, such as telephone consultation, crisis intervention and prehospital screening examination;

(b) Care and treatment for a portion of the day or night, which may include day treatment centers, work activity centers and preschool programs;

(c) Residential care and treatment in facilities such as halfway houses, detoxification centers and other community living facilities;

(d) Continuity of care, such as that provided by service coordinators, community case development specialists and core staff of federally assisted community mental health centers;

(e) Inpatient treatment in community hospitals; and

(f) Other alternative services to state hospitalization as defined by the department.

(3) In addition to any other requirements that may be established by rule of the department, each community mental health and developmental disabilities program, subject to the availability of funds, shall provide or ensure the provision of the following services to persons with mental or emotional disturbances:

(a) Screening and evaluation to determine the client's service needs;

(b) Crisis stabilization to meet the needs of persons [*suffering*] **with** acute mental or emotional disturbances, including the costs of investigations and prehearing detention in community hospitals or other facilities approved by the department for persons involved in involuntary commitment procedures;

(c) Vocational and social services that are appropriate for the client's age, designed to improve the client's vocational, social, educational and recreational functioning;

(d) Continuity of care to link the client to housing and appropriate and available health and social service needs;

(e) Psychiatric care in state and community hospitals, subject to the provisions of subsection (4) of this section;

(f) Residential services;

(g) Medication monitoring;

(h) Individual, family and group counseling and therapy;

(i) Public education and information;

(j) Prevention of mental or emotional disturbances and promotion of mental health;

(k) Consultation with other community agencies;

(L) Preventive mental health services for children and adolescents, including primary prevention efforts, early identification and early intervention services. Preventive services should be patterned after service models that have demonstrated effectiveness in reducing the incidence of emotional, behavioral and cognitive disorders in children. As used in this paragraph:

(A) "Early identification" means detecting emotional disturbance in its initial developmental stage;

(B) "Early intervention services" for children at risk of later development of emotional [*disturbance*] **disturbances** means programs and activities for children and their families that promote conditions, opportunities and experiences that encourage and develop emotional stability, self-sufficiency and increased personal competence; and

(C) "Primary prevention efforts" means efforts that prevent emotional problems from occurring by addressing issues early so that disturbances do not have an opportunity to develop; and

(m) Preventive mental health services for older adults, including primary prevention efforts, early identification and early intervention services. Preventive services should be patterned after service models that have demonstrated effectiveness in reducing the incidence of emotional and behavioral disorders and suicide attempts in older adults. As used in this paragraph:

(A) "Early identification" means detecting emotional disturbance in its initial developmental stage;

(B) "Early intervention services" for older adults at risk of development of emotional [*disturbance*] **disturbances** means programs and activities for older adults and their families that promote

conditions, opportunities and experiences that encourage and maintain emotional stability, self-sufficiency and increased personal competence and that deter suicide; and

(C) "Primary prevention efforts" means efforts that prevent emotional problems from occurring by addressing issues early so that disturbances do not have an opportunity to develop.

(4) A community mental health and developmental disabilities program shall assume responsibility for psychiatric care in state and community hospitals, as provided in subsection (3)(e) of this section, in the following circumstances:

(a) The person receiving care is a resident of the county served by the program. For purposes of this paragraph, "resident" means the resident of a county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed [*mentally ill*] person **with a mental illness** has been conditionally released.

(b) The person has been hospitalized involuntarily or voluntarily, pursuant to ORS 426.130 or 426.220, except for persons confined to the Secure Child and Adolescent Treatment Unit at Oregon State Hospital, or has been hospitalized as the result of a revocation of conditional release.

(c) Payment is made for the first 60 consecutive days of hospitalization.

(d) The hospital has collected all available patient payments and third-party reimbursements.

(e) In the case of a community hospital, the department has approved the hospital for the care of [*mentally or emotionally disturbed*] persons **with mental or emotional disturbances**, the community mental health and developmental disabilities program has a contract with the hospital for the psychiatric care of residents and a representative of the program approves voluntary or involuntary admissions to the hospital prior to admission.

(5) Subject to the review and approval of the department, a community mental health and developmental disabilities program may initiate additional services after the services defined in this section are provided.

(6) Each community mental health and developmental disabilities program and the state hospital serving the program's geographic area shall enter into a written agreement concerning the policies and procedures to be followed by the program and the hospital when a patient is admitted to, and discharged from, the hospital and during the period of hospitalization.

(7) Each community mental health and developmental disabilities program shall have a mental health advisory committee, appointed by the board of county commissioners or the county court or, if two or more counties have combined to provide mental health services, the boards or courts of the participating counties or, in the case of a Native American reservation, the tribal council.

(8) A community mental health and developmental disabilities program may request and the department may grant a waiver regarding provision of one or more of the services described in subsection (3) of this section upon a showing by the county and a determination by the department that [*mentally or emotionally disturbed*] persons **with mental or emotional disturbances** in that county would be better served and unnecessary institutionalization avoided.

(9) Each community mental health and developmental disabilities program shall cooperate fully with the Governor's Council on Alcohol and Drug Abuse Programs in the performance of its duties.

(10)(a) As used in this subsection, "local mental health authority" means one of the following entities:

(A) The board of county commissioners of one or more counties that establishes or operates a community mental health and developmental disabilities program;

(B) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(C) A regional local mental health authority comprised of two or more boards of county commissioners.

(b) Each local mental health authority that provides mental health services shall determine the need for local mental health services and adopt a comprehensive local plan for the delivery of mental health services for children, families, adults and older adults that describes the methods by which the local mental health authority shall provide those services. The local mental health au-

thority shall review and revise the local plan biennially. The purpose of the local plan is to create a blueprint to provide mental health services that are directed by and responsive to the mental health needs of individuals in the community served by the local plan.

(c) The local plan shall identify ways to:

(A) Coordinate and ensure accountability for all levels of care described in paragraph (e) of this subsection;

(B) Maximize resources for consumers and minimize administrative expenses;

(C) Provide supported employment and other vocational opportunities for consumers;

(D) Determine the most appropriate service provider among a range of qualified providers;

(E) Ensure that appropriate mental health referrals are made;

(F) Address local housing needs for persons with mental health disorders;

(G) Develop a process for discharge from state and local psychiatric hospitals and transition planning between levels of care or components of the system of care;

(H) Provide peer support services, including but not limited to drop-in centers and paid peer support;

(I) Provide transportation supports; and

(J) Coordinate services among the criminal and juvenile justice systems, adult and juvenile corrections systems and local mental health programs to ensure that persons with mental illness who come into contact with the justice and corrections systems receive needed care and to ensure continuity of services for adults and juveniles leaving the corrections system.

(d) When developing a local plan, a local mental health authority shall:

(A) Coordinate with the budgetary cycles of state and local governments that provide the local mental health authority with funding for mental health services;

(B) Involve consumers, advocates, families, service providers, schools and other interested parties in the planning process;

(C) Coordinate with the local public safety coordinating council to address the services described in paragraph (c)(J) of this subsection;

(D) Conduct a population based needs assessment to determine the types of services needed locally;

(E) Determine the ethnic, age-specific, cultural and diversity needs of the population served by the local plan;

(F) Describe the anticipated outcomes of services and the actions to be achieved in the local plan;

(G) Ensure that the local plan coordinates planning, funding and services with:

(i) The educational needs of children, adults and older adults;

(ii) Providers of social supports, including but not limited to housing, employment, transportation and education; and

(iii) Providers of physical health and medical services;

(H) Describe how funds, other than state resources, may be used to support and implement the local plan;

(I) Demonstrate ways to integrate local services and administrative functions in order to support integrated service delivery in the local plan; and

(J) Involve the local mental health advisory committees described in subsection (7) of this section.

(e) The local plan must describe how the local mental health authority will ensure the delivery of and be accountable for clinically appropriate services in a continuum of care based on consumer needs. The local plan shall include, but not be limited to, services providing the following levels of care:

(A) Twenty-four-hour crisis services;

(B) Secure and nonsecure extended psychiatric care;

(C) Secure and nonsecure acute psychiatric care;

(D) Twenty-four-hour supervised structured treatment;

- (E) Psychiatric day treatment;
- (F) Treatments that maximize client independence;
- (G) Family and peer support and self-help services;
- (H) Support services;
- (I) Prevention and early intervention services;
- (J) Transition assistance between levels of care;
- (K) Dual diagnosis services;
- (L) Access to placement in state-funded psychiatric hospital beds;
- (M) Precommitment and civil commitment in accordance with ORS chapter 426; and
- (N) Outreach to older adults at locations appropriate for making contact with older adults, including senior centers, long term care facilities and personal residences.

(f) In developing the part of the local plan referred to in paragraph (c)(J) of this subsection, the local mental health authority shall collaborate with the local public safety coordinating council to address the following:

(A) Training for all law enforcement officers on ways to recognize and interact with persons with mental illness, for the purpose of diverting them from the criminal and juvenile justice systems;

(B) Developing voluntary locked facilities for crisis treatment and follow-up as an alternative to custodial arrests;

(C) Developing a plan for sharing a daily jail and juvenile detention center custody roster and the identity of persons of concern and offering mental health services to those in custody;

(D) Developing a voluntary diversion program to provide an alternative for persons with mental illness in the criminal and juvenile justice systems; and

(E) Developing mental health services, including housing, for persons with mental illness prior to and upon release from custody.

(g) Services described in the local plan shall:

(A) Address the vision, values and guiding principles described in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001;

(B) Be provided to children, older adults and families as close to their homes as possible;

(C) Be culturally appropriate and competent;

(D) Be, for children, older adults and adults with mental health needs, from providers appropriate to deliver those services;

(E) Be delivered in an integrated service delivery system with integrated service sites or processes, and with the use of integrated service teams;

(F) Ensure consumer choice among a range of qualified providers in the community;

(G) Be distributed geographically;

(H) Involve consumers, families, clinicians, children and schools in treatment as appropriate;

(I) Maximize early identification and early intervention;

(J) Ensure appropriate transition planning between providers and service delivery systems, with an emphasis on transition between children and adult mental health services;

(K) Be based on the ability of a client to pay;

(L) Be delivered collaboratively;

(M) Use age-appropriate, research-based quality indicators;

(N) Use best-practice innovations; and

(O) Be delivered using a community-based, multisystem approach.

(h) A local mental health authority shall submit to the Department of Human Services a copy of the local plan and biennial revisions adopted under paragraph (b) of this subsection at time intervals established by the department.

(i) Each local commission on children and families shall reference the local plan for the delivery of mental health services in the local coordinated comprehensive plan created pursuant to ORS 417.775.

SECTION 231. ORS 430.640 is amended to read:

430.640. (1) The Department of Human Services, in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds shall:

(a) Assist Oregon counties and groups of Oregon counties in the establishment and financing of community mental health and developmental disabilities programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community mental health and developmental disabilities program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) In an emergency situation when no community mental health and developmental disabilities program is operating within a county or when a county is unable to provide a service essential to public health and safety, operate the program or service on a temporary basis.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community mental health and developmental disabilities program in the same manner that the department contracts with a county court or board of county commissioners.

(e) If a county agrees, contract with a public agency or private corporation for all services within one or more of the following program areas: Mental or emotional disturbances, drug abuse, mental retardation or other developmental disabilities and alcohol abuse and alcoholism.

(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community mental health and developmental disabilities program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.630 may not be placed in effect without prior approval of the department. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.630 within the portion of the program for persons with mental or emotional disturbances, or within the portion for persons with mental retardation *[and]* **or** developmental disabilities or within the portion for persons with alcohol *[and]* **or** drug dependence may be made without department approval.

(g) Make all necessary and proper rules to govern the establishment and operation of community mental health and developmental disabilities programs, including adopting rules defining the range and nature of the services which shall or may be provided under ORS 430.630.

(h) Collect data and evaluate services in the state hospitals in accordance with the same methods prescribed for community mental health and developmental disabilities programs under ORS 430.665.

(i) Develop guidelines that include, for the development of comprehensive local plans in consultation with local mental health authorities:

(A) The use of integrated services;

(B) The outcomes expected from services and programs provided;

(C) Incentives to reduce the use of state hospitals;

(D) Mechanisms for local sharing of risk for state hospitalization;

(E) The provision of clinically appropriate levels of care based on an assessment of the mental health needs of consumers;

(F) The transition of consumers between levels of care; and

(G) The development, maintenance and continuation of older adult mental health programs with mental health professionals trained in geriatrics.

(j) Work with local mental health authorities to provide incentives for community-based care whenever appropriate while simultaneously ensuring adequate statewide capacity.

(k) Provide technical assistance and information regarding state and federal requirements to local mental health authorities throughout the local planning process required under ORS 430.630 (10).

(L) Provide incentives for local mental health authorities to enhance or increase vocational placements for adults with mental health needs.

(m) Develop or adopt nationally recognized system-level performance measures, linked to the Oregon Benchmarks, for state-level monitoring and reporting of mental health services for children, adults and older adults, including but not limited to quality and appropriateness of services, outcomes from services, structure and management of local plans, prevention of mental health disorders and integration of mental health services with other needed supports.

(n) Develop standardized criteria for each level of care described in ORS 430.630 (10), including protocols for implementation of local plans, strength-based mental health assessment and case planning.

(o) Develop a comprehensive long-term plan for providing appropriate and adequate mental health treatment and services to children, adults and older adults that is derived from the needs identified in local plans, is consistent with the vision, values and guiding principles in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001, and addresses the need for and the role of state hospitals.

(p) Report biennially to the Governor and the Legislative Assembly on the progress of the local planning process and the implementation of the local plans adopted under ORS 430.630 (10)(b) and the state planning process described in paragraph (o) of this subsection, and on the performance measures and performance data available under paragraph (m) of this subsection.

(q) On a periodic basis, not to exceed 10 years, reevaluate the methodology used to estimate prevalence and demand for mental health services using the most current nationally recognized models and data.

(r) Encourage the development of regional local mental health authorities comprised of two or more boards of county commissioners that establish or operate a community mental health and developmental disabilities program.

(2) The department may provide technical assistance and other incentives to assist in the planning, development and implementation of regional local mental health authorities whenever the department determines that a regional approach will optimize the comprehensive local plan described under ORS 430.630 (10).

(3) The enumeration of duties and functions in subsection (1) of this section shall not be deemed exclusive nor construed as a limitation on the powers and authority vested in the department by other provisions of law.

SECTION 232. ORS 430.665 is amended to read:

430.665. (1) In order to improve services to [*mentally or emotionally disturbed*] persons **with mental or emotional disturbances** and provide information for uniform analysis, each community mental health and developmental disabilities program shall collect and report data and evaluate programs in accordance with methods prescribed by the Department of Human Services after consultation with the program directors.

(2) Information collected by the department under subsection (1) of this section shall include, but need not be limited to:

- (a) Numbers of persons served;
- (b) Ages of persons served;
- (c) Types of services provided; and
- (d) Cost of services.

(3) Within the limits of available funds allocated for the administration of community mental health and developmental disabilities programs, community mental health and developmental disabilities programs shall collect data and evaluate programs with moneys provided by the department. The department shall distribute funds so that programs within the same population grouping shall receive equal amounts of funds. The population groupings are:

- (a) More than 400,000 population.
- (b) Less than 400,000 but more than 100,000.
- (c) Less than 100,000 but more than 50,000.
- (d) Less than 50,000.

(4) During the first biennium that a new service is funded by the department, two percent of the service funds shall be set aside for use in data collection and evaluation of the service. Thereafter, the service shall be evaluated as a part of the total community mental health program.

SECTION 233. ORS 430.685 is amended to read:

430.685. In allocating funds for community mental health and developmental disabilities programs affecting [*the mentally and emotionally disturbed*] **persons with mental or emotional disturbances**, the Department of Human Services shall observe the following priorities:

(1) To assure the establishment and operation of community mental health and developmental disabilities programs for [*the mentally and emotionally disturbed*] **persons with mental or emotional disturbances** in every geographic area of the state to provide some services in each category of services described in ORS 430.630 (3) unless a waiver has been granted;

(2) To assure survival of services that address the needs of persons within the priority of services under ORS 430.675 and that meet department standards;

(3) To develop the interest and capacity of community mental health and developmental disabilities programs to provide new or expanded services to meet the needs for services under ORS 430.675 and to promote the equal availability of such services throughout the state; and

(4) To encourage and assist in the development of model projects to test new services and innovative methods of service delivery.

SECTION 234. ORS 430.695 is amended to read:

430.695. (1) Any program fees, third-party reimbursements, contributions or funds from any source, except client resources applied toward the cost of care in group homes for [*the mentally retarded and mentally ill*] **persons with mental retardation or mental illness** and client resources and third-party payments for community psychiatric inpatient care, received by a community mental health and developmental disabilities program are not an offset to the costs of the services and [*shall*] **may** not be applied to reduce the program's eligibility for state funds providing such funds are expended for mental health services approved by the Department of Human Services.

(2) Within the limits of available funds, the department may contract for specialized, statewide and regional services including but not limited to group homes for [*the mentally retarded or mentally or emotionally disturbed*] persons **with mental retardation or mental or emotional disturbances**, day and residential treatment programs for [*mentally or emotionally disturbed*] children and adolescents **with mental or emotional disturbances** and community services for clients of the Psychiatric Security Review Board.

(3) [*Beginning July 1, 1981,*] Fees and third-party reimbursements, including all amounts paid pursuant to Title XIX of the Social Security Act by the Department of Human Services, for services rendered by the community mental health and developmental disabilities program and interest earned on such funds shall be retained by the program and expended for any service which meets the standards of the department.

SECTION 235. ORS 430.705 is amended to read:

430.705. Notwithstanding ORS 430.640, the State of Oregon, through the Department of Human Services, may establish the necessary facilities and provide comprehensive mental health services for children throughout the state. These services may include, but **need** not be limited to: [*the prevention of mental illness, and the prevention, treatment and restoration of emotionally disturbed, mentally ill and drug-dependent children.*]

(1) **The prevention of mental illness, emotional disturbances and drug dependency in children; and**

(2) **The treatment of children with mental illness, emotional disturbances and drug dependency.**

SECTION 236. ORS 430.735 is amended to read:

430.735. As used in ORS 430.735 to 430.765:

(1) "Abuse" means one or more of the following:

(a) Any death caused by other than accidental or natural means.

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(c) Willful infliction of physical pain or injury.

(d) Sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult.

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(2) "Adult" means a person [*who is mentally ill or developmentally disabled*] **with a mental illness or developmental disability**, who is 18 years of age or older and receives services from a community program or facility.

(3) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and funds. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.

(4) "Care provider" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(5) "Community program" means a community mental health and developmental disabilities program as established in ORS 430.610 to 430.695.

(6) "Department" means the Department of Human Services.

(7) "Facility" means a residential treatment home or facility, residential care facility, adult foster care home, residential training home or facility or crisis respite facility.

(8) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) Any district attorney.

(9) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatric physician and surgeon, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

SECTION 237. ORS 430.737 is amended to read:

430.737. The Legislative Assembly finds that for the purpose of preventing abuse and safeguarding and enhancing the welfare of adults [*who are mentally ill or developmentally disabled*] **with mental illness or developmental disabilities**, it is necessary and in the public interest to require mandatory reports and thorough and unbiased investigations of [*allegedly abused mentally ill and developmentally disabled*] adults **with mental illness or developmental disabilities who are allegedly abused**.

SECTION 238. ORS 431.180 is amended to read:

431.180. Nothing in the public health laws shall be construed to empower or authorize the Department of Human Services or its representatives, or any county or district board of health or its representatives to interfere in any manner with the individual's right to select the physician or mode of treatment of the choice of the individual, nor interfere with the practice of any person whose religion treats or administers to *[the]* **people who are** sick or suffering by purely spiritual means. However, sanitary laws and rules must be complied with.

SECTION 239. ORS 437.030 is amended to read:

437.030. The Department of Human Services shall, upon receiving a report that any person has tuberculosis, make such investigation of the case as is necessary to determine whether or not the person reported has communicable tuberculosis. Upon finding that any person *[is suffering from]* **has** communicable tuberculosis, the department shall exercise such control over the affected person and contacts with other persons as may be necessary for the protection of the public health, pursuant to its rules and regulations. In exercising such control over any *[afflicted]* person **who has communicable tuberculosis** the department may make such rules or orders governing such person's conduct as are necessary to prevent the spread of the disease.

SECTION 240. ORS 441.137 is amended to read:

441.137. (1) There is established a Long Term Care Advisory Committee of seven members to be appointed in the following manner:

- (a) One person appointed by the Speaker of the House of Representatives;
- (b) One person appointed by the President of the Senate;
- (c) One person appointed by the House Minority Leader;
- (d) One person appointed by the Senate Minority Leader;
- (e) Two persons, from a list of four names submitted by the organizations of seniors, appointed by the Governor; and
- (f) One person appointed by the Governor.

(2) All members are subject to confirmation by the Senate under ORS 171.562 and 171.565.

(3) The term of office of each member is four years. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) The members of the committee must be citizens of this state who are broadly representative to the extent possible of persons over 55 years of age, including *[disabled]* persons **with disabilities** and members of racial and ethnic minorities, who have knowledge and interest in the problems of the elderly and are representative of all areas of the state. At least five members shall be at least 60 years of age.

SECTION 241. ORS 441.525 is amended to read:

441.525. As used in ORS 441.525 to 441.595, unless the context requires otherwise:

(1) "Adult congregate living facility" means any institution, building or buildings, residential facility for elderly **persons** and *[disabled]* persons **with disabilities**, or other place, operated as a nonprofit corporation which undertakes through its ownership or management to provide housing, meals and the availability of other supportive services.

(2) "Authority" means any public authority organized or existing pursuant to ORS 441.525 to 441.595.

(3) "Governing body" means the county court, board of county commissioners, council or other legislative body of any municipality.

(4) "Hospital facility" means any structure, system, machinery, equipment or other real or personal property useful for or incidental to inpatient or outpatient care or administration, service or support for such care or any combination thereof which is provided by a political subdivision of this state or any private nonprofit corporation, which is operating or proposes to operate an adult congregate living facility, or a health care facility as defined by ORS 442.015.

(5) "Municipality" means any health district, city or county and further means any municipal corporation resulting from a city-county or city consolidation or a merger of cities.

SECTION 242. ORS 442.015 is amended to read:

442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

(1) "Acquire" or "acquisition" means obtaining equipment, supplies, components or facilities by any means, including purchase, capital or operating lease, rental or donation, with intention of using such equipment, supplies, components or facilities to provide health services in Oregon. When equipment or other materials are obtained outside of this state, acquisition is considered to occur when the equipment or other materials begin to be used in Oregon for the provision of health services or when such services are offered for use in Oregon.

(2) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.

(3) "Affected persons" has the same meaning as given to "party" in ORS 183.310.

(4) "Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(5) "Audited actual experience" means data contained within financial statements examined by an independent, certified public accountant in accordance with generally accepted auditing standards.

(6) "Budget" means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators.

(7) "Case mix" means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital's mix of cases compared to a state or national mix of cases.

(8) "Commission" means the Oregon Health Policy Commission.

(9) "Department" means the Department of Human Services of the State of Oregon.

(10) "Develop" means to undertake those activities that on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

(11) "Director" means the Director of Human Services.

(12) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a donation or grant in lieu of an expenditure but not including any interest thereon.

(13) "Freestanding birthing center" means a facility licensed for the primary purpose of performing low risk deliveries.

(14) "Governmental unit" means the state, or any county, municipality or other political subdivision, or any related department, division, board or other agency.

(15) "Gross revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue. "Gross revenue" does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

(16)(a) "Health care facility" means a hospital, a long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient renal dialysis facility.

(b) "Health care facility" does not mean:

(A) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or

(B) An establishment furnishing primarily domiciliary care.

(17) "Health maintenance organization" or "HMO" means a public organization or a private organization organized under the laws of any state that:

(a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

- (i) Usual physician services;
- (ii) Hospitalization;
- (iii) Laboratory;
- (iv) X-ray;
- (v) Emergency and preventive services; and
- (vi) Out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(C) Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(18) "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

(19) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for [*the mentally ill*] **patients with mental illness** or to provide treatment in special inpatient care facilities.

(20) "Institutional health services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

(21) "Intermediate care facility" means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.

(22) "Long term care facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

(23) "Major medical equipment" means medical equipment that is used to provide medical and other health services and that costs more than \$1 million. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.

(24) "Net revenue" means gross revenue minus deductions from revenue.

(25) "New hospital" means a facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services. "New hospital" also includes any replacement of an existing hospital that involves a substantial increase or change in the services offered.

(26) "New skilled nursing or intermediate care service or facility" means a service or facility that did not offer long term care services on a regular basis by or through the facility within the prior 12-month period and is initiating or proposing to initiate such services. "New skilled nursing or intermediate care service or facility" also includes the rebuilding of a long term care facility, the relocation of buildings that are a part of a long term care facility, the relocation of long term care

beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

(27) "Offer" means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(28) "Operating expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes.

(29) "Outpatient renal dialysis facility" means a facility that provides renal dialysis services directly to outpatients.

(30) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation, of a state.

(31) "Skilled nursing facility" means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of **individuals who are** injured[, *disabled*] or sick [*persons*] **or who have disabilities.**

(32) "Special inpatient care facility" means a facility with permanent inpatient beds and other facilities designed and utilized for special health care purposes, including but not limited to a rehabilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Department of Human Services, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(33) "Total deductions from gross revenue" or "deductions from revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.

SECTION 243. ORS 442.502 is amended to read:

442.502. (1) For purposes of determining the size of a rural hospital, beds certified by the Department of Human Services on the license of the hospital as special inpatient care beds shall not be included.

(2) As used in this section, "special inpatient care beds" means beds that:

(a) Are used for the treatment of [*the mentally ill*] **patients with mental illness** or for the treatment of alcoholism or drug abuse, or are located in a rehabilitation center, a college infirmary, a chiropractic facility, a freestanding hospice facility, an infirmary for the homeless or an inpatient care facility described in ORS 441.065;

(b) Are physically separate from acute inpatient care beds, at least by being located on separate floors or wings of the same building;

(c) Are never used for acute patient care;

(d) Are staffed by dedicated direct care personnel for whom separate employment records are maintained;

(e) Have separate medical directors; and

(f) Maintain separate admission, discharge and patient records.

SECTION 244. ORS 442.700 is amended to read:

442.700. As used in ORS 442.700 to 442.760:

(1) "Board of governors" means the governors of a cooperative program as described in ORS 442.720.

(2) "Cooperative program" means a program among two or more health care providers for the purpose of providing heart and kidney transplant services including, but not limited to, the sharing, allocation and referral of physicians, patients, personnel, instructional programs, support services, facilities, medical, diagnostic, laboratory or therapeutic services, equipment, devices or supplies, and other services traditionally offered by health care providers.

(3) "Director" means the Director of Human Services.

(4) "Health care provider" means a hospital, physician or entity, a significant part of whose activities consist of providing hospital or physician services in this state. For purposes of the immunities provided by ORS 442.700 to 442.760 and 646.740, "health care provider" includes any officer, director, trustee, employee, or agent of, or any entity under common ownership and control with, a health care provider.

(5) "Hospital" means a hospital, as defined in ORS 442.015 (19), or a long term care facility or an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under ORS 441.015 to 441.089. "Hospital" includes community health programs established under ORS 430.610 to 430.695.

(6) "Order" means a decision issued by the director under ORS 442.710 either approving or denying an application for a cooperative program and includes modifications of an original order under ORS 442.730 (3)(b) and ORS 442.740 (1) and (4).

(7) "Party to a cooperative program agreement" or "party" means an entity that enters into the principal agreement to establish a cooperative program and applies for approval under ORS 442.700 to 442.760 and 646.740 and any other entity that, with the approval of the director, becomes a member of a cooperative program.

(8) "Physician" means a physician defined in ORS 677.010 [(12)] (13) and licensed under ORS chapter 677.

SECTION 245. ORS 443.400 is amended to read:

443.400. As used in ORS 443.400 to 443.455 and 443.991 (2), unless the context requires otherwise:

(1) "Department" means the Department of Human Services.

(2) "Director" means the Director of Human Services.

(3) "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a resident if the individual is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility.

(4) "Residential care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(5) "Residential care facility" means a facility that provides, for six or more [*physically disabled or*] socially dependent individuals **or individuals with physical disabilities**, residential care in one or more buildings on contiguous properties.

(6) "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home or residential treatment home.

(7) "Residential training facility" means a facility that provides, for six or more [*mentally retarded or other developmentally disabled*] individuals **with mental retardation or other developmental disabilities**, residential care and training in one or more buildings on contiguous properties.

(8) "Residential training home" means a facility that provides, for five or fewer [*mentally retarded or other developmentally disabled*] individuals **with mental retardation or other developmental disabilities**, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the department.

(9) "Residential treatment facility" means a facility that provides, for six or more [*mentally, emotionally or behaviorally disturbed*] individuals **with mental, emotional or behavioral disturbances** or alcohol or drug [*dependent persons*] **dependence**, residential care and treatment in one or more buildings on contiguous properties.

(10) "Residential treatment home" means a facility that provides for five or fewer [*mentally, emotionally or behaviorally disturbed*] individuals **with mental, emotional or behavioral disturbances** or alcohol or drug [*dependent persons*] **dependence**, residential care and treatment in one or more buildings on contiguous properties.

(11) "Training" means the systematic, planned maintenance, development or enhancement of self-care skills, social skills or independent living skills, or the planned sequence of systematic interactions, activities or structured learning situations designed to meet each resident's specified needs in the areas of physical, social, emotional and intellectual growth.

(12) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

SECTION 246. ORS 443.410 is amended to read:

443.410. A license issued by the Department of Human Services is required in order to operate or maintain any residential facility for persons who **have developmental, physical or psychiatric disabilities** or are [*developmentally disabled, physically disabled or*] socially dependent[, *psychiatrically disabled*] or alcohol or drug dependent. In the case of a combination of residents, the category of licensure shall be determined by the Director of Human Services.

SECTION 247. ORS 443.452 is amended to read:

443.452. (1) The director shall waive the requirements of ORS 443.410 for a residential care facility caring for [*physically disabled*] residents **with physical disabilities** if:

(a) Each resident is over 16 years of age;

(b) No more than five [*physically disabled*] individuals **with physical disabilities** reside in any one building of the facility; and

(c) The residential facility complies with the applicable requirements of the State Fire Marshal.

(2) As used in this section, "building" means any structure that does not share a common wall or roof with another structure.

SECTION 248. ORS 443.480 is amended to read:

443.480. As used in ORS 443.480 to 443.500:

(1) "Elderly" means an individual who is 62 years of age or older.

(2) [*"Disabled"*] "**Disability**" means [*an individual who has*] a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities.

SECTION 249. ORS 443.485 is amended to read:

443.485. (1) Subject to ORS 443.490, any person who offers to the general public residential facilities and meals for compensation to two or more adults who are elderly or [*disabled*] **have disabilities**, as defined in ORS 443.480, not related to the person by blood or marriage, and is not licensed or registered under any other law of this state or city or county ordinance or regulation shall register the person's name and address with the Department of Human Services. The registration fee is \$20 annually. The department shall establish by rule reasonable and appropriate standards for the operation of facilities subject to ORS 443.480 to 443.500, consistent with their residential nature.

(2) The Department of Human Services shall provide evidence of the registration to the person. The evidence shall be posted in the residence.

(3) The Department of Human Services may impose a civil penalty not to exceed \$200 for:

(a) Operating without registration as required under this section; or

(b) A violation of ORS 443.880 or 443.881.

(4) The department may suspend or revoke registration or deny the issuance of registration for violation of any statute, rule, ordinance or regulation relating to the safety of occupants of the residential facility.

SECTION 250. ORS 443.715 is amended to read:

443.715. For purposes of ORS 443.705 to 443.825, "adult foster home" does not include:

(1) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care.

(2) Any specialized living situation for [*physically disabled*] persons **with physical disabilities** where the Department of Human Services provides payment for personal care services other than to an adult foster home provider.

(3) Any residential facility, as defined in ORS 443.400, licensed and funded by the department.

(4) Any residential treatment home, as defined in ORS 443.400, licensed and funded by the department.

SECTION 251. ORS 443.720 is amended to read:

443.720. (1) The Legislative Assembly finds that:

(a) Adult foster homes provide needed care and services to thousands of [*elderly and disabled*] Oregonians **who are elderly or have disabilities and** who might otherwise be institutionalized;

(b) The protection of the health, safety and well-being of the residents of adult foster homes is an important function of the Department of Human Services; and

(c) Consistent interpretation, application and enforcement of regulatory standards is necessary and desirable for the protection of adult foster home residents.

(2) It is legislative intent that:

(a) The department provide training and guidelines for employees assigned to licensing and enforcement to encourage consistency; and

(b) The department take vigorous action to ensure that inspections and investigations are carried out as required by law.

SECTION 252. ORS 444.010 is amended to read:

444.010. (1) The Oregon Health and Science University is designated to administer a program the purpose of which is to enable the state to extend and improve services for locating [*disabled*] children **with disabilities** and for providing medical, surgical, corrective and other services and care, and facilities for diagnosis, hospitalization and after care for such children and for children having conditions which lead to disability.

(2) The Oregon Health and Science University shall also supervise the administration of those services included in the program which are not administered directly by it.

SECTION 253. ORS 444.020 is amended to read:

444.020. The Oregon Health and Science University may:

(1) Make all necessary rules and regulations for administering services to [*disabled*] children **with disabilities** under ORS 444.010 to 444.050.

(2) Accept, expend and disburse all federal funds made available to this state for services for [*disabled*] children **with disabilities** and for the administration of services for children with special health needs.

(3) Make such reports in such form and containing such information as are required by the federal government, and comply with such provisions as are found necessary to [*insure*] **ensure** correctness and verification of such reports.

(4) Cooperate with medical, health, nursing and welfare groups and organizations and with any agencies in the state charged with administering state laws providing for vocational rehabilitation of [*physically disabled*] children **with physical disabilities**.

(5) Cooperate with the federal government through its appropriate agency or instrumentality in administering services for children with special health needs.

(6) Accept and receive funds, money or other valuable things from relatives, corporations or interested persons or organizations for the care of [*disabled*] children **with disabilities** and expend the same for the purposes for which such funds, money or other valuable things were received.

(7) Accept and receive fees for services rendered under ORS 444.010 to 444.050.

SECTION 254. ORS 444.030 is amended to read:

444.030. The Oregon Health and Science University shall be responsible for the administration of services for children with special health needs under ORS 444.010 to 444.050 and may establish:

(1) Qualifications of medical, nursing and other personnel employed in connection with services to [*disabled*] children **with disabilities**.

(2) Standards of medical practice, hospitalization, nursing and other services, and diagnostic clinics.

SECTION 255. ORS 444.120 is amended to read:

444.120. (1) Upon filing a report under ORS 444.110, the judge exercising jurisdiction under ORS 419B.100 or 419C.005 shall:

(a) Fix a day for a hearing upon the complaint.

(b) Cause the person or institution having legal custody of the child to be served with a notice of the hearing.

(c) Notify the district attorney, who shall appear and conduct the proceedings.

(2) At the hearing of the complaint, evidence may be introduced. If the judge finds that the child [*is suffering from*] **has** a deformity or malady which can probably be remedied by surgical or medical treatment and hospital care, and that the person or institution legally chargeable with the support of the child is unable to pay the expenses thereof, the judge, with the consent of the person or institution having the legal charge of the child, may enter an order directing that the child shall be taken or sent to the Oregon Health and Science University for free surgical and medical treatment and hospital care. The child shall also be provided with proper and sufficient clothing.

SECTION 256. ORS 454.657 is amended to read:

454.657. (1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468B.005. The commission shall grant such specific variance only where after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

(2) The commission shall adopt rules for granting variances from rules or standards pertaining to subsurface sewage disposal systems in cases of extreme and unusual hardship. The rules shall provide for consideration of the following factors in reviewing applications for variances due to hardship:

(a) Advanced age or bad health of applicants;

(b) Relative insignificance of the environmental impact of granting a variance; and

(c) The need of applicants to care for **relatives who are** aged[,] **or** incapacitated or [*disabled relatives*] **have disabilities**.

(3) The department shall strive to aid and accommodate the needs of applicants for variances due to hardship.

(4) Variances granted due to hardship may contain conditions such as permits for the life of the applicant, limiting the number of permanent residents using a subsurface sewage disposal system and use of experimental systems for specified periods of time.

SECTION 257. ORS 455.720 is amended to read:

455.720. (1) In accordance with applicable provisions of ORS chapter 183, to promote effective and uniform enforcement of the state building code by improving the competence of building officials and inspectors, the Director of the Department of Consumer and Business Services, with the advice of the advisory boards, shall:

(a) Establish for building officials and inspectors reasonable minimum training and experience standards, including but not limited to courses or subjects for instruction, facilities for instruction, qualification of instructors and methods of instruction. The standards shall include provisions for determining a practical experience equivalent.

(b) Establish a procedure to be used by municipalities to determine whether a person meets minimum standards or has minimum training to be appointed or employed as a building official or inspector. The procedure shall allow for a field examination of a person to determine if the person meets the practical experience equivalent of a minimum standard.

(c) Subject to such terms, conditions and classifications as the director may impose, certify building officials as being qualified, and revoke such certifications in the manner provided in ORS 455.740.

(d) Require an applicant for a certificate as a building official or inspector to demonstrate knowledge of the laws governing accessibility to buildings by *[disabled]* persons **with disabilities** by passing an examination prescribed by the director.

(2) The director shall maintain and, upon request of municipalities, furnish information on applicants for appointment or employment as building officials or inspectors.

(3) Pursuant to ORS chapter 183, the director shall adopt rules necessary to carry out the certification programs provided by subsection (1) of this section.

(4) The director, by rule, may require evidence of completion of continuing education covering any certification created under this section as a condition of maintaining the certification. Nothing in this subsection shall prohibit the director from delegating any of this power to a municipality.

(5) The director, with the advice of the appropriate advisory boards, may adopt rules for certifying inspectors as being qualified to enforce one or more particular specialty codes, subject to any terms, conditions and classifications the director may impose, and for revoking those certifications in the manner provided in ORS 455.740.

SECTION 258. ORS 456.515 is amended to read:

456.515. As used in ORS 456.515 to 456.725 and ORS chapter 458 unless the context requires otherwise:

(1) "Community Action Directors of Oregon" means an organization described in ORS 458.505.

(2) "Construction" includes, but is not limited to, new construction or moderate or substantial rehabilitation of existing structures or facilities.

(3) "Council" means the State Housing Council established under ORS 456.567.

(4) "Department" means the Housing and Community Services Department established under ORS 456.555.

(5) "Director" means the Director of the Housing and Community Services Department.

[(6) "*Disabled person*" means a person who has a physical or mental impairment that substantially limits one or more major life activities.]

[(7) (6) "Elderly household" means a household whose head is over the age of 58, residing in this state, who cannot obtain in the open market decent, safe and sanitary housing, including the costs of utilities and taxes, for 25 percent of the gross income of the household.

[(8) (7) "Major life activity" includes but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

[(9)(a) (8)(a) "Multifamily housing" means a structure or facility established primarily to provide housing that provides more than one living unit, and may also provide facilities that are functionally related and subordinate to the living units for use by the occupants in social, health, educational or recreational activities:

(A) For the elderly, including but not limited to individual living units within such structures, mobile home and manufactured dwelling parks and residential facilities licensed under ORS 443.400 to 443.455 and other congregate care facilities with or without domiciliary care.

(B) For *[disabled]* persons **with disabilities**, including, but not limited to, individual living units within such structures, mobile home and manufactured dwelling parks and residential facilities licensed under ORS 443.400 to 443.455 and other congregate care facilities with or without domiciliary care.

(b) "Multifamily housing" does not include nursing homes, hospitals, places primarily engaged in recreational activities and single-family, detached dwellings, except manufactured dwellings situated in a mobile home and manufactured dwelling park.

(9) "Person with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(10) "Target population" means:

- (a) Elderly households; or
- (b) *[Disabled]* Persons **with disabilities**.

SECTION 259. ORS 456.539 is amended to read:

456.539. (1) The Housing and Community Services Department shall be the agency for the State of Oregon for the administration of the Elderly and Disabled Housing Fund. Except as otherwise provided in ORS 456.515 to 456.725 the provisions of ORS 456.515 to 456.725 are applicable to the administration of the Elderly and Disabled Housing Fund.

(2) The department is authorized to use the Elderly and Disabled Housing Fund to advance funds, by contract, grant, loan or otherwise, as provided by Article XI-I(2) of the Oregon Constitution to finance multifamily housing for elderly households, *[disabled]* persons **with disabilities** and their family members and such other persons who reside therein as are necessary to maintain the housing or provide services or companionship for elderly households and *[disabled]* persons **with disabilities**.

(3) In carrying out the provisions specified in Article XI-I(2) of the Oregon Constitution, the department shall, with the concurrence of the State Housing Council, adopt criteria for approval of projects proposed by qualified housing sponsors to finance multifamily housing for the target population and their family members and such other persons who reside therein as are necessary to maintain the housing or provide services or companionship for elderly households and *[disabled]* persons **with disabilities**. The criteria shall:

(a) Assure that health, mental health and other supportive services as may be necessary to maintain elderly and disabled households living in the housing are available to the occupants onsite or in the community;

(b) Give priority to members of the target populations; and

(c) Allow occupancy by such family members or other persons as the department determines necessary to maintain the housing and provide services or companionship for elderly households and *[disabled]* persons **with disabilities**.

(4) The department shall:

(a) Adopt criteria, including maximum income limitations not to exceed median family income, for approval of applications for financing the purchase by elderly households of ownership interests within a multifamily structure or facility. The criteria must include a requirement that the applicants obtain loan cancellation life insurance.

(b) Provide means for allocating funds to finance multifamily housing units for the target population and to establish limitations on the interest and fees to be charged on loans made by the department.

(c) Adopt rules necessary for efficient administration of the Elderly and Disabled Housing Fund.

(d) Adopt rules to assure that each of the target populations has access to a reasonable portion of the bond authority under ORS 456.515 to 456.725, and that a reasonable portion of the funds for elderly households is made available to finance the purchase by elderly households of ownership interests within multifamily housing structures or facilities.

(5) Loans made by the department under this section for the interim construction financing of multifamily housing shall be subject to the provisions of ORS 456.717.

SECTION 260. ORS 456.541 is amended to read:

456.541. The Housing and Community Services Department shall and the State Housing Council may consult generally with the Department of Human Services and such other persons as the council or Housing and Community Services Department may consider appropriate concerning project applications for housing for disabled households. The Housing and Community Services Department shall seek comment on such project applications concerning:

(1) The need for and design of the project generally, considering the proposed location of the housing;

(2) The means proposed for screening eligibility for occupancy to assure that priority will be given to members of the target populations of *[disabled]* persons **with disabilities**; and

(3) The adequacy of the provisions for assuring the availability of health, mental health and other supportive services necessary to maintain disabled households in the housing.

SECTION 261. ORS 456.543 is amended to read:

456.543. (1) The Housing and Community Services Department shall maintain, with the State Treasurer, an Elderly and Disabled Housing Sinking Fund, separate and distinct from the General Fund. The Elderly and Disabled Housing Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-I(2), Oregon Constitution, and ORS 456.515 to 456.725. Moneys in the sinking fund are continuously appropriated to the department for such purpose. With the approval of the department, the moneys in the Elderly and Disabled Housing Sinking Fund may be invested as provided by ORS 293.701 to 293.820, and earnings from the investment shall be credited to the Elderly and Disabled Housing Sinking Fund.

(2) The Elderly and Disabled Housing Sinking Fund shall consist of:

(a) All moneys received from contract or loan proceeds;

(b) Bond reserves;

(c) Other funds available for these purposes; and

(d) If necessary, state ad valorem taxes provided by Article XI-I(2), Oregon Constitution, and by ORS 456.515 to 456.725.

(3) The Elderly and Disabled Housing Sinking Fund shall not be used for any purpose other than that for which the fund was created provided, however, that amounts on deposit in the fund may be applied to the payment of operating and administrative expenses of the department allocable to its elderly and disabled housing program under ORS 456.515 to 456.725, and for transfers under subsections (4) and (5) of this section. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Elderly and Disabled Housing Fund at the direction of the department.

(4) The Director of the Housing and Community Services Department may transfer moneys from the Elderly and Disabled Housing Sinking Fund, with the approval of the State Treasurer, for the purpose of financing multifamily housing for the elderly and *[the disabled]* **persons with disabilities**. The State Treasurer shall approve such request if:

(a) The cash flow projection required by ORS 286.105 shows that, for the term of the bonds outstanding at the time the director transfers the moneys, remaining moneys in the sinking fund, together with expected loan proceeds and fund earnings, will continue to be adequate to pay bond principal, interest and administrative costs; and

(b) The transfer will not create the need for issuance of any bonds.

(5) The director shall deposit loan prepayments in the Elderly and Disabled Housing Fund, and lend such prepayments for the purpose of financing multifamily housing for the elderly and *[the disabled]* **persons with disabilities** for a term not exceeding the term of the bonds associated with the loan that was prepaid, if the director determines that such a deposit and loan will not adversely affect the ability of the department to pay outstanding bonds.

SECTION 262. ORS 456.559 is amended to read:

456.559. (1) The Housing and Community Services Department shall:

(a) Maintain current housing data and information concerning available programs, status of funding, programs planned or undertaken which might conflict with, overlap, duplicate or supersede other planned or existing programs and call these to the attention of appropriate state agencies, governmental bodies and public or private housing sponsors.

(b) Provide to appropriate state agencies, governmental bodies and public or private housing sponsors such advisory and educational services as will assist them in the development of housing plans and projects.

(c) Subject to the approval of the State Housing Council, make noninterest bearing advances, in accordance with ORS 456.710 and the policies of the department to qualified nonprofit sponsors for development costs of housing projects until mortgage funds are released to repay the advances as provided in ORS 456.710.

(d) Advise and assist appropriate state agencies, governmental bodies and public or private housing sponsors, cities and counties, in all programs and activities which are designed or might tend to fulfill the purposes of ORS 456.550 to 456.725 and ORS chapter 458.

(e) Encourage and assist in the planning, development, construction, rehabilitation and conservation of dwelling units for persons and families of lower income.

(f) Be the central state department to apply for, receive and distribute, on behalf of appropriate state agencies, governmental bodies and public or private housing sponsors in the state, grants, gifts, contributions, loans, credits or assistance from the federal government or any other source for housing programs except when the donor, grantor, or lender of such funds specifically directs some other agency to administer them. Moneys received under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account.

(g) For the purposes of acquiring moneys, credits or other assistance from any agency or instrumentality of the United States or from any public corporation chartered by the United States, comply with any applicable agreements or restrictions for the receipt of such assistance and become a member of any such association or public corporation chartered by the United States.

(h) Assist individuals, appropriate state agencies, governmental bodies and public or private housing sponsors through a program which provides housing information, planning, educational services and technical assistance.

(i) Comply with the requirements of ORS 443.225 in assisting in the development of any housing for residential care, training or treatment for [*mentally retarded, developmentally disabled, mentally or emotionally disturbed*] persons **with mental retardation, developmental disabilities or mental or emotional disturbances.**

(2) Except as otherwise provided in ORS 456.625 (7), the department [*shall*] **may** not itself develop, construct, rehabilitate or conserve housing units; and neither the department nor any housing sponsor, including but not limited to any association, corporation, cooperative housing authority or urban renewal agency organized to provide housing and other facilities pursuant to ORS 456.550 to 456.725, may own, acquire, construct, purchase, lease, operate or maintain utility facilities, including facilities for the generation of electricity, for the distribution of gas and electricity, and for the conveyance of telephone and telegraph messages.

(3) In accordance with the provisions of this section and with the advice of the council, the department shall establish statewide priorities for housing programs. State agencies shall coordinate their housing programs with the department. All state agencies intending to apply for federal funds for use in planning, developing or managing housing, or rendering assistance to governmental bodies or sponsors or individuals involved therein shall submit a description of the proposed activity to the department for review not less than 30 days prior to the intended date of submission of the application to the federal agency. The department shall determine whether the proposal would result in a program that would overlap, duplicate or conflict with any other housing program in the state. If the department finds overlapping or duplication or conflict, it shall recommend modifications in the application. The Oregon Department of Administrative Services shall consider these recommendations in making its decision to approve or disapprove the application. The department shall complete its review and forward its recommendations within 15 working days after receipt of the notification. Failure of the department to complete the review within that time shall constitute approval of the application by the department.

(4) The director may participate in discussions and deliberations of the council. The director may suggest policies and rules to the council, including those necessary to stimulate and increase the supply of housing for persons and families of lower income.

SECTION 263. ORS 457.095 is amended to read:

457.095. The governing body of the municipality, upon receipt of a proposed urban renewal plan and report from the municipality's urban renewal agency and after public notice and hearing and consideration of public testimony and planning commission recommendations, if any, may approve the urban renewal plan. The approval shall be by nonemergency ordinance which shall incorporate

the plan by reference. Notice of adoption of the ordinance approving the urban renewal plan, and the provisions of ORS 457.135, shall be published by the governing body of the municipality in accordance with ORS 457.115 no later than four days following the ordinance adoption. The ordinance shall include determinations and findings by the governing body that:

- (1) Each urban renewal area is blighted;
- (2) The rehabilitation and redevelopment is necessary to protect the public health, safety or welfare of the municipality;
- (3) The urban renewal plan conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole and provides an outline for accomplishing the urban renewal projects the urban renewal plan proposes;
- (4) Provision has been made to house displaced persons within their financial means in accordance with ORS 35.500 to 35.530 and, except in the relocation of elderly **individuals** or *[disabled]* individuals **with disabilities**, without displacing on priority lists persons already waiting for existing federally subsidized housing;
- (5) If acquisition of real property is provided for, that it is necessary;
- (6) Adoption and carrying out of the urban renewal plan is economically sound and feasible; and
- (7) The municipality shall assume and complete any activities prescribed it by the urban renewal plan.

SECTION 264. ORS 458.215 is amended to read:

458.215. The Housing and Community Services Department may establish a program to build local capacity to address any or a combination of the following:

- (1) Housing needs of people, with low or moderate incomes, for homeownership and affordable rental housing;
- (2) The problem of abandoned houses;
- (3) The need for adequate housing for seasonal farm laborers;
- (4) Housing problems for low and moderate income elderly **persons** and *[disabled]* persons **with disabilities**;
- (5) The need to incorporate social service programs as a component of community economic development; and
- (6) The need to incorporate related jobs for low and moderate income persons as a component of community economic revitalization.

SECTION 265. ORS 458.515 is amended to read:

458.515. (1) The Director of the Housing and Community Services Department shall appoint an advisory committee whose members shall be appointed based on a demonstrated interest in and knowledge of low income energy assistance programs and broadly representative of organizations, fuel providers and consumer groups that represent low income persons, particularly elderly **persons** and *[disabled]* persons **with disabilities** and have special qualifications with respect to solving the energy consumption problems of low income persons.

(2) The committee shall meet not less than twice a year to advise and assist the Housing and Community Services Department in regard to rules, policies and programs regarding low income energy assistance programs provided for under ORS 458.510.

SECTION 266. ORS 458.610 is amended to read:

458.610. For purposes of ORS 458.600 to 458.655:

- (1) "Council" means the State Housing Council established in ORS 456.567.
- (2) "Department" means the Housing and Community Services Department established in ORS 456.555.

[(3) "Disabled" means those persons described as such by the Fair Housing Amendments Act of 1988.]

[(4)] (3) "Low income" means individuals or households that receive more than 50 percent but less than 80 percent of the area median income as determined by the council based on information from the United States Department of Housing and Urban Development.

[(5)] (4) "Organization" means a:

- (a) Nonprofit corporation established under ORS chapter 65;
- (b) Housing authority established under ORS 456.055 to 456.235; or
- (c) Local government as defined in ORS 197.015.

(5) **“Persons with disabilities” means persons with handicaps described in 42 U.S.C. 3602(h).**

(6) “Very low income” means individuals or households which receive less than 50 percent of the area median income as determined by the council based on information from the United States Department of Housing and Urban Development.

SECTION 267. ORS 458.625 is amended to read:

458.625. (1) The Housing and Community Services Department may disburse the revenue earned from investment of the principal in the Housing Development and Guarantee Account to expand this state’s supply of housing for low and very low income families and individuals, including, but not limited to, housing for persons over 65 years of age, [*disabled*] persons **with disabilities**, farmworkers and Native Americans. The State Housing Council shall have a policy that provides for distribution by the department of account investment revenue disbursements statewide while concentrating account investment revenue disbursements in those areas of the state with the greatest need for low and very low income housing, as determined by the council.

(2) The department may disburse account investment revenue, in the form of grants or loans as determined by the department, for any or all of the following purposes:

(a) To organizations as defined in ORS 458.610 and to for-profit business entities to construct new housing or to acquire or rehabilitate existing structures, or both, for housing for persons of low or very low income, or both;

(b) To provide nonprofit organizations, as set forth in ORS 458.210 to 458.240, technical assistance or predevelopment costs, or both. Predevelopment costs include, but are not limited to, site acquisition, architectural services and project consultants. Predevelopment costs do not include costs described in paragraph (c) of this subsection;

(c) For costs to develop nonprofit organizations that show sufficient evidence of having strong community support and a strong likelihood of producing low or very low income housing. Account investment revenue may not be used by an organization for its general operations;

(d) To match public and private moneys available from other sources for purposes of production of low or very low income housing; or

(e) For purposes of administration of the account, not to exceed five percent of the account investment revenue.

(3) The department shall give preference in making grants or loans to those entities that the department determines will:

(a) Provide the greatest number of low and very low income housing units constructed, acquired or rehabilitated for the amount of account investment revenue expended by matching account investment revenue with other grant, loan or eligible in-kind contributions;

(b) Ensure the longest use for the units as low or very low income housing units; or

(c) Include social services to occupants of the proposed housing, including but not limited to, programs that address home health care, mental health care, alcohol and drug treatment and post-treatment care, child care and case management.

(4) Account investment revenue derived in any calendar year may be used to construct, acquire or rehabilitate housing for low and very low income persons but not more than 25 percent of the account investment revenue derived in any calendar year may be used to construct, acquire or rehabilitate housing for low income households. Account investment revenue not disbursed by the department as grants or loans to construct, acquire or rehabilitate low or very low income housing may be retained and credited as account principal.

(5) Loans disbursed from account investment revenue shall bear an interest rate equal to the interest rate paid on United States Treasury long-term obligations as identified by the department.

SECTION 268. ORS 458.650 is amended to read:

458.650. (1) The Emergency Housing Account shall be administered by the Housing and Community Services Department to assist homeless persons and those persons who are at risk of becoming homeless. For purposes of this section, "account" means the Emergency Housing Account.

(2) The State Housing Council shall develop policy for giving grants to organizations that shall use the funds to provide to low and very low income persons, including but not limited to, persons more than 65 years of age, [disabled] persons **with disabilities**, farmworkers and Native Americans:

(a) Emergency shelters and attendant services;

(b) Transitional housing services designed to assist persons to make the transition from homelessness to permanent housing and economic independence;

(c) Supportive housing services to enable persons to continue living in their own homes or to provide in-home services for such persons for whom suitable programs do not exist in their geographic area;

(d) Programs that provide emergency payment of home payments, rents or utilities; or

(e) Some or all of the needs described in paragraphs (a) to (d) of this subsection.

(3)(a) The council shall require as a condition of awarding a grant that the organization demonstrate to the satisfaction of the council that the organization has the capacity to deliver any service proposed by the organization.

(b) Any funds granted under this section shall not be used to replace existing funds. Funds granted under this section may be used to supplement existing funds. An organization may use funds to support existing programs or to establish new programs.

(c) The council, by policy, shall give preference in granting funds to those organizations that coordinate services with those programs established under ORS 458.625.

(4) The department may expend for administration of the account no more than five percent of the account appropriation.

SECTION 269. ORS 458.655 is amended to read:

458.655. (1) The Home Ownership Assistance Account shall be administered by the Housing and Community Services Department to expand the state's supply of homeownership housing for low and very low income families and individuals, including, but not limited to, housing for persons over 65 years of age, [disabled] persons **with disabilities**, farmworkers and Native Americans. The State Housing Council shall have a policy of distributing funds statewide while concentrating funds in those areas of the state with the greatest need, as determined by the council, for low and very low income homeownership housing. However, the council's policy of distributing funds may differ from the distribution policy for the Housing Development and Guarantee Account.

(2) Funds in the Home Ownership Assistance Account shall be granted to organizations, as defined in ORS 458.610 [(5)], that both sponsor and manage low income homeownership programs, including lease-to-own programs, for the construction of new homeownership housing or for the acquisition or rehabilitation of existing structures for homeownership housing for persons of low or very low income, or both.

(3) The council shall develop a policy for disbursing grants for any or all of the following purposes:

(a) To aid low income homeownership programs, including program administration, in purchasing land, providing assistance with down payment costs, or providing homeownership training and qualification services or any combination thereof. No Home Ownership Assistance Account funds shall be used by an organization for its general operations or for a substantial portion of construction or rehabilitation costs;

(b) To match public and private moneys available from other sources for purposes of the provision of low or very low income homeownership housing; or

(c) To administer the Home Ownership Assistance Account, not to exceed five percent of the revenue.

(4) The council, in developing policy under subsection (3) of this section, shall give preference in making grants to those entities that propose to:

(a) Provide the greatest number of low and very low income homeownership housing units constructed, acquired or rehabilitated for the amount of account money expended by matching account funds with other grant, loan or eligible in-kind contributions;

(b) Ensure the longest use for the units as low or very low income homeownership housing units, such as by including some form of equity recapture, as determined by the council; and

(c) Include social services for occupants and proposed occupants of the proposed housing, including but not limited to, programs that address home health care, mental health care, alcohol and drug treatment and post-treatment care, child care, homeownership training, mortgage qualification service, credit repair and case management.

SECTION 270. ORS 471.752 is amended to read:

471.752. (1) An agent appointed under ORS 471.750 may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the agent and may participate in the state deferred compensation plan established under ORS 243.401 to 243.507. For such purposes, agents shall be considered eligible state employees.

(2) A person who is the surviving spouse or child of a deceased agent or the spouse or child of [a disabled] **an** agent of the Oregon Liquor Control Commission **who has a disability** shall be given preference in the appointment of a successor agent, if otherwise qualified, the spouse having greater preference. The experience of such applicant in the business operation of the deceased **agent** or [disabled] **the** agent **who has a disability** shall be the primary consideration in determining the qualifications of the applicant.

SECTION 271. ORS 476.730 is amended to read:

476.730. (1) The superintendent of each Department of Corrections institution of this state and of each institution for [the mentally ill] **persons with mental illness** shall, prior to the release, or immediately after the escape, from such institution of any person committed to such institution for arson or arsonist activity, notify the State Fire Marshal and the Department of State Police except that such notice shall not be required when such persons are on approved leave from such institutions for periods of not to exceed 10 days. The notice shall state the name of the person to be released or who has escaped, the county in which the person was convicted or from which the person was committed and, if known, the address or locality at which the person will reside.

(2) Promptly upon receipt of the notice, the State Fire Marshal and the Department of State Police shall notify respectively the fire departments and rural fire protection districts who maintain full-time personnel and the sheriff and police departments of the county in which the person was convicted or from which the person was committed and the county, if known, in which the person will reside.

SECTION 272. ORS 479.250 is amended to read:

479.250. As used in ORS 479.250 to 479.300, unless the context requires otherwise:

(1) "Smoke alarm" means a self-contained single or multiple station detection device for products of combustion other than heat that conforms to the state building code, rules of the State Fire Marshal and that is listed by Underwriters Laboratories or any other nationally recognized testing laboratory. "Smoke alarm" includes but is not limited to devices listed under UL 217 (1998). "Smoke alarm" may include two or more single station units wired to operate in conjunction with each other.

(2) "Smoke detector" means a device that is not self-contained, that detects products of combustion other than heat, that is intended for use in conjunction with a central control panel, that conforms to the state building code and rules of the State Fire Marshal and that is listed by Underwriters Laboratories or any other nationally recognized testing laboratory. "Smoke detector" includes but is not limited to devices listed under UL 268 (1998).

(3) "Door knock alerting device" or "door knock device" means an approved electronic unit that alerts [a hearing impaired] **an** occupant **who is hard of hearing** of a knock on the door of the sleeping room that the [hearing impaired] person **who is hard of hearing** is occupying.

(4) "Dwelling unit" means a structure or part of a structure providing complete, independent living facilities for one or more persons including permanent provisions for sleeping, eating, cooking and sanitation.

(5) "Hotel" means any building containing six or more guest rooms that are rented, hired out or made available on a regular basis for sleeping purposes but are not used as a primary residence.

(6) "Landlord" means the owner, lessor or sublessor of the rental dwelling unit or guest room in the building of which it is a part.

(7) "Lodging house" is any building or portion thereof containing not more than five guest rooms that are made available for sleeping purposes in exchange for compensation paid in money, goods, labor or other tender but are not used as a primary residence.

(8) "Smoke alarm for [*hearing impaired*] persons **who are hard of hearing**" means an approved smoke alarm that, when activated by smoke or products of combustion, produces an audible and a visual warning. The visual warning shall produce a light signal sufficient to warn a [*hearing impaired*] person **who is hard of hearing** of the presence of fire or smoke.

(9) "State building code" shall have the meaning for that term provided under ORS 455.010.

(10) "Tenant" means a person entitled to occupy a dwelling unit on a rental or lease basis.

SECTION 273. ORS 479.255 is amended to read:

479.255. (1) Every dwelling unit regulated under ORS chapter 90, every lodging house and every hotel guest room shall contain an approved and properly functioning smoke alarm or smoke detector, installed in accordance with the state building code and rules of the State Fire Marshal.

(2) A hotel shall provide no fewer than one smoke alarm for [*hearing impaired*] persons **who are hard of hearing** and one door knock device for each 75, or fraction thereof, rooms of the hotel that are regularly used for sleeping.

(3) If a person renting a room in a hotel requests a room with a smoke detector or a smoke alarm for [*hearing impaired*] persons **who are hard of hearing** and a door knock device, the landlord shall:

(a) Install a portable smoke alarm for [*hearing impaired*] persons **who are hard of hearing** and a door knock device; or

(b) Provide the person with a room in which a smoke detector or smoke alarm for [*hearing impaired*] persons **who are hard of hearing** and a door knock device have been permanently installed.

(4) The landlord may require a guest to pay a refundable deposit if the landlord provides the smoke alarm for [*hearing impaired*] persons **who are hard of hearing** under subsection (3)(a) of this section.

(5) A hotel shall provide a printed notice of the requirements of subsection (3) of this section, posted conspicuously at the place of registration or in each guest room.

SECTION 274. ORS 479.297 is amended to read:

479.297. (1) All ionization smoke alarms sold in this state that are solely battery-operated shall be packaged with a 10-year battery.

(2) All ionization smoke alarms sold in this state shall include a "hush" mechanism that allows a person to temporarily disengage the alarm for a period of not more than 15 minutes.

(3) The provisions of this section do not apply to:

(a) Smoke alarms specifically designed for [*hearing impaired*] persons **who are hard of hearing**;

(b) Smoke alarms sold in this state for shipment out of state; or

(c) Smoke alarms sold for installation in recreational vehicles, commercial vehicles, railroad equipment, aircraft, marine vessels or manufactured dwellings.

(4) The sale of a recreational vehicle, commercial vehicle, railroad equipment, aircraft, marine vessel or new manufactured dwelling containing a smoke alarm does not constitute sale of a smoke alarm.

SECTION 275. ORS 480.225 is amended to read:

480.225. (1) A person is eligible for a certificate of possession under ORS 480.235 if:

(a) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of a misdemeanor involving violence, as defined in ORS 166.470, within the previous four years. A person who has been so convicted is eligible under this subsection following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(b) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of, and is not under indictment for, any felony.

(c) The person is not a fugitive from justice, has no outstanding warrants for arrest and is not free on any form of pretrial release for any offenses listed in paragraphs (a) and (b) of this subsection.

(d) The person has not been [adjudged] **determined** to be mentally ill [or *mentally deficient pursuant to ORS chapter 426*] **under ORS 426.130** and 430.397 to 430.401 or [OR chapter 427] **mentally retarded under ORS 427.290**. A person who previously has been so [adjudged] **determined** is eligible under this subsection if, at the time of application for such a certificate, the person produces a certified copy of a full discharge from the proper state hospital. The Department of Human Services shall provide the State Fire Marshal with direct electronic access to the department's database of information identifying persons meeting the criteria of this section who were committed or subject to an order under ORS 426.130. The State Fire Marshal and the Department of Human Services shall enter into an agreement describing the access to information under this subsection.

(e) The person is at least 21 years of age.

(f) The person does not use a fictitious name or make a material misrepresentation in application for such a certificate.

(g)(A) The person has not been convicted of, and is not under indictment for, a criminal offense involving a controlled substance as defined in ORS 475.005, other than the offense of driving under the influence of intoxicants.

(B) Notwithstanding subparagraph (A) of this paragraph, a person who has had a certificate denied or revoked due to conviction of a criminal offense involving a controlled substance is eligible under this section following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(h) The person has been discharged from the jurisdiction of the juvenile court for more than four years for an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470.

(i) The person is not the subject of a restraining order that alleges the person's possession of explosives presents a credible threat to another person.

(j) The person has passed an examination administered by the State Fire Marshal that assesses the person's knowledge of safety in the transportation and storage of explosives as required under federal and state laws and regulations pertaining to explosives. The State Fire Marshal shall examine each applicant prior to issuance of a certificate of possession to the applicant. The State Fire Marshal may by rule establish and collect an examination fee in an amount necessary to cover the cost of administering the examination.

(k) The person certifies on the application for a certificate of possession that all explosives in the person's possession will be used, stored and transported in accordance with federal, state and local requirements.

(L) The person certifies that all explosives will be possessed, used, stored and transported in accordance with federal, state and local requirements.

(2) Subsection (1)(a) and (b) of this section does not apply to a conviction or indictment that has been expunged from a person's record under the laws of this state or equivalent laws of another jurisdiction.

SECTION 276. ORS 480.315 is amended to read:

480.315. The Legislative Assembly declares that, except as provided in ORS 480.345 to 480.385, it is in the public interest to maintain a prohibition on the self-service dispensing of Class 1 flammable liquids at retail. The Legislative Assembly finds and declares that:

(1) The dispensing of Class 1 flammable liquids by dispensers properly trained in appropriate safety procedures reduces fire hazards directly associated with the dispensing of Class 1 flammable liquids;

(2) Appropriate safety standards often are unenforceable at retail self-service stations in other states because cashiers are often unable to maintain a clear view of and give undivided attention to the dispensing of Class 1 flammable liquids by customers;

(3) Higher liability insurance rates charged to retail self-service stations reflect the dangers posed to customers when they leave their vehicles to dispense Class 1 flammable liquids, such as the increased risk of crime and the increased risk of personal injury resulting from slipping on slick surfaces;

(4) The dangers of crime and slick surfaces described in subsection (3) of this section are enhanced because Oregon's weather is uniquely adverse, causing wet pavement and reduced visibility;

(5) The dangers described in subsection (3) of this section are heightened when the customer is a senior citizen or [*is disabled*] **has a disability**, especially if the customer uses a mobility aid, such as a wheelchair, walker, cane or crutches;

(6) Attempts by other states to require the providing of aid to senior citizens and [*the disabled*] **persons with disabilities** in the self-service dispensing of Class 1 flammable liquids at retail have failed, and therefore, senior citizens and [*the disabled*] **persons with disabilities** must pay the higher costs of full service;

(7) Exposure to toxic fumes represents a health hazard to customers dispensing Class 1 flammable liquids;

(8) The hazard described in subsection (7) of this section is heightened when the customer is pregnant;

(9) The exposure to Class 1 flammable liquids through dispensing should, in general, be limited to as few individuals as possible, such as gasoline station owners and their employees or other trained and certified dispensers;

(10) The typical practice of charging significantly higher prices for full-service fuel dispensing in states where self-service is permitted at retail:

(a) Discriminates against customers with lower incomes, who are under greater economic pressure to subject themselves to the inconvenience and hazards of self-service;

(b) Discriminates against customers who are elderly or [*handicapped*] **have disabilities** who are unable to serve themselves and so must pay the significantly higher prices; and

(c) Increases self-service dispensing and thereby decreases maintenance checks by attendants, which results in neglect of maintenance, endangering both the customer and other motorists and resulting in unnecessary and costly repairs;

(11) The increased use of self-service at retail in other states has contributed to diminishing the availability of automotive repair facilities at gasoline stations;

(12) Self-service dispensing at retail in other states does not provide a sustained reduction in fuel prices charged to customers;

(13) A general prohibition of self-service dispensing of Class 1 flammable liquids by the general public promotes public welfare by providing increased safety and convenience without causing economic harm to the public in general;

(14) Self-service dispensing at retail contributes to unemployment, particularly among young people;

(15) Self-service dispensing at retail presents a health hazard and unreasonable discomfort to [*the handicapped*] **persons with disabilities**, [*to*] elderly persons, small children and those susceptible to respiratory diseases;

(16) The federal Americans with Disabilities Act, Public Law 101-336, requires that equal access be provided to [*disabled*] persons **with disabilities** at retail gasoline stations; and

(17) Small children left unattended when customers leave to make payment at retail self-service stations creates a dangerous situation.

SECTION 277. ORS 497.121 is amended to read:

497.121. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to angle for fish or take shellfish the following licenses and tags and shall charge therefor the following fees:

- (a) Resident annual angling license, \$21.
- (b) Nonresident annual angling license, \$54.75.
- (c) Nonresident angling license to angle for seven consecutive days, \$39.50.
- (d) Angling license to angle for one day, \$9.25.
- (e) Resident annual juvenile angling license for persons 14 through 17 years of age, \$4.
- (f) Resident annual shellfish license, \$5.
- (g) Nonresident annual shellfish license, \$15.
- (h) Nonresident three-day shellfish license, \$7.50.
- (i) Resident pioneer angling license for persons 65 years of age or older who have resided in the state for not less than 50 years prior to the date of application, free.
- (j) Resident annual senior citizen angling license for persons 70 years of age or older who have resided in the state for not less than five years prior to the date of application, one-half the fee imposed under paragraph (a) of this subsection for a resident annual angling license.
- (k) Resident disabled war veteran angling license for a person who files with the commission written proof that the last official certification of record by the United States Department of Veterans Affairs or by any branch of the Armed Forces of the United States shows the person to be at least 25 percent disabled, free.
- (L) Annual tag to angle for salmon, steelhead trout, sturgeon and halibut, \$20.
- (m) Annual tag for persons under 18 years of age to angle for salmon, steelhead trout, sturgeon and halibut, \$5.

(n) Renewable tag to angle for hatchery salmon and steelhead, \$10.50.

(2) Any person who holds a valid permanent angling license for *[blind]* persons **who are blind** or a permanent angling license for persons in a wheelchair issued by the commission before January 1, 2000, need not obtain a resident annual angling license under this section.

(3) The annual tags to angle for salmon, steelhead trout, sturgeon and halibut referred to in subsection (1)(L), (m) and (n) of this section are in addition to and not in lieu of the angling licenses required by the wildlife laws. However, an annual tag to angle for salmon, steelhead trout, sturgeon and halibut is not required of a person who holds a valid angling license referred to in subsection (1)(c) or (d) of this section.

SECTION 278. ORS 498.136 is amended to read:

498.136. (1) Except as provided in subsection (2) of this section, *[no]* a person *[shall]* **may not** hunt wildlife from a motor-propelled vehicle.

(2) The State Fish and Wildlife Commission, by rule, may authorize hunting from a motor-propelled vehicle by a person with a disability or for the purpose of alleviating damage by wildlife to other resources.

(3)(a) Nothing in the wildlife laws, or rules adopted pursuant thereto, is intended to prohibit the *[able-bodied]* companion of a person with a disability who is lawfully hunting from a motor-propelled vehicle from killing an animal wounded by the *[disabled]* person and applying *[thereto]* **to the animal** the tag issued to *[such disabled]* **the** person for the taking of *[such an]* **the** animal, even if *[that able-bodied person]* **the companion** has already validated any tag required for the taking of such an animal.

(b) For purposes of this subsection, "companion" means a person who does not have a disability.

SECTION 279. ORS 498.170 is amended to read:

498.170. (1) A person who *[is not visually impaired]* **does not have a visual impairment** and who accompanies a hunter who possesses a visually impaired hunter license may:

- (a) Assist the hunter in selecting a game animal or bird;
- (b) Assist the aiming or sighting of a firearm;
- (c) Advise the hunter when to fire a firearm;

(d) Shoot a game animal or bird on behalf of the hunter while in the immediate presence of the hunter; and

(e) Tag and retrieve game animals and birds on behalf of the hunter.

(2) The person accompanying a hunter who [*is visually impaired*] **has a visual impairment** shall be required to possess a valid hunting license. The person accompanying a [*visually impaired*] hunter **who has a visual impairment** may also hunt game animals or birds if the person possesses the appropriate tags, permits and stamps for the area and time period.

(3) A hunter who possesses a visually impaired hunter license must comply with all other tag, permit and stamp requirements of the State Fish and Wildlife Commission and applicable hunting laws.

(4) As used in this section, [*“visually impaired hunter”*] **“hunter who has a visual impairment”** means a person who files proof with the commission that the person’s central visual acuity does not exceed 20/200 in the better eye with best correction or that the person’s visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

SECTION 280. ORS 609.100 is amended to read:

609.100. (1) In a county, precinct or city having a dog control program under ORS 609.030, 609.035 to 609.110 and 609.405, every person keeping a dog that has a set of permanent canine teeth or is six months old, whichever comes first, shall procure a license for the dog. The license must be procured by paying a license fee to the county in which the person resides not later than March 1 of each year or within 30 days after the person becomes keeper of the dog. However, the county governing body may provide for dates other than March 1 for annual payment of fees. The fee for the license shall be determined by the county governing body in such amount as it finds necessary to carry out ORS 609.035 to 609.110. A license fee shall not be less than \$25 for each dog, except that the fee shall not be less than \$3 for each spayed female or neutered male dog for which a veterinarian’s certificate of operation for the spaying or neutering of the dog is presented to the county. If the person fails to procure a license within the time provided by this section, the county governing body may prescribe a penalty in an additional sum to be set by the governing body.

(2) The county shall, at the time of issuing a license, supply the licensee, without charge, with a suitable identification tag, which shall be fastened by the licensee to a collar and kept on the dog at all times when not in the immediate possession of the licensee.

(3) The license fees in subsection (1) of this section do not apply to dogs that are kept primarily in kennels and are not permitted to run at large. The county governing body may establish a separate license for dogs that are kept primarily in kennels when the dogs cease to be considered inventory under ORS 307.400, the fee for which shall not exceed \$5 per dog.

(4) [*No*] A license fee [*shall be*] **is not** required to be paid for any dog kept by a [*blind*] person **who is blind and** who uses [*it*] **the dog** as a guide. A license shall be issued for such dog upon the [*blind person’s*] filing **by the person who is blind** of an affidavit with the county showing that the dog qualifies for exemption.

(5) The county shall keep a record of dog licenses.

(6) Notwithstanding any other provision of this section or ORS 609.015, when the keeper of a dog obtains a license for the dog, that license is valid and is in lieu of a license for the dog required by any other city or county within this state, for the remainder of the license period:

(a) If the keeper of the dog changes residence to a city or county other than the city or county in which the license was issued; or

(b) If the keeper of the dog transfers the keeping of the dog to a person who resides in a city or county other than the city or county in which the license was issued.

SECTION 281. ORS 646.482 is amended to read:

646.482. As used in ORS 646.482 to 646.498:

(1) “Assistive device” or “device” means:

(a) Wheelchairs and scooters of any kind, including other aids that enhance the mobility or positioning of an individual using a wheelchair or scooter of any kind, such as motorization, motorized positioning features and the switches and controls for any motorized features; and

(b) Hearing aids as defined in ORS 694.015.

(2) “Assistive device system” means a system of assistive devices. An “assistive device system” may be a single assistive device, or each component part of the assistive device system may be considered a separate assistive device.

(3) “Authorized dealer” means a dealer authorized by a manufacturer to sell or lease assistive devices manufactured or assembled by the manufacturer.

(4) “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of delivering the assistive device to the manufacturer or dealer for repair and obtaining an alternative device if no loaner was offered.

(5) “Consumer” means any of the following:

(a) The purchaser of an assistive device, if the device was purchased from a dealer or manufacturer for purposes other than resale;

(b) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the device;

(c) A person who may enforce the warranty; or

(d) A person who leases an assistive device from a dealer under a written lease.

(6) “Current value of the written lease” means the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the dealer’s early termination costs and the market value of the assistive device at the lease expiration date if the lease sets forth that market value, less the dealer’s early termination savings.

(7) “Dealer” means a person who is in the business of selling or leasing assistive devices.

(8) “Demonstrator” means an assistive device that would be new but for its use, since its manufacture, only for the purpose of demonstrating the device to the public or prospective buyers or lessees.

(9) “Early termination cost” means any expense or obligation that a dealer incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination cost” includes a penalty for prepayment under a finance arrangement.

(10) “Early termination savings” means any expense or obligation that a dealer avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination savings” includes the interest charge that the dealer would have paid to finance the device or, if the dealer does not finance the device, the difference between the total amount for which a lease obligates the consumer during the period of the lease term remaining after the early termination and the present market value of that amount at the date of the early termination.

(11) “Individual with a disability” means any individual who is considered to have a mental or physical disability[, or impairment [*or handicap*]] for the purposes of any law of this state or of the United States, including any rules or regulations adopted under those laws.

(12) “Loaner” means an assistive device, provided to the consumer for use by the user free of charge, that need not be new or be identical to or have functional capabilities equal to or greater than those of the original assistive device, but that meets the following conditions:

(a) It is in good working order;

(b) It performs at a minimum the most essential functions of the original assistive device, in light of the [*disabilities*] **disability** of the user; and

(c) Any differences between it and the original assistive device do not create a threat to safety.

(13) “Manufacturer” means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantor of the manufacturer’s device, but does not include a dealer.

(14)(a) “Nonconformity” means a condition or defect that substantially impairs the use, market value or safety of an assistive device and that is covered by an express warranty applicable to the device or to a component of the device.

(b) “Nonconformity” does not include a condition or defect that:

(A) Is the result of abuse or neglect of the device by a consumer;

(B) Is the result of an unauthorized modification or alteration of the device by a consumer if the modification or alteration substantially affects the performance of the device; or

(C) For hearing aids, is the result of normal use of the hearing aid and when the condition or defect could be resolved through fitting adjustments, cleaning or proper care.

(15)(a) “Reasonable allowance for use” means:

(A) When an assistive device has been sold to a consumer, no more than the amount obtained by multiplying the full purchase price of the device by a fraction, the denominator of which is the number of days in the useful life of the device and the numerator of which is the number of days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(B) When an assistive device has been leased to a consumer, no more than the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is the useful life of the device and the numerator of which is the number of days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(b) As used in this subsection, the useful life of the assistive device is the greater of:

(A) Five years; or

(B) Such other time that the consumer may prove to be the expected useful life of assistive devices of the same kind.

(16) “Reasonable attempt to repair” means, within the terms of an express warranty applicable to an assistive device:

(a) The same nonconformity is subject to repair at least two times by the manufacturer or any authorized dealer and the nonconformity continues; or

(b) The assistive device is out of service, by reason of repair or correction, for an aggregate of at least 30 days after notification to the manufacturer or any authorized dealer because of the nonconformity.

(17) “User” means an individual with a disability who, by reason thereof, needs and actually uses the assistive device.

SECTION 282. ORS 653.030 is amended to read:

653.030. The Commissioner of the Bureau of Labor and Industries shall issue rules prescribing the employment of other types of persons at fixed minimum hourly wage rates lower than the minimum wage rate required by ORS 653.025, when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment for specific types of persons. The types of persons for whom a minimum hourly wage rate may be set are limited to persons [*who are mentally or physically handicapped*] **with mental or physical disabilities** or who are student-learners, as defined in ORS 653.070.

SECTION 283. ORS 653.269 is amended to read:

653.269. The provisions of ORS 653.268 relating to pay for overtime shall not apply to:

(1) Labor employed in forest fire fighting.

(2) Employees of any irrigation system district actually engaged in the distribution of water for irrigation or domestic use.

(3) Employees of a public employer, as defined in ORS 243.650, who are employed in fire protection or law enforcement activities, including security personnel in corrections institutions, as those employees and activities are defined by rule of the Commissioner of the Bureau of Labor and Industries.

(4) Employees of a people’s utility district organized under ORS chapter 261.

(5) Employees exempted from overtime:

(a) By a public employer as defined in ORS 243.650 because of the executive, administrative, supervisory or professional nature of their employment as the nature of such employment is defined by rule of the Commissioner of the Bureau of Labor and Industries; or

(b) By a collective bargaining agreement expressly waiving application of ORS 653.268.

(6) Employees of a public employer as defined in ORS 243.650 engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of [*the sick, the aged, or the mentally ill or defective*] **persons who are sick or aged or have mental illness or mental retardation and** who reside on the premises if, before performance of the work and pursuant to an agreement between the employer and employee or between the employer and the bargaining representative of the employees when the employees are represented under a collective bargaining agreement, a work period of 14 consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the rate at which the employee is employed.

(7) Members of the organized militia while on state active duty in accordance with ORS 399.075.

SECTION 284. ORS 655.515 is amended to read:

655.515. If an inmate sustains an injury as described in ORS 655.510, benefits shall be delivered in a manner similar to that provided for injured workers under the workers' compensation laws of this state, except that:

(1) No benefits, except medical services and any occupational training or rehabilitation services provided by the Department of Corrections, shall accrue to the inmate until the date of release from confinement and shall be based upon the condition of the inmate at that time.

(2) Benefits shall be discontinued during any subsequent period of reconfinement in a penal institution.

(3) Costs of rehabilitation services to [*disabled*] inmates **with disabilities** shall be paid out of the Insurance Fund established under ORS 278.425 in an amount approved by the Oregon Department of Administrative Services, which shall be the reasonable and necessary cost of such services.

(4) Medical services when the inmate is confined in a Department of Corrections facility shall be those provided by the Department of Corrections. After release, medical services shall be paid only if necessary to the process of recovery and as prescribed by the attending practitioner. No medical services may be paid after the attending practitioner has determined that the inmate is medically stationary other than for reasonable, periodic repair or replacement of prosthetic appliances. The department, by rule, may require that medical and rehabilitation services after release must be provided directly by the state or its contracted managed care organization.

SECTION 285. ORS 656.033 is amended to read:

656.033. (1) All persons participating as trainees in a work experience program or school directed professional education project of a school district as defined in ORS 332.002 in which such persons are enrolled, including [*mentally retarded*] persons **with mental retardation** in training programs, are considered as workers of the district subject to this chapter for purposes of this section. Trainees placed in a work experience program with their resident school district as the training employer shall be subject workers under this section when the training and supervision are performed by noninstructional personnel.

(2) A school district conducting a work experience program or school directed professional education project shall submit a written statement to the insurer, or in the case of self-insurers, the Director of the Department of Consumer and Business Services, that includes a description of the work to be performed by such persons and an estimate of the total number of persons enrolled.

(3) The premium cost for coverage under this section shall be based on an assumed hourly wage which is approved by the Director of the Department of Consumer and Business Services. Such assumed wage is to be used only for calculation purposes under this chapter and without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991. A self-insured district shall submit such

assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The school district shall furnish the insurer, or in the case of self-insurers, the director, with an estimate of the total number of persons enrolled in its work experience program or school directed professional education project and shall notify the insurer or director of any significant changes therein. Persons covered under this section are entitled to the benefits of this chapter. However, such persons are not entitled to benefits under ORS 656.210 or 656.212. They are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program or school directed professional education project, provided the duties being performed are among those:

- (a) Described on the application of the school district; and
- (b) Required of similar full-time paid employees.

(5) The filing of claims for benefits under this section is the exclusive remedy of a trainee or a beneficiary of the trainee for injuries compensable under this chapter against the state, its political subdivisions, the school district board, its members, officers and employees, or any employer, regardless of negligence.

(6) The provisions of this section shall be inapplicable to any trainee who has earned wages for such employment.

(7) As used in this section, "school directed professional education project" means an on-campus or off-campus project supervised by school personnel and which is an assigned activity of a local professional education program approved pursuant to operating procedures of the State Board of Education. A school directed professional education project must be of a practicum experience nature, performed outside of a classroom environment and extending beyond initial instruction or demonstration activities. Such projects are limited to logging, silvicultural thinning, slash burning, fire fighting, stream enhancement, woodcutting, reforestation, tree surgery, construction, printing and manufacturing involving formed metals.

(8) Notwithstanding subsection (1) of this section, a school district may elect to make trainees subject workers under this chapter for school directed professional education projects not enumerated in subsection (7) of this section by making written request to the district's insurer, or in the case of a self-insured district, the director, with coverage to begin no sooner than the date the request is received by the insurer or director. The request for coverage shall include a description of the work to be performed under the project and an estimate of the number of participating trainees. The insurer or director shall accept a request that meets the criteria of this section.

SECTION 286. ORS 656.628 is amended to read:

656.628. (1) There is established a [*Handicapped*] Workers **with Disabilities** Program for the benefit of complying employers and their workers. The purpose of the program is to encourage the employment or reemployment of [*handicapped*] workers **with disabilities**.

(2) As used in this section, "[*handicapped*] worker **with a disability**" means a worker who [*is afflicted with or*] **has or is** subject to any permanent physical or mental impairment, whether congenital or due to an injury or disease, including periodic impairment of consciousness or muscular control of such character that the impairment would prevent the worker from obtaining or retaining employment.

(3) Any employer of a worker who claims or has received compensation under this chapter, or whose dependents have claimed or received such compensation, may file an application with the Director of the Department of Consumer and Business Services requesting the director to make the determinations referred to in subsection (4) of this section.

(4) When the director receives a request referred to in subsection (3) of this section, the director shall determine:

(a) Whether the injured worker was a [*handicapped*] worker **with a disability** and whether the injury, disease or death sustained by the worker would not have been sustained except for the [*handicap*] **disability**; or

(b) Whether the injured worker was a [*handicapped*] worker **with a disability** and whether the injury, disease or death sustained by the worker would have been sustained without regard to the [*handicap*] **disability** but that:

(A) Any resulting disability was substantially greater by reason of the [*handicap*] **disability**; or

(B) The [*handicap*] **disability** contributed substantially to the worker's death; and

(C) Whether the injury, disease or death of the worker would not have occurred except for the act or omission of a [*handicapped*] worker **with a disability** employed by the same employer and that the act or omission of the [*handicapped*] worker **with a disability** would not have occurred except for the [*handicapped worker's*] impairment **of the worker with a disability**.

(5) If the director determines that any of the conditions described in subsection (4) of this section exist, the director may reimburse the paying agency for compensation amounts in excess of \$1,000 per claimant for all subsequent injuries throughout the claimant's working career, paid as the result of the condition.

(6) The reimbursement paid from the Workers' Benefit Fund [*shall*] **may** not be included in any data used for rate making or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the Department of Consumer and Business Services.

(7) Notwithstanding any other provision of law:

(a) Any reimbursement to employers under the [*Handicapped*] Workers **with Disabilities** Program shall be in such amounts as the director prescribes and only to the extent of moneys available in the Workers' Benefit Fund as determined by the director.

(b) Determinations made by the director regarding reimbursement from the Workers' Benefit Fund for the purposes of this section are not subject to review by any court or administrative body.

(c) After a determination has been made by the director that an employer will receive reimbursement from the Workers' Benefit Fund, any settlement of the claim by the parties is void unless made with the written approval of the director.

(8) The director by rule shall prescribe the form and manner of requesting determinations under this section, the amount of reimbursement payable and such other matters as may be necessary for the administration of this section.

SECTION 287. ORS 657A.120 is amended to read:

657A.120. Services offered by resource and referral agencies shall include but are not limited to assistance for:

(1) Parents in locating available and appropriate child care, including counseling on how to choose a quality arrangement and sources of subsidies for low income families;

(2) Parents in locating child care during nontraditional work hours;

(3) Parents of [*handicapped*] children **with disabilities** in locating available and appropriate child care and respite care services;

(4) Parents in locating child care for ill children;

(5) Providers of child care programs in acquiring clients for their services;

(6) Providers of child care programs in upgrading the quality of services offered and business operation;

(7) Communities in assessing and recruiting for underserved needs; and

(8) Employers in providing assistance to employees in locating or providing child care.

SECTION 288. ORS 658.019 is amended to read:

658.019. (1) ORS 658.005 to 658.245 do not apply to a rehabilitation services agency.

(2) As used in this section:

(a) A "rehabilitation services agency" means an individual, partnership or corporation that:

(A) Holds itself out to the public as such;

(B) Is certified by the Department of Consumer and Business Services to perform rehabilitation services pursuant to ORS chapter 656;

(C) Exclusively provides services to clients who are injured workers or [*physically or mentally disabled*] individuals **with physical or mental disabilities**; and

(D) Receives the major portion of the fee for services to the clients from a government agency, an insurer, self-insured employer or person other than the client.

(b) "Services to the client" may include, but are not limited to medical evaluation, physical rehabilitation, vocational rehabilitation, employment counseling, job analysis, job site modification, job placement, on-the-job training or other short term training program.

SECTION 289. ORS 659A.100 is amended to read:

659A.100. (1) As used in ORS 659A.100 to 659A.145, unless the context requires otherwise:

[(a) "Disabled person" means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.]

[(b)] (a) "Drug" means a controlled substance, as classified in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C.A. 812, as amended, and as modified under ORS 475.035.

[(c)] (b) "Illegal use of drugs" means any use of drugs, the possession or distribution of which is unlawful under state law or under the Controlled Substances Act, 21 U.S.C.A. 812, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law.

(c) "**Person with a disability**" means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(d) "State government" has the meaning given that term in ORS 174.111.

(2) As used in subsection (1) of this section:

(a) "Major life activity" includes but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(b) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(c) "Is regarded as having such an impairment" means that the individual:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or supervisor as having such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is treated by an employer or supervisor as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Substantially limits" means:

(A) The impairment renders the individual unable to perform a major life activity that the average person in the general population can perform; or

(B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

SECTION 290. ORS 659A.103 is amended to read:

659A.103. (1) It is declared to be the public policy of Oregon to guarantee [disabled] persons **with disabilities** the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, to participate in and receive the benefits of the services, programs and activities of state government and to secure housing accommodations of their choice, without discrimination.

(2) The right to otherwise lawful employment without discrimination because of disability where the reasonable demands of the position do not require such a distinction, and the right to use and

enjoy places of public accommodation, resort or amusement, to participate in and receive the benefits of the services, programs and activities of state government and to purchase or rent property without discrimination because of disability, are hereby recognized and declared to be the rights of all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect these rights and ORS 659A.100 to 659A.145 shall be construed to effectuate such policy.

SECTION 291. ORS 659A.112 is amended to read:

659A.112. (1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because an otherwise qualified person is a *[disabled]* person **with a disability**.

(2) An employer violates subsection (1) of this section if the employer does any of the following:

(a) The employer limits, segregates or classifies a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because the applicant or employee is a *[disabled]* person **with a disability**.

(b) The employer participates in a contractual or other arrangement or relationship that has the effect of subjecting an otherwise qualified job applicant or employee who is a *[disabled]* person **with a disability** to the discrimination prohibited by ORS 659A.112 to 659A.139, including but not limited to participating in a relationship with an employment or referral agency, a labor union, an organization providing fringe benefits to an employee of the employer, or an organization providing training and apprenticeship programs.

(c) The employer utilizes standards, criteria or methods of administration that have the effect of discrimination on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

(d) The employer excludes or otherwise denies equal jobs or benefits to an otherwise qualified person because the person is known to have a relationship or association with a *[disabled]* person **with a disability**.

(e) The employer does not make reasonable accommodation to the known physical or mental limitations of an otherwise qualified *[disabled]* person **with a disability** who is a job applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(f) The employer denies employment opportunities to a job applicant or employee who is an otherwise qualified *[disabled]* person **with a disability**, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

(g) The employer uses qualification standards, employment tests or other selection criteria that screen out or tend to screen out a *[disabled]* person **with a disability** or a class of *[disabled]* persons **with disabilities** unless the standard, test or other selection criterion, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity.

(h) The employer fails to select and administer tests relating to employment in the most effective manner to ensure that when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or other characteristics of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant. The provisions of this paragraph do not limit the ability of an employer to select or administer tests designed to measure sensory, manual or speaking skills of an employee or job applicant.

SECTION 292. ORS 659A.115 is amended to read:

659A.115. For the purposes of ORS 659A.112, a *[disabled]* person **with a disability** is otherwise qualified for a position if the person, with or without reasonable accommodation, can perform the essential functions of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a written description before advertising or inter-

viewing applicants for a job, the position description shall be considered evidence of the essential functions of the job.

SECTION 293. ORS 659A.118 is amended to read:

659A.118. (1) For the purposes of ORS 659A.112, reasonable accommodation of an otherwise qualified [*disabled*] person **with a disability** may include:

(a) Making existing facilities used by employees readily accessible to and usable by [*disabled*] persons **with disabilities**.

(b) Job restructuring, part-time or modified work schedules or reassignment to a vacant position.

(c) Acquisition or modification of equipment or devices.

(d) Appropriate adjustment or modification of examinations, training materials or policies.

(e) The provision of qualified readers or interpreters.

(2) Notwithstanding any other provision of ORS 659A.100 to 659A.145, an employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to a person with a disability arising out of transsexualism.

SECTION 294. ORS 659A.130 is amended to read:

659A.130. (1) For the purposes of ORS 659A.112 to 659A.139, homosexuality and bisexuality are not physical or mental impairments. A person who is homosexual or bisexual is not a [*disabled*] person **with a disability** for the purposes of ORS 659A.112 to 659A.139 solely by reason of being homosexual or bisexual.

(2) For the purposes of ORS 659A.112 to 659A.139, the following conditions are not physical or mental impairments, and a person with one or more of the following conditions is not a [*disabled*] person **with a disability** for the purposes of ORS 659A.112 to 659A.139 solely by reason of that condition:

(a) Transvestism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders.

(b) Compulsive gambling, kleptomania or pyromania.

(c) Psychoactive substance use disorders resulting from current illegal use of drugs.

SECTION 295. ORS 659A.133 is amended to read:

659A.133. (1) Except as provided in this section, an employer violates ORS 659A.112 if the employer conducts a medical examination of a job applicant, makes inquiries of a job applicant as to whether the applicant is a [*disabled*] person **with a disability** or makes inquiries as to the nature or severity of any disability of the applicant.

(2) An employer may make inquiries into the ability of a job applicant to perform job-related functions.

(3) An employer may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and condition the employment on the results of the examination, if the following conditions are met:

(a) All persons entering the employ of the employer must be subject to the examination regardless of disability.

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except as follows:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659A.112 to 659A.139 shall be provided relevant information on request.

(c) The results of an examination authorized under this subsection may only be used in the manner provided for in ORS 659A.112 to 659A.139.

SECTION 296. ORS 659A.136 is amended to read:

659A.136. (1) Except as provided in this section, an employer may not require that an employee submit to a medical examination, may not make inquiries of an employee as to whether the employee

is a *[disabled]* person **with a disability**, and may not make inquiries of an employee as to the nature or severity of any disability of the employee, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

(3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659A.133.

SECTION 297. ORS 659A.142 is amended to read:

659A.142. (1) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a *[disabled]* person **with a disability**, or to classify or refer for employment any individual because that individual is a *[disabled]* person **with a disability**.

(2) It is an unlawful employment practice for a labor organization, because an individual is a *[disabled]* person **with a disability**, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(3) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 659A.400, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a *[disabled]* person **with a disability**.

(4)(a) It is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual is a *[disabled]* person **with a disability**.

(b) Paragraph (a) of this subsection is intended to ensure equal access to available services, programs and activities of state government.

(c) Paragraph (a) of this subsection is not intended to:

(A) Create an independent entitlement to any service, program or activity of state government; or

(B) Require state government to take any action that state government can demonstrate would result in a fundamental alteration in the nature of a service, program or activity of state government or would result in undue financial or administrative burdens on state government.

(5) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual's inability to acquire, rent or maintain property.

SECTION 298. ORS 659A.145 is amended to read:

659A.145. (1) A person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, *[shall]* **may** not discriminate by:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser, lessee or renter;

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection therewith; or

(d) Attempting to discourage the sale, rental or lease of any real property.

(2) For purposes of this subsection, discrimination includes:

(a) A refusal to permit, at the expense of the *[disabled]* person **with a disability**, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification

on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(3) A person [shall] **may** not publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination against a [disabled] person **with a disability**.

(4) A person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (2)(b), [shall] **may** not discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a disability.

(5) A real estate broker or principal real estate broker [shall] **may** not accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a [disabled] person **with a disability**.

(6) A person [shall] **may** not assist, induce, incite or coerce another person to permit an act or engage in a practice that violates this section.

(7) A person [shall] **may** not coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(8) A person [shall] **may** not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a [disabled person or persons] **person with a disability**.

(9) Any violation of this section is an unlawful practice.

SECTION 299. ORS 675.583 is amended to read:

675.583. (1) A licensed clinical social worker shall report to the State Board of Clinical Social Workers any information the licensed clinical social worker has that appears to show that a licensed clinical social worker is or may be **an impaired clinical social worker**, or may be guilty of unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Any information that the board obtains pursuant to subsection (1) of this section is confidential as provided under ORS 676.175.

(3) Any person who reports or provides information to the board under subsection (1) of this section in good faith shall not be subject to an action for civil damages as a result thereof.

SECTION 300. ORS 675.785 is amended to read:

675.785. The Oregon Board of Licensed Professional Counselors and Therapists has the following powers:

(1) In accordance with the applicable provisions of ORS chapter 183, the board shall adopt rules necessary for the administration of the laws the board is charged with administering.

(2) Subject to any applicable provisions of the State Personnel Relations Law, the board may appoint, prescribe the duties and fix the compensation of an administrator and other employees of the board necessary to carry out the duties of the board.

(3) The board may impose nonrefundable fees in an amount set by rule for the following:

(a) License application.

(b) First issuance of a license.

(c) Renewal of a license.

(d) Late filing of a license renewal.

(e) Renewal of registration as an intern.

(f) Examinations. Examination fees shall not exceed the costs incurred in administering the particular examination. Fees established under this subsection are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to

adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(4) The board shall:

(a) Maintain a register of all current licensed professional counselors and marriage and family therapists.

(b) Annually publish a directory listing all current licensed professional counselors and marriage and family therapists. The directory shall be available to the public, for which the board may collect a publication fee.

(5) The board shall:

(a) Investigate alleged violations of the provisions of ORS 675.715 to 675.835 or rules adopted under authority of the board.

(b) Establish procedures to review the complaints of clients of licensees of the board. Upon receipt of a complaint under ORS 675.715 to 675.835 against any licensed or unlicensed person, the board shall conduct an investigation as described under ORS 676.165.

(6) The board shall report to the Legislative Assembly concerning the activities of the board during the preceding biennium.

(7) The board shall form standards committees to establish, examine and pass on the qualifications of applicants to practice professional counseling or marriage and family therapy in this state. The standards committee for professional counselors shall be made up of the professional counselors on the board, the faculty member and the public member. The standards committee for marriage and family therapists shall be made up of the marriage and family members of the board, the faculty member and the public member.

(8) The board shall grant licenses to applicants who qualify to practice professional counseling or marriage and family therapy in this state upon compliance with ORS 675.715 to 675.835 and the rules of the board.

(9) The board may administer oaths, take depositions, defray legal expenses and issue subpoenas to compel the attendance of witnesses and the production of documents or written information necessary to carry out ORS 675.715 to 675.835.

(10) The board may adopt a seal to be affixed to all licenses.

(11) The board shall adopt a code of ethics for licensees. The board may use the ethical codes of professional counseling and marriage and family therapy associations as models for the code established by the board.

(12) The board may set academic and training standards necessary under ORS 675.715 to 675.835, including, but not limited to, the adoption of rules to establish semester hour equivalents for qualification for licensing where quarter hours are required under ORS 675.715 to 675.835.

(13) The board shall require the applicant for a professional counselor license or a marriage and family therapy license to receive a passing score on an examination of competency in counseling or marriage and family therapy. The examination may be the examination given nationally to certify counselors, or in the case of marriage and family therapy, the examination approved by the Association of Marital and Family Therapy Regulatory Boards.

(14) The standards committee shall establish standards and requirements for continuing education and supervision, as appropriate. The standards and requirements shall be in effect July 1, 1992.

(15) The board shall establish a program for **licensees whose ability to perform professional counseling is** impaired [*professionals*] to assist [*licensed professional counselors and licensed marriage and family therapists to regain or retain*] **those licensees in regaining or retaining** their licensure and **shall** impose the requirement of participation as a condition to reissuance or retention of the license.

(16) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the board may require the fingerprints of a person who is:

(a) Applying for a license that is issued by the board;

(b) Applying for renewal of a license that is issued by the board; or

(c) Under investigation by the board.

SECTION 301. ORS 677.010 is amended to read:

677.010. As used in this chapter, subject to the exemptions in ORS 677.060 and unless the context requires otherwise:

(1) "Approved internship" means the first year of post-graduate training served in a hospital that is approved by the board or by the Accreditation Council of Graduate Medical Education, the American Osteopathic Association or the Royal College of Physicians and Surgeons of Canada.

(2) **"Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules.**

[2] (3) "Board" means the Board of Medical Examiners for the State of Oregon.

[3] (4) "Diagnose" means to examine another person in any manner to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is so examining another person. It is not necessary that the examination be made in the presence of such other person; it may be made on information supplied either directly or indirectly by such other person.

[4] (5) "Dispense" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

[5] (6) "Dispensing physician" means a physician or podiatric physician and surgeon who purchases prescription drugs for the purpose of dispensing them to patients or other individuals entitled to receive the prescription drug and who dispenses them accordingly.

[6] (7) "Drug" means all medicines and preparations for internal or external use of humans, intended to be used for the cure, mitigation or prevention of diseases or abnormalities of humans, which are recognized in any published United States Pharmacopoeia or National Formulary, or otherwise established as a drug.

[7] (8) "Fellow" means an individual who has not qualified under ORS 677.100 (1) and (2) and who is pursuing some special line of study as part of a supervised program of a school of medicine, a hospital approved for internship or residency training, or an institution for medical research or education that provides for a period of study under the supervision of a responsible member of that hospital or institution, such school, hospital or institution having been approved by the board.

[8] *"Impaired physician" means a physician who is unable to practice medicine with reasonable skill and safety by reason of mental illness; physical illness, including, but not limited to, physical deterioration that adversely affects cognition, motor or perceptive skill; or habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.*

(9) "Intern" means an individual who has entered into a hospital or hospitals for the first year of post-graduate training.

(10) "License" means permission to practice, whether by license, registration or certification.

(11) "Licensee" means an individual holding a valid license issued by the board.

(12) **"Licensee with an impairment" means an individual licensed under this chapter who is unable to practice the profession for which the individual is licensed with reasonable skill and safety by reason of mental illness; physical illness, including, but not limited to, physical deterioration that adversely affects cognition, motor or perceptive skill; or habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.**

[12] (13) "Physician" means any person who holds a degree of Doctor of Medicine or Doctor of Osteopathy.

[13] (14) "Podiatric physician and surgeon" means a podiatric physician and surgeon licensed under ORS 677.805 to 677.840 to treat ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

[(14)] (15) "Prescribe" means to direct, order or designate the use of or manner of using by spoken or written words or other means.

[(15)] (16) "Resident" means an individual who, after the first year of post-graduate training, in order to qualify for some particular specialty in the field of medicine, pursues a special line of study as part of a supervised program of a hospital approved by the board.

[(16)] "Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules.]

SECTION 302. ORS 677.415 is amended to read:

677.415. (1) As used in this section:

(a) "Health care facility" means a facility licensed under ORS 441.015 to 441.087.

(b) "Official action, incident or event" means a restriction, limitation, loss or denial of privileges of a licensee to practice medicine, any formal action taken against a licensee by a government agency or a health care facility based on a finding of medical incompetence, unprofessional conduct or licensee impairment, or the withdrawal by a licensee from the practice of medicine or podiatry.

(2) The Board of Medical Examiners on its own motion may investigate any evidence that appears to show that a licensee licensed by the board is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be *[an impaired]* a licensee **with an impairment** *[unable safely to engage in the practice of medicine or podiatry]*.

(3) A licensee licensed by the board, the Oregon Medical Association, Inc., or any component society thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric Medical Association shall report within 10 working days, and any other person may report, to the board any information such licensee, association, society or person may have that appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be *[an impaired]* a licensee **with an impairment** *[unable safely to engage in the practice of medicine or podiatry]*. However, a licensee who is treating another licensee for a mental disability has a duty to report within 10 working days the licensee patient unless, in the opinion of the treating licensee, the patient is not impaired.

(4) A licensee shall self-report within 10 working days any official action, incident or event taken against the licensee.

(5) A health care facility shall report to the Board of Medical Examiners any official action, incident or event taken against a licensee within 10 business days of the date of the official action, incident or event.

(6) A licensee's voluntary resignation from the staff of a health care institution or voluntary limitation of the licensee's staff privileges at such an institution shall be promptly reported to the board by the institution and the licensee if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or mental or physical impairment.

(7) If, in the opinion of the board, it appears that information provided to it under this section is or may be true, the board may order an informal interview with the licensee subject to the notice requirement of ORS 677.320.

(8) A person who reports in good faith to the Board of Medical Examiners as required by this section is immune from civil liability by reason of making the report.

SECTION 303. ORS 677.615 is amended to read:

677.615. (1) There is established a Diversion Program Supervisory Council consisting of five members appointed by the Board of Medical Examiners for the purpose of developing and implementing a diversion program for *[chemically dependent]* licensees regulated under this chapter **who are chemically dependent**. No current board member or staff shall serve on the council.

(2) The term of office of each member is two years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term.

(3) The members of the council must be citizens of this state who are familiar with the recognition, intervention, assessment and treatment of **persons who are** chemically dependent [*persons*].

(4) A member of the council is entitled to compensation and expenses as provided in ORS 292.495, except that the compensation for the time spent in performance of official duties shall be the same as the compensation received by members of the Board of Medical Examiners.

(5) The council shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the council determines.

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

SECTION 304. ORS 677.625 is amended to read:

677.625. (1) Subject to the approval of the Board of Medical Examiners, the Diversion Program Supervisory Council shall appoint a medical director to serve at the pleasure of the council. The medical director shall be an employee of the board.

(2) The medical director shall administer, under the control and supervision of the council, the diversion program for **licensees who are** chemically dependent [*licensees*].

(3) The board shall appoint such employees as may be necessary to carry out the duties of the council, as assigned by the medical director.

SECTION 305. ORS 677.635 is amended to read:

677.635. The Board of Medical Examiners may enter into contracts to provide services for **licensees who are** chemically dependent [*licensees*] and may, in accordance with ORS chapter 183, adopt rules necessary for the administration of a diversion program for **licensees who are** chemically dependent [*licensees*].

SECTION 306. ORS 680.205 is amended to read:

680.205. (1) A dental hygienist issued a permit to act as a limited access permit dental hygienist under ORS 680.200 shall be authorized to render all services within the scope of practice of dental hygiene, as defined in ORS 679.010, without the supervision of a dentist and as authorized by the limited access permit to:

(a) Patients or residents of the following facilities or programs who, due to age, infirmity or disability, are unable to receive regular dental hygiene treatment:

(A) Nursing homes as defined in ORS 678.710;

(B) Adult foster homes as defined in ORS 443.705;

(C) Residential care facilities as defined in ORS 443.400;

(D) Adult congregate living facilities as defined in ORS 441.525;

(E) Mental health residential programs administered by the Department of Human Services;

(F) Facilities for mentally ill persons, as **those terms are** defined in ORS 426.005;

(G) Facilities for persons with mental retardation, as **those terms are** defined in ORS 427.005;

(H) Local correctional facilities and juvenile detention facilities as those terms are defined in ORS 169.005, regional correctional facilities as defined in ORS 169.620, youth correction facilities as defined in ORS 420.005, youth care centers as defined in ORS 420.855, and Department of Corrections institutions as defined in ORS 421.005; or

(I) Public and nonprofit community health clinics.

(b) [*Homebound*] Adults **who are homebound**.

(c) Students or enrollees of nursery schools and day care programs and their siblings under 18 years of age, Job Corps and other similar employment training facilities, primary and secondary schools, including private schools and public charter schools, and persons entitled to benefits under the Women, Infants and Children Program.

(2) The Oregon Board of Dentistry may authorize the provision of dental hygiene services by a limited access permit dental hygienist at locations or to populations that are underserved or lack access to dental hygiene services.

(3) At least once each calendar year, a dental hygienist issued a permit to act as a limited access permit dental hygienist shall refer each patient or resident to a dentist who is available to treat the patient or resident.

(4) [Nothing in this section shall be construed to] **This section does not** authorize a limited access permit dental hygienist to administer local anesthesia, denture soft lines, temporary restorations and radiographs except under the general supervision of a dentist licensed under ORS chapter 679, or to administer nitrous oxide except under the indirect supervision of a dentist licensed under ORS chapter 679.

(5) A limited access permit dental hygienist may provide sealants and write prescriptions for all applications of fluoride in which fluoride is applied or supplied to patients.

(6) A person granted a limited access permit under ORS 680.200 shall also procure all other permits or certificates required by the board under ORS 679.250.

SECTION 307. ORS 681.220 is amended to read:

681.220. It is declared to be a policy of this state that it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services to the public in order to:

(1) Safeguard the public health, safety and welfare;

(2) Protect the public from being misled by incompetent, unscrupulous and unauthorized persons;

(3) Protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists; and

(4) Help ensure the availability of the highest possible quality speech-language pathology and audiology services to [*the communicatively disabled*] people of this state **who have communication disabilities.**

SECTION 308. ORS 682.025 is amended to read:

682.025. As used in this chapter, unless the context requires otherwise:

(1) "Ambulance" or "ambulance vehicle" means any privately or publicly owned motor vehicle, aircraft or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons [*suffering from illness, injury or disability*] **who are ill or injured or who have disabilities.**

(2) "Ambulance service" means any person, governmental unit, corporation, partnership, sole proprietorship or other entity that operates ambulances and that holds itself out as providing pre-hospital care or medical transportation to **persons who are ill or [sick,] injured or [disabled persons] who have disabilities.**

(3) "Board" means the Board of Medical Examiners for the State of Oregon.

(4) "Department" means the Department of Human Services.

(5) "Emergency care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of [*the*] **persons who are ill[,] or injured or [disabled] who have disabilities;** in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(6) "Emergency medical technician" or "EMT" means a person who has received formal training in prehospital and emergency care, and is state certified to attend any **person who is ill[,] or injured or [disabled person] who has a disability.** Police officers, firefighters, funeral home employees and other personnel serving in a dual capacity one of which meets the definition of "emergency medical technician" are "emergency medical technicians" within the meaning of this chapter.

(7) "First responder" means a person who has successfully completed a first responder training course approved by the department and:

(a) Has been examined and certified as a first responder by an authorized representative of the department to perform basic emergency and nonemergency care procedures; or

(b) Has been otherwise designated as a first responder by an authorized representative of the department to perform basic emergency and nonemergency care procedures.

(8) "Fraud or deception" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or false impression knowingly is given.

(9) "Governmental unit" means the state or any county, municipality or other political subdivision or any department, board or other agency of any of them.

(10) "Highway" means every public way, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, used or intended for the use of the general public for vehicles.

(11) "Nonemergency care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24 hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Board of Medical Examiners in the course of providing prehospital care as defined by this section.

(12) "Owner" means the person having all the incidents of ownership in an ambulance service or an ambulance vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance vehicle or operation of an ambulance service under a security agreement or a lease for a term of 10 or more successive days.

(13) "Patient" means *[an]* **a person who is ill[,] or injured or *[disabled person]* who has a disability and who is** transported in an ambulance.

(14) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose or organization of any kind and includes any receiver, trustee, assignee or other similar representative thereof.

(15) "Prehospital care" means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by this chapter and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to, "emergency care" as defined by this section.

(16) "Scope of practice" means the maximum level of emergency or nonemergency care that an emergency medical technician may provide.

(17) "Standing orders" means the written protocols that an emergency medical technician follows to treat patients when direct contact with a physician is not maintained.

(18) "Supervising physician" means a medical or osteopathic physician licensed under ORS chapter 677, actively registered and in good standing with the board, who provides direction of emergency or nonemergency care provided by emergency medical technicians.

(19) "Unprofessional conduct" means conduct unbecoming a person certified in emergency care, or detrimental to the best interests of the public and includes:

(a) Any conduct or practice contrary to recognized standards of ethics of the medical profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair an emergency medical technician's ability safely and skillfully to practice emergency or nonemergency care;

(b) Willful performance of any medical treatment which is contrary to acceptable medical standards; and

(c) Willful and consistent utilization of medical service for treatment which is or may be considered inappropriate or unnecessary.

SECTION 309. ORS 682.027 is amended to read:

682.027. As used in ORS 682.031, 682.062 and 682.066, “ambulance services” includes the transportation of an [ill, injured or disabled] individual **who is ill or injured or who has a disability** in an ambulance and, in connection therewith, the administration of prehospital and out-of-hospital medical, emergency or nonemergency care, if necessary.

SECTION 310. ORS 682.035 is amended to read:

682.035. ORS 820.330 to 820.380 and this chapter do not apply to:

- (1) Ambulances owned by or operated under the control of the United States Government.
- (2) Vehicles being used to render temporary assistance in the case of a major catastrophe or emergency with which the ambulance services of the surrounding locality are unable to cope, or when directed to be used to render temporary assistance by an official at the scene of an accident.
- (3) Vehicles operated solely on private property or within the confines of institutional grounds, whether or not the incidental crossing of any highway through the property or grounds is involved.
- (4) Vehicles operated by lumber industries solely for the transportation of lumber industry employees.
- (5) Any person who drives or [who] attends an **individual who is ill[,] or injured or [disabled person] who has a disability, if the individual is** transported in a vehicle mentioned in subsections (1) to (4) of this section.

(6) Any person who otherwise by license is authorized to attend patients.

SECTION 311. ORS 682.204 is amended to read:

682.204. (1) On and after September 13, 1975, it shall be unlawful:

(a) For any person to act as an emergency medical technician without being certified under this chapter.

(b) For any person or governmental unit which operates an ambulance to authorize a person to act for it as an emergency medical technician without being certified under this chapter.

(c) For any person or governmental unit to operate or allow to be operated in this state any ambulance unless it is operated with at least one certified emergency medical technician.

(2) It is a defense to any charge under this section that there was a reasonable basis for believing that the performance of services contrary to this section was necessary to preserve human life, that diligent effort was made to obtain the services of a certified emergency medical technician and that the services of a certified emergency medical technician were not available or were not available in time as under the circumstances appeared necessary to preserve such human life.

(3) Subsection (1) of this section is not applicable to any individual, group of individuals, partnership, entity, association or other organization otherwise subject thereto providing a service to the public exclusively by volunteer unpaid workers, nor to any person who acts as an ambulance attendant therefor, provided that in the particular county in which the service is rendered, the county court or board of county commissioners has by order, after public hearing, granted exemption from such subsection to the individual, group, partnership, entity, association or organization. When exemption is granted under this section, any person who attends an **individual who is ill[,] or injured or [disabled person] who has a disability** in an ambulance may not purport to be an emergency medical technician or use the designation “EMT.”

SECTION 312. ORS 683.120 is amended to read:

683.120. (1) Each optometrist who practices in this state shall on the date established by the Oregon Board of Optometry pay a license fee, as determined by the board, for a renewal of the license of the optometrist and shall have such license conspicuously posted in the office of the optometrist or place of business at all times. Each optometrist who is retired, [disabled] **has a disability** or is a nonresident of the State of Oregon and who is not practicing optometry within this state shall on the date established by the board pay a license fee, as determined by the board, for a renewal of the license of the optometrist.

(2) A person who is no more than 30 days delinquent in renewing the license may renew the license upon payment to the board of the required fee plus a delinquent fee. If a person is more than 30 days delinquent in renewing the license, the license is automatically suspended by the board upon

30-day notice given to the licensee. A certified letter addressed to the last-known address of the licensee failing to comply with the requirements is sufficient notice.

(3) A person who is more than 60 days delinquent in renewing the license may be required to take an examination and pay the examination fee as required in ORS 683.060 before a license is issued. The board may, upon application, waive the examination requirement.

SECTION 313. ORS 689.342 is amended to read:

689.342. (1) There is established a Pharmacy Diversion Program Supervisory Council consisting of five members appointed by the State Board of Pharmacy for the purpose of developing and implementing a diversion program for [*chemically dependent*] licensees regulated under this chapter **who are chemically dependent**. No current board member or staff shall serve on the council.

(2) The term of office of each member is two years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the council is entitled to compensation and expenses as provided in ORS 292.495.

(4) The council shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers the council determines necessary for the performance of the functions of such office.

(5) A majority of the members of the council constitutes a quorum for the transaction of business.

SECTION 314. ORS 689.344 is amended to read:

689.344. (1) Subject to approval of the State Board of Pharmacy, the Pharmacy Diversion Program Supervisory Council may appoint a program director to serve at the pleasure of the council. The program director shall be an employee of the board.

(2) The program director shall administer, under the control and supervision of the council, the diversion program for **licensees who are** chemically dependent [*licensees*].

(3) The board may appoint such employees as may be necessary to carry out the duties of the council under the control and supervision of the council.

SECTION 315. ORS 689.346 is amended to read:

689.346. The State Board of Pharmacy may enter into contracts to provide services for **licensees who are** chemically dependent [*licensees*] and may, in accordance with ORS chapter 183, adopt rules necessary for the administration of a diversion program for **licensees who are** chemically dependent [*licensees*].

SECTION 316. ORS 701.525 is amended to read:

701.525. (1) As used in this section and ORS 701.530:

(a) "Developer" means a person who contracts to construct, or arrange for the construction of, new residential housing on behalf of, or for the purpose of selling the residential housing to, a specific individual the person knows is the purchaser of the residential housing.

(b) "Residential housing":

(A) Means a structure designed for use as a residence and containing dwelling units for three or fewer families.

(B) Means a structure that is a condominium as defined in ORS 100.005.

(C) Does not mean a manufactured structure as defined in ORS 446.003.

(2) A developer who enters into a contract to construct or arrange for the construction of new residential housing may, at the time of providing a purchaser with a written contract, also provide the purchaser with a list of features that may make residential housing more accessible to a person with [*disabilities*] **a disability**. The list may include the features identified in the model list of features adopted by the Construction Contractors Board by rule under ORS 701.530.

(3) The inclusion of a feature on the list supplied by the developer under subsection (2) of this section does not obligate the developer to make the feature available to a purchaser. The list sup-

plied by the developer may specify for each feature whether the feature is standard, optional, available on a limited basis or unavailable from the developer. If a listed feature is available from the developer as an option or on a limited basis, the list of features may specify the stage of construction by which the purchaser must submit to the developer any request that the residential housing be constructed with that feature.

(4) This section, or the inclusion of a feature on the model list developed under ORS 701.530, does not affect the requirement that installation of a feature comply with the state building code or be approved under ORS 455.060.

SECTION 317. ORS 735.720 is amended to read:

735.720. For purposes of ORS 735.720 to 735.740:

(1) "Carrier" has the meaning given that term in ORS 735.700.

(2) "Eligible individual" means an individual who:

(a) Is a resident of the State of Oregon;

(b) Is not eligible for Medicare;

(c) Either has been without health benefit plan coverage for a period of time established by the Office of Private Health Partnerships, or meets exception criteria established by the office;

(d) Except as otherwise provided by the office, has family income less than 200 percent of the federal poverty level;

(e) Has investments and savings less than the limit established by the office; and

(f) Meets other eligibility criteria established by the office.

(3)(a) "Family" means:

(A) A single individual;

(B) An adult and the adult's spouse;

(C) An adult and the adult's spouse, all unmarried, dependent children under 23 years of age, including adopted children, children placed for adoption and children under the legal guardianship of the adult or the adult's spouse, and all dependent children of a dependent child; or

(D) An adult and the adult's unmarried, dependent children under 23 years of age, including adopted children, children placed for adoption and children under the legal guardianship of the adult, and all dependent children of a dependent child.

(b) A family includes a dependent elderly relative or a dependent adult [*disabled*] child **with a disability** who meets the criteria established by the office and who lives in the home of the adult described in paragraph (a) of this subsection.

(4)(a) "Health benefit plan" means a policy or certificate of group or individual health insurance, as defined in ORS 731.162, providing payment or reimbursement for hospital, medical and surgical expenses. "Health benefit plan" includes a health care service contractor or health maintenance organization subscriber contract, the Oregon Medical Insurance Pool and any plan provided by a less than fully insured multiple employer welfare arrangement or by another benefit arrangement defined in the federal Employee Retirement Income Security Act of 1974, as amended.

(b) "Health benefit plan" does not include coverage for accident only, specific disease or condition only, credit, disability income, coverage of Medicare services pursuant to contracts with the federal government, Medicare supplement insurance, student accident and health insurance, long term care insurance, hospital indemnity only, dental only, vision only, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, insurance under which the benefits are payable with or without regard to fault and that is legally required to be contained in any liability insurance policy or equivalent self-insurance or coverage obtained or provided in another state but not available in Oregon.

(5) "Income" means gross income in cash or kind available to the applicant or the applicant's family. Income does not include earned income of the applicant's children or income earned by a spouse if there is a legal separation.

(6) "Investment and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the office may es-

establish that are available to the applicant or the applicant's family to contribute toward meeting the needs of an applicant or eligible individual.

(7) "Medicaid" means medical assistance provided under 42 U.S.C. section 1396a (section 1902 of the Social Security Act).

(8) "Resident" means an individual who meets the residency requirements established by rule by the office.

(9) "Subsidy" means payment or reimbursement to an eligible individual toward the purchase of a health benefit plan, and may include a net billing arrangement with carriers or a prospective or retrospective payment for health benefit plan premiums and eligible copayments or deductible expenses directly related to the eligible individual.

(10) "Third-party administrator" means any insurance company or other entity licensed under the Insurance Code to administer health insurance benefit programs.

SECTION 318. ORS 742.518 is amended to read:

742.518. As used in ORS 742.518 to 742.542:

(1) "Evaluation services" means physical examinations or reviews of medical records of beneficiaries conducted at the request of an insurer by either an employee of the insurer or a third-party medical record or bill review service to determine whether the provision or continuation of medical services is necessary or reasonable.

(2) "Managed care services" means any system of health care delivery that attempts to control or coordinate use of health care services in order to contain health care expenditures or improve quality of health care services.

(3) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:

(a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;

(b) A vehicle operated on rails or crawler-treads; or

(c) A vehicle located for use as a residence or premises.

(4) "Motorcycle" and "moped" have the meanings given those terms in ORS 801.345 and 801.365.

(5) "Occupying" means in, or upon, or entering into or alighting from.

(6) "Pedestrian" means a person while not occupying a self-propelled vehicle other than a wheelchair or a similar low-powered motorized or mechanically propelled vehicle that is designed specifically for use by a [*physically disabled*] person **with a physical disability** and that is determined to be medically necessary for the occupant of the wheelchair or other low-powered vehicle.

(7) "Personal injury protection benefits" means the benefits described in ORS 742.518 to 742.542.

(8) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery other than farming, a self-propelled mobile home and a farm truck.

(9) "Provider" has the meaning given that term in ORS 743.801.

SECTION 319. ORS 746.015 is amended to read:

746.015. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life, or between risks of essentially the same degree of hazard, in the availability of insurance, in the application of rates for insurance, in the dividends or other benefits payable under insurance policies, or in any other terms or conditions of insurance policies.

(2) Discrimination by an insurer in the application of its underwriting standards or rates based solely on an individual's physical [*handicap*] **disability** is prohibited, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. For purposes of this subsection, "physical [*handicap*] **disability**" shall include, but not be limited to, blindness, deafness, hearing or speaking impairment or loss, or partial loss, of function of one or more of the upper or lower extremities.

(3) Discrimination by an insurer in the application of its underwriting standards or rates based solely upon an insured's or applicant's attaining or exceeding 65 years of age is prohibited, unless

such discrimination is clearly based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(4)(a) No insurer, on the basis of the status of an insured or prospective insured as a victim of domestic violence, shall do any of the following:

(A) Deny, cancel or refuse to issue or renew an insurance policy;

(B) Demand or require a greater premium or payment;

(C) Designate domestic violence as a preexisting condition for which coverage will be denied or reduced;

(D) Exclude or limit coverage for losses or deny a claim; or

(E) Fix any lower rate for or discriminate in the fees or commissions of an insurance producer for writing or renewing a policy.

(b) The fact that an insured or prospective insured is or has been a victim of domestic violence shall not be considered a permitted underwriting or rating criterion.

(c) Nothing in this subsection prohibits an insurer from taking an action described in paragraph (a) of this subsection if the action is otherwise permissible by law and is taken in the same manner and to the same extent with respect to all insureds and prospective insureds without regard to whether the insured or prospective insured is a victim of domestic violence.

(d) An insurer that complies in good faith with the requirements of this subsection shall not be subject to civil liability due to such compliance.

(e) For purposes of this subsection, "domestic violence" means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally or knowingly causing physical injury;

(B) Intentionally or knowingly placing another in fear of imminent serious physical injury; or

(C) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(5) If the Director of the Department of Consumer and Business Services has reason to believe that an insurer in the application of its underwriting standards or rates is not complying with the requirements of this section, the director shall, unless the director has reason to believe the non-compliance is willful, give notice in writing to the insurer stating in what manner such noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days after the date of mailing, in which the noncompliance may be corrected.

(6)(a) If the director has reason to believe that noncompliance by an insurer with the requirements of this section is willful, or if, within the period prescribed by the director in the notice required by subsection (5) of this section, the insurer does not make the changes necessary to correct the noncompliance specified by the director or establish to the satisfaction of the director that such specified noncompliance does not exist, the director may hold a hearing in connection therewith. Not less than 10 days before the date of such hearing the director shall mail to the insurer written notice of the hearing, specifying the matters to be considered.

(b) If, after the hearing, the director finds that the insurer's application of its underwriting standards or rates violates the requirements of this section, the director may issue an order specifying in what respects such violation exists and stating when, within a reasonable period of time, further such application shall be prohibited. If the director finds that the violation was willful, the director may suspend or revoke the certificate of authority of the insurer.

(7) Affiliated workers' compensation insurers having reinsurance agreements which result in one carrier ceding 80 percent or more of its workers' compensation premium to the other, while utilizing different workers' compensation rate levels without objective evidence to support such differences, shall be presumed to be engaging in unfair discrimination.

SECTION 320. ORS 801.115 is amended to read:

801.115. "Ambulance" means any privately or publicly owned motor vehicle that is regularly provided or offered to be provided for the emergency transportation of persons [*suffering from illness, injury or disability*] **who are ill or injured or who have disabilities.**

SECTION 321. ORS 801.120 is amended to read:

801.120. "Ambulatory disability" means a disability because of which a person:

(1) *[Is so severely physically and permanently disabled as to be]* **Has a physical and permanent disability to such a degree that the person is** unable to move from place to place without the aid of a wheelchair;

(2) Is not able to cross curbs because of paralysis or loss of function of the person's legs;

(3) Is missing one or both legs; or

(4) Has a permanently impaired or unsteady gait that makes it impossible or impractical to walk as a means of transportation.

SECTION 322. ORS 801.235 is amended to read:

801.235. "*[Disabled]* Person **with a disability**" means:

(1) A person who has severely limited mobility because of paralysis or the loss of use of some or all of the person's legs or arms;

(2) A person who is affected by loss of vision or substantial loss of visual acuity or visual field beyond correction; or

(3) A person who has any other disability that prevents the person from walking without the use of an assistive device or that causes the person to be unable to walk more than 200 feet, including but not necessarily limited to:

(a) Chronic heart condition;

(b) Emphysema;

(c) Arthritis;

(d) Rheumatism; or

(e) Ulcerative colitis or related chronic bowel disorder.

SECTION 323. ORS 802.500 is amended to read:

802.500. The Director of Transportation may enter into agreements with the duly authorized representatives of any jurisdiction that issues registration to establish reciprocal privileges or registration exemptions for vehicles as described in this section. All of the following apply to an agreement established under the authority granted by this section:

(1) An agreement may establish any of the following benefits, privileges and exemptions with respect to the operation of commercial or noncommercial vehicles in this state:

(a) For purposes of ORS 803.305 exemptions from registration and payment, wholly or partially, of any vehicle or registration fees.

(b) Privileges relating to vehicles used by *[disabled]* persons **with disabilities**.

(c) Privileges relating to vehicle parking.

(d) Privileges relating to vehicle dealers.

(e) Privileges, exemptions or benefits relating to farm vehicles or implements of husbandry.

(f) Privileges relating to persons commercially transporting vehicles.

(g) Any similar privileges, benefits or exemptions relating to the operation of vehicles.

(h) Privileges, benefits or exemptions relating to the registration of fleets of vehicles.

(2) An agreement shall only grant the privileges, benefits and exemptions to a vehicle or the owner of a vehicle if the vehicle is any of the following:

(a) Registered in the jurisdiction where the person registering the vehicle has a legal residence.

(b) A commercial vehicle registered in a jurisdiction where the commercial enterprise in which the vehicle is used has a place of business. To qualify under this paragraph the vehicle must be assigned to the place of business and the place of business must be the place from which or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled.

(c) A commercial vehicle registered in a jurisdiction where the vehicle has been registered because of an agreement between two jurisdictions or a declaration issued by any jurisdiction.

(3) An agreement shall retain the right of the Department of Transportation to make the final determination as to the proper place of registration of a vehicle when there is a dispute or doubt concerning the proper place of registration. An agreement shall retain the right of the department to confer with the departments of other jurisdictions affected when making a determination under this subsection.

(4) An agreement shall not provide for any benefit, exemption or privilege with respect to fuel taxes, use fuel taxes, weight mile taxes or any other fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except registration taxes, fees and requirements.

(5) An agreement must provide that any vehicle registered in this state will receive a similar kind or degree of exemptions, benefits and privileges when operated in another jurisdiction that is party to the agreement as vehicles registered in the other jurisdiction receive when operated in this state.

(6) An agreement, in the judgment of the director, shall be in the best interest of this state and its citizens, shall be fair and equitable to this state and its citizens and shall be determined on the basis and recognition of benefits that accrue to the economy of this state from the uninterrupted flow of commerce.

(7) An agreement may authorize a vehicle that would otherwise be required to be registered in one jurisdiction to be registered in another jurisdiction without losing any benefit, exemption or privilege under the agreement if the vehicle is operated from a base located in the other jurisdiction.

(8) An agreement may allow the lessee or lessor of a vehicle, subject to the terms and conditions of the lease to receive benefits, exemptions and privileges under the agreement.

(9) An agreement may authorize the department to suspend or cancel any exceptions, benefits or privileges granted to any person under the agreement if the person violates any of the terms or conditions of the agreement or violates any law or rule of this state relating to vehicles.

(10) All agreements shall be in writing and filed with the department within 10 days after execution or the effective date of the agreement, whichever is later.

(11) An agreement may be a limited type agreement with any state bordering this state as described in this subsection. An agreement described under this subsection is subject to all of the following:

(a) The benefits, exemptions and privileges under the agreement shall only be extended to vehicles or a class of vehicles as specified in the agreement.

(b) The agreement shall be applicable only within an area in each state that is situated along the boundary between the states and that is substantially equal in size.

(c) The usage permitted of the vehicles in the two areas shall be as substantially equal as may be practicable.

(d) The areas and usage subject to the agreement shall be described in the agreement.

(e) Proportional registration shall not be required under the agreement.

(f) The agreement shall comply with other mandatory provisions of this section and may contain any other provisions described under this section.

(g) A vehicle operating under the agreement may be required to obtain a permit under ORS 803.610.

(12) An agreement may require the display or submission of evidence of registration for any vehicle operating under the agreement.

SECTION 324. ORS 803.030 is amended to read:

803.030. This section establishes exemptions from the requirements under ORS 803.025 to obtain title issued by this state. The exemptions are subject to ORS 803.040. The exemptions are in addition to any exemptions under ORS 801.026. Vehicles exempted by this section from the requirements to be titled by this state are not prohibited from being titled by this state if titling is permitted under ORS 803.035. The exemptions are partial or complete as provided in the following:

(1) Title from this state is not required for a vehicle unless the vehicle is operated on a highway in this state.

(2) Title from this state is not required unless a vehicle is operated under a registration number of this state.

(3) Snowmobiles, Class I all-terrain vehicles and Class III all-terrain vehicles are not subject to the requirements under ORS 803.025. The requirements and procedures for titling snowmobiles are as provided under ORS 821.060 and 821.070.

(4) Road rollers, farm tractors and traction engines are exempt from the requirements for title.

- (5) Trolleys are exempt from the requirements for title.
- (6) Bicycles are exempt from the requirements for title.
- (7) United States Government owned and operated motor vehicles and trailers are exempt from the requirements for title.
- (8) Implements of husbandry, well drilling machinery, emergency fire apparatus providing public fire protection and [*invalid chairs*] **wheelchairs** are exempt from the requirements for title.
- (9) Fixed load vehicles are exempt from the requirements for title while operated within the immediate construction project, as described in the governmental agency contract, in the construction or reconstruction of state or county roads, highways or city streets.
- (10) Motor vehicles designed to operate at a loaded weight over 8,000 pounds, trailers and equipment are exempt from requirements for title while:
 - (a) Owned, leased, contracted or requisitioned by the State Forester, State Board of Forestry, their contractors under ORS chapter 477, or the federal government; and
 - (b) Being used for the purposes of forest protection and fire suppression under ORS chapter 477 or a similar federal statute, including movement of the vehicles to and from the work area.
- (11) Farm trailers are exempt from requirements for title when the operation or movement of the vehicle upon the highways is incidental to its use in an agricultural operation.
- (12) Golf carts operated under an ordinance adopted under ORS 810.070 are exempt from requirements for title.
- (13) Golf carts or similar vehicles are exempt from requirements for title when:
 - (a) They have not less than three wheels in contact with the ground;
 - (b) They have an unloaded weight of less than 1,300 pounds;
 - (c) They are designed to be and are operated at not more than 15 miles per hour; and
 - (d) They are operated by [*disabled*] persons **with disabilities**.
- (14) The nonresident owners of vehicles currently registered and titled in any other country, state or territory may operate such vehicles over the highways of this state without complying with the titling requirements under ORS 803.025. All of the following apply to this subsection:
 - (a) This subsection only provides an exemption so long as the owner satisfactorily shows that the owner is not a resident of this state as described under ORS 803.200.
 - (b) The exemption under this subsection applies to vehicles granted exemptions under ORS 802.500, 802.520 or 826.005, unless otherwise provided under paragraph (c) of this subsection.
 - (c) Except as otherwise provided in this paragraph, a vehicle operated over the highways of this state for compensation or profit must comply with the titling requirements under ORS 803.025 in the same manner as required of nontitled vehicles. The following vehicles are not subject to this paragraph:
 - (A) Vehicles operated under reciprocal registration exemptions established under ORS 802.500 or 826.005.
 - (B) Vehicles operated under an exemption established under ORS 802.520.
 - (C) Vehicles that are proportionally registered under an agreement established under ORS 826.007, and according to the procedures established under ORS 826.009 or 826.011.
 - (D) Any vehicle if duly registered and titled under the laws of the state or country of which the owner is a bona fide resident to the extent that in the foreign country, state, territory or federal district where the owner resides like exemptions and privileges are granted vehicles duly registered and titled under the laws of this state and owned by residents of this state.
 - (d) If no exemptions from titling requirements are in effect under ORS 802.500, 802.520, 826.005 or 826.007 with respect to another jurisdiction, any vehicle properly registered and titled in such other jurisdiction and for which evidence of compliance is supplied shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered and titled in this state. Reciprocity extended under this paragraph shall apply to commercial vehicles only when engaged exclusively in interstate commerce.
 - (e) Any vehicle operated under dealer registration plates issued by another state, country, province, territory or the District of Columbia is subject to this subsection.

(15) Vehicle dealers issued certificates under ORS 822.020 may use and operate untitled vehicles as provided under ORS 822.040.

(16) Towing businesses issued certificates under ORS 822.205 may tow untitled vehicles as provided under ORS 822.210.

(17) Vehicle transporters issued certificates under ORS 822.310 may transport untitled vehicles as provided in ORS 822.310.

(18) Untitled vehicles may be operated under trip permits described under ORS 803.600 or under permits described under ORS 803.610 to 803.625.

(19) Vehicles that are registered by the United States Department of State and that are owned or operated by foreign nationals with diplomatic immunity are exempt from the requirements for title.

(20)(a) Vehicles that are registered under the proportional registration provisions of ORS chapter 826 and are titled in a jurisdiction other than Oregon are exempt from the requirements for title.

(b) A trailer that is registered under the proportional registration provisions of ORS chapter 826 and titled in a jurisdiction other than Oregon shall remain exempt from the requirements for title in Oregon if the trailer is registered when the other jurisdiction removes its exception to proportional registration requirements for the trailer.

(21) Converter dollies and tow dollies are exempt from the requirements for title.

(22) Electric personal assistive mobility devices are exempt from the requirements for title.

SECTION 325. ORS 803.305 is amended to read:

803.305. This section establishes exemptions from the requirements under ORS 803.300. The exemptions under this section are in addition to any exemptions under ORS 801.026. Vehicles exempted by this section from the requirements to be registered by this state are not prohibited from being registered by this state if registration is permitted under ORS 803.310. The following are exempt, either partially or completely as described, from the registration requirements under ORS 803.300:

(1) Road rollers, farm tractors, trolleys and traction engines are exempt from registration.

(2) Bicycles are exempt from registration.

(3) A vehicle is exempt from registration if it has registration issued for the vehicle by the Armed Forces of the United States where the registration is issued in a foreign country to a vehicle owned by a member of the Armed Forces. The exemption granted by this subsection applies only for a period of 45 days from the time the vehicle is returned to the United States.

(4) A vehicle is exempt from registration if it is not operated on the highways of this state.

(5) A trailer is exempt from registration if it is equipped with pneumatic tires made of elastic material and is not operated in this state with a loaded weight of more than 1,800 pounds. A trailer for hire, travel trailer or camper is not exempt by this subsection.

(6) Vehicles owned and operated by the United States Government are exempt from registration.

(7) Snowmobiles are subject to the requirements for registration provided under ORS 821.080 to 821.110.

(8) Implements of husbandry, well drilling machinery, emergency fire apparatus providing public fire protection and [*invalid chairs*] **wheelchairs** are exempt from registration.

(9) Road graders, farm tractors and farm trailers on highways are exempt from registration when the operation of the vehicle upon the highway is incidental to its use in an agricultural operation.

(10) Fixed load vehicles are exempt from registration while the vehicles are operated:

(a) In the construction or reconstruction of state or county roads, highways or city streets; and

(b) Within the immediate construction projects, as described in the governmental agency contract under which the work is being performed.

(11) Motor vehicles designed to operate at a loaded weight over 8,000 pounds, trailers and equipment are exempt from registration while being used for the purposes of forest protection and fire suppression under ORS chapter 477 or a similar federal statute. The exemption under this subsection applies to the vehicles or equipment described while being moved to or from the work area. The exemption under this subsection only applies to vehicles or equipment owned, leased, contracted

for or requisitioned by the State Forester or State Board of Forestry, a contractor of the State Forester or State Board of Forestry under ORS chapter 477 or the United States Government.

(12) Vehicles being used for the purposes of forest protection and fire suppression are exempt if the vehicles are necessary in order to comply with ORS 477.615 or 477.650 or a similar federal statute. The exemption under this subsection also applies to the vehicles described being moved to or from the work area.

(13) Golf cart exemptions from registration are as provided in ORS 820.210.

(14) Vehicles currently registered and titled in any other country, state or territory are not required to be registered by this state. All of the following apply to this subsection:

(a) This subsection only provides an exemption as long as the owner of the vehicle satisfactorily shows that the owner is not a resident of this state as described under ORS 803.200.

(b) The exemption under this subsection applies to vehicles granted exemptions under ORS 802.500, 802.520 or 826.005 unless otherwise provided for under paragraph (c) of this subsection.

(c) Except as otherwise provided in this paragraph, a vehicle operated over the highways of this state for compensation or profit must comply with the registration requirements under ORS 803.300 in the same manner as vehicles owned by persons in this state. The following vehicles are not subject to this paragraph:

(A) Vehicles operated under reciprocal registration exemptions established under ORS 802.500 or 826.005.

(B) Vehicles operated under an exemption established under ORS 802.520.

(C) Vehicles that are proportionally registered under an agreement established under ORS 826.007 and according to the procedures established under ORS 826.009 and 826.011.

(D) Any vehicle if duly registered and titled under the laws of the state or country of which the owner is a bona fide resident to the extent that in the foreign country, state, territory or federal district where the owner resides like exemptions and privileges are granted vehicles duly registered and titled under the laws of this state and owned by residents of this state.

(d) If no exemption from registration requirements is in effect under ORS 802.500, 802.520, 826.005 or 826.007 with respect to another jurisdiction, any vehicle properly registered and titled in such other jurisdiction and for which evidence of compliance is supplied shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered and titled in this state. Reciprocity extended under this paragraph shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

(e) Any vehicle operated under dealer registration plates issued by another state, country, province, territory or the District of Columbia is subject to this subsection.

(15) Vehicles operated or used by vehicle dealers may be operated or used without registration as provided under ORS 822.040.

(16) Vehicles towed by towing businesses may be towed without registration as provided under ORS 822.210.

(17) Vehicles without registration may be transported by vehicle transporters as provided under ORS 822.310.

(18) Vehicles that are not registered may be operated under trip permits described under ORS 803.600 or under permits described under ORS 803.610 to 803.625.

(19) If trailers that are part of a fleet of trailers for hire are properly registered in this state under an agreement entered into pursuant to ORS 802.500, all trailers that are identified as being a part of the same fleet and that are currently registered in any state, territory, province, country or the District of Columbia shall be permitted to operate in this state in both interstate and intra-state commerce without being registered by this state.

(20) Vehicles that are registered by the United States Department of State and that are owned or operated by foreign nationals with diplomatic immunity are exempt from registration.

(21) Tow dollies and converter dollies are exempt from registration.

(22) Class I and Class III all-terrain vehicles are exempt from registration.

(23) Motor assisted scooters are exempt from registration.

(24) Electric personal assistive mobility devices are exempt from registration.

SECTION 326. ORS 807.070 is amended to read:

807.070. The Department of Transportation shall administer an examination to establish qualification for each class of license and endorsement. The examination for each class of license or endorsement shall include all of the following as described:

(1) A test of the applicant's eyesight. This subsection does not apply to an applicant with a limited vision condition as defined in section 2, chapter 277, Oregon Laws 2003.

(2) A test of the applicant's knowledge and understanding of the traffic laws of this state, safe driving practices and factors that cause accidents. The following all apply to the test under this subsection:

(a) The test shall not cover any subject that is not presented in the publications of the department intended for the instruction of applicants for licenses and driver permits.

(b) The test for each class of license and endorsement shall include, but is not limited to, a test of knowledge and understanding of traffic laws that relate specifically to the type of driving privileges granted under the specific class of license or endorsement sought.

(c) The test under this subsection shall include, but is not limited to, the following subjects:

(A) Rights of [*blind*] pedestrians **who are blind**.

(B) The meaning of official traffic signs and signals.

(C) Proper operating procedure in emergency situations.

(D) Vehicle safety equipment and its use.

(E) Practices necessary for safe operation of a vehicle around pedestrians and bicyclists.

(d) The department may waive the test under circumstances described in ORS 807.072.

(3) A test that is an actual demonstration of the applicant's ability to operate a motor vehicle without endangering the safety of persons or property. The following apply to this subsection:

(a) The actual demonstration for each class of license shall be performed in a vehicle that may be operated under the class of license sought, but that may not be operated under lower classes of license.

(b) An actual demonstration for a passenger endorsement shall be performed in a vehicle that is designed to transport 16 or more persons, including the driver.

(c) An actual demonstration for a school bus endorsement shall be performed in a school bus.

(d) The department may waive the demonstration under circumstances described in ORS 807.072.

(4) Any other examination or test, including demonstrations, that the department determines may be necessary to assist the department in establishing whether the applicant is eligible for a license under ORS 807.060 or whether the applicant is fit to operate a motor vehicle safely on the highways of this state. In any examination or test under this subsection, the department shall only conduct an investigation for facts relating directly to the ability of the applicant to operate a motor vehicle safely or other facts that are specifically required to show the fitness of the applicant for license.

SECTION 327. ORS 807.070, as amended by section 10, chapter 277, Oregon Laws 2003, and section 6, chapter 649, Oregon Laws 2005, is amended to read:

807.070. The Department of Transportation shall administer an examination to establish qualification for each class of license and endorsement. The examination for each class of license or endorsement shall include all of the following as described:

(1) A test of the applicant's eyesight.

(2) A test of the applicant's knowledge and understanding of the traffic laws of this state, safe driving practices and factors that cause accidents. The following all apply to the test under this subsection:

(a) The test shall not cover any subject that is not presented in the publications of the department intended for the instruction of applicants for licenses and driver permits.

(b) The test for each class of license and endorsement shall include, but is not limited to, a test of knowledge and understanding of traffic laws that relate specifically to the type of driving privileges granted under the specific class of license or endorsement sought.

- (c) The test under this subsection shall include, but is not limited to, the following subjects:
- (A) Rights of [*blind*] pedestrians **who are blind**.
 - (B) The meaning of official traffic signs and signals.
 - (C) Proper operating procedure in emergency situations.
 - (D) Vehicle safety equipment and its use.
 - (E) Practices necessary for safe operation of a vehicle around pedestrians and bicyclists.
- (d) The department may waive the test under circumstances described in ORS 807.072.
- (3) A test that is an actual demonstration of the applicant's ability to operate a motor vehicle without endangering the safety of persons or property. The following apply to this subsection:
- (a) The actual demonstration for each class of license shall be performed in a vehicle that may be operated under the class of license sought, but that may not be operated under lower classes of license.
 - (b) An actual demonstration for a passenger endorsement shall be performed in a vehicle that is designed to transport 16 or more persons, including the driver.
 - (c) An actual demonstration for a school bus endorsement shall be performed in a school bus.
 - (d) The department may waive the demonstration under circumstances described in ORS 807.072.
- (4) Any other examination or test, including demonstrations, that the department determines may be necessary to assist the department in establishing whether the applicant is eligible for a license under ORS 807.060 or whether the applicant is fit to operate a motor vehicle safely on the highways of this state. In any examination or test under this subsection, the department shall only conduct an investigation for facts relating directly to the ability of the applicant to operate a motor vehicle safely or other facts that are specifically required to show the fitness of the applicant for license.

SECTION 328. ORS 807.700 is amended to read:

807.700. (1) It shall be the duty of the superintendent of the hospital for [*the mentally ill or mentally retarded*] **persons with mental retardation or mental illness** to notify the Department of Transportation as to released licensed operators who, in the opinion of the superintendent, should not drive because of their mental condition.

(2) Upon receipt of information submitted under this section, the department is subject to the provisions relating to this section under ORS 809.419.

SECTION 329. ORS 811.035 is amended to read:

811.035. (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a [*blind*] pedestrian **who is blind** if the driver violates any of the following:

(a) A driver approaching a **pedestrian who is blind** or blind and deaf, **who is** [*pedestrian*] carrying a white cane or accompanied by a dog guide, **and** who is crossing or about to cross a roadway, shall stop and remain stopped until the pedestrian has crossed the roadway.

(b) Where the movement of vehicular traffic is regulated by traffic control devices, a driver approaching a **pedestrian who is blind** or blind and deaf [*pedestrian*] shall stop and remain stopped until the pedestrian has vacated the roadway if the [*blind or blind and deaf*] pedestrian has entered the roadway and is carrying a white cane or is accompanied by a dog guide. This paragraph applies notwithstanding any other provisions of the vehicle code relating to traffic control devices.

(2) This section is subject to the provisions and definitions relating to the rights of pedestrians who are blind or blind and deaf under ORS 814.110.

(3) The offense described in this section, failure to stop and remain stopped for a [*blind*] pedestrian **who is blind**, is a Class B traffic violation.

SECTION 330. ORS 811.602 is amended to read:

811.602. (1) A disabled person parking permit is a means of identifying vehicles being used to exercise the parking privileges described in ORS 811.635. The following are disabled person parking permits:

(a) A special decal described in ORS 811.605 issued by the Department of Transportation to be affixed to a golf cart or substantially similar vehicle;

(b) An individual placard described in ORS 811.605;

- (c) A program placard issued by the department under ORS 811.607;
- (d) A family placard issued by the department under ORS 811.609; and
- (e) A foreign visitor placard issued by the department under ORS 811.611.

(2) The department shall issue a disabled person parking permit in the form of a decal or individual placard to any person who submits an application that complies with ORS 811.604. Nothing in this section prohibits the department from issuing a decal or individual placard to a person who has disabled veteran registration plates issued under ORS 805.100 and who qualifies for the decal or placard.

(3) Except as otherwise provided in this subsection, the department may not issue more than one individual placard to an applicant. The department may issue a replacement placard upon receipt of proof satisfactory to the department that the original placard has been lost, mutilated or destroyed. The department may issue a temporary duplicate permit to a person who needs a duplicate permit for travel purposes. A temporary duplicate permit shall be valid for 30 days. The department shall adopt rules governing application for and issuance of temporary duplicate permits. Nothing in this subsection prohibits issuance of an individual placard to a person who has been issued a decal.

(4) Permits issued under this section, other than temporary duplicate permits, may be renewed by mail.

(5) Permits for use on vehicles that are regularly used as part of a program for the transportation of [*disabled*] persons **with disabilities** are issued as provided in ORS 811.607.

(6) Except as provided in subsection (7) of this section, the department shall determine the form, size and content of any decal or placard issued under this section and shall adopt rules governing their issuance, display and use as necessary to carry out this section.

(7)(a) Except as provided in paragraph (b) of this subsection, the department may not require a decal or placard issued under this section to an individual or a family to contain any identifying information about the person to whom the decal or placard is issued, including any of the following:

- (A) Name;
- (B) Address;
- (C) Telephone number;
- (D) Social Security number;
- (E) Driver license number;
- (F) Golf cart driver permit number;
- (G) Identification card number;
- (H) Passport or visa number; or
- (I) Photograph.

(b) The department may require a decal or placard issued under this section to an individual or a family to contain not more than four digits of the driver license or identification card number of the person to whom the decal or placard is issued.

SECTION 331. ORS 811.604 is amended to read:

811.604. (1) Application for issuance of a disabled person parking permit in the form of an individual placard or decal issued under ORS 811.602 shall include:

(a) A certificate by a licensed physician, a certified nurse practitioner or a licensed physician assistant to the Department of Transportation that the applicant is a [*disabled*] person **with a disability** or a certificate by a licensed optometrist that the applicant is a [*disabled*] person **with a disability** because of loss of vision or substantial loss of visual acuity or visual field beyond correction; and

(b) The number of a current, valid driver license, golf cart driver permit or identification card issued to the applicant by the department.

(2) Application for renewal of a disabled person parking permit shall be a signed statement from the holder of the permit saying that the person is still qualified to hold the permit.

SECTION 332. ORS 811.606 is amended to read:

811.606. The Department of Transportation may issue a placard showing an expiration date not to exceed six months after the date of issuance for use by [*temporarily disabled*] persons **with temporary disabilities** upon submission by the applicant of a certificate described in ORS 811.604 except that it certifies that the applicant [*is temporarily disabled*] **has a temporary disability** for less than four years. An applicant for a temporary permit need not have a driver license, permit or identification card.

SECTION 333. ORS 811.607 is amended to read:

811.607. The Department of Transportation shall issue disabled person parking permits in the form of program placards for use on vehicles that are regularly used as part of a program for the transportation of [*disabled*] persons **with disabilities** or by an adult foster care home. All the following apply to placards issued under this section:

(1) The department shall determine the form, size and content of the placards except that the department shall require that a placard contain the name of the program holding the placard and the department shall require that the expiration date of a placard be visible when the placard is displayed in the vehicle.

(2) Placards issued under this section shall be valid for a period of eight years from the date of issue. Upon expiration, placards may be renewed in a manner determined by the department by rule. The department shall authorize renewal by mail of placards issued under this section.

(3) The department shall determine by rule how programs for the transportation of [*disabled*] persons **with disabilities** may qualify vehicles for placards issued under this section.

SECTION 334. ORS 811.609 is amended to read:

811.609. The Department of Transportation shall issue disabled person parking permits in the form of family placards for use on vehicles that are regularly used by a family that includes more than one [*disabled*] person **with a disability**. All the following apply to placards issued under this section:

(1) The department shall determine the form, size and content of the placards except that the department shall require that the expiration date of a placard be visible when the placard is displayed in the vehicle.

(2) Placards issued under this section shall be valid for a period of eight years from the date of issue. Upon expiration, placards may be renewed in a manner determined by the department by rule.

(3) The department shall not issue or renew a placard under this section unless a licensed physician certifies that the family includes at least two [*disabled*] persons **with disabilities**.

SECTION 335. ORS 811.611 is amended to read:

811.611. (1) The Department of Transportation may issue a disabled person parking permit in the form of a placard to a person who is visiting from a foreign country if the person presents to the department either a valid driver license or other grant of driving privileges from the foreign country or a passport or visa showing that the person is a visitor to the United States and presents one of the following:

(a) A valid disabled person parking permit issued by the country that issued the visitor's passport or visa;

(b) A certificate from an official of the agency that issues disabled person parking permits in the country that issued the visitor's passport or visa certifying that the person holds a valid disabled person parking permit; or

(c) A certificate from a licensed physician, a certified nurse practitioner or a licensed physician assistant addressed to the Department of Transportation certifying that the applicant is a [*disabled*] person **with a disability**, or a certificate from a licensed optometrist certifying that the applicant is a [*disabled*] person **with a disability** because of loss of vision or substantial loss of visual acuity or visual field beyond correction.

(2) A disabled person parking permit issued under this section is valid for 30 days.

SECTION 336. ORS 811.615 is amended to read:

811.615. (1) A person commits the offense of unlawful parking in a space reserved for [disabled] persons **with disabilities** if:

(a) The person parks a vehicle in any parking space that is on private or public property and that is marked or signed to provide parking for [disabled] persons **with disabilities** and the vehicle does not conspicuously display a disabled person parking permit described under ORS 811.602 or 811.606 or a disabled parking permit issued by another jurisdiction; or

(b) The person parks a vehicle in the aisle required by ORS 447.233 regardless of whether or not the vehicle displays a disabled person parking permit.

(2) This section does not apply to any of the following:

(a) Momentarily parking a vehicle in a parking space marked or signed for [disabled] persons **with disabilities** for the purposes of allowing a [disabled] person **with a disability** to enter or leave the vehicle.

(b) Any parking space that is marked or signed to provide parking for [disabled] persons **with disabilities** and that is subject to different provisions or requirements under city or county ordinance if the different provisions or requirements are clearly posted.

(3) Unless the police officer or other authorized person issuing the citation witnesses the parking of the vehicle, a rebuttable presumption exists that a vehicle parked in violation of this section was parked by the registered owner of the vehicle and the citation issued for the violation may be placed upon the vehicle. If the parking of the vehicle is witnessed by the police officer or other person authorized to issue a citation for the offense, the operator of the vehicle is in violation of this section.

(4) The penalties provided by this section shall be imposed regardless of the text or symbol displayed on the marking or sign reserving the space or aisle for [disabled] persons **with disabilities**. The penalties are in addition to the following:

(a) A vehicle parked on private property in violation of this section is subject to removal under ORS 98.810 and to lien and sale under ORS 98.812.

(b) A vehicle parked in violation of this section may be removed and sold as provided under ORS 811.620.

(5) The offense described in this section, unlawful parking in a space reserved for [disabled] persons **with disabilities**, is a Class A traffic violation except that a person in violation of this section shall pay a minimum fine of \$190 for the first offense and a minimum fine of \$450 for each subsequent offense.

(6) Notwithstanding any other provision of law and except as otherwise provided in subsection (7) of this section:

(a) A court may not suspend imposition or execution of a sentence to pay at least the minimum fine required by this section for a person's first offense unless the court finds from clear and convincing evidence that compelling circumstances require a suspension of a portion of the fine in the interests of justice. In no event shall a court suspend under this paragraph more than \$140 of the minimum \$190 fine.

(b) A court may not suspend imposition or execution of a sentence to pay a fine for a second or subsequent offense.

(7) If the court finds that the person who was issued a citation for the offense described in this section lawfully held, but failed to properly display, a valid permit at the time of citation, then the court may suspend all but \$20 of the fine.

SECTION 337. ORS 811.617 is amended to read:

811.617. (1) A person commits the offense of blocking a parking space reserved for [disabled] persons **with disabilities** if the person:

(a) Stops or parks a vehicle in such a way as to block access to a parking space that is on private or public property and that is marked or signed to provide parking for [disabled] persons **with disabilities**; or

(b) Places an object or allows an object to be placed in such a manner that it blocks access to a parking space that is on private or public property and that is marked or signed to provide parking for *[disabled]* persons **with disabilities**.

(2)(a) Unless the police officer or other authorized person issuing the citation witnesses the stopping or parking of a vehicle in violation of subsection (1)(a) of this section, there is a rebuttable presumption that the vehicle was stopped or parked by the registered owner of the vehicle and a citation issued for the violation may be placed upon the vehicle. If the stopping or parking of the vehicle is witnessed by the police officer or other person authorized to issue a citation for the offense, or if the operator is in the vehicle, the operator of the vehicle is in violation of this section.

(b) Unless the police officer or other authorized person issuing the citation witnesses the blocking of a parking space in violation of subsection (1)(b) of this section, there is a rebuttable presumption that the owner or manager of the parking lot placed or allowed placement of the object blocking access to the parking space and a citation may be issued to the owner or manager of the parking lot. If a police officer or other person issuing the citation sees a person placing an object in violation of subsection (1)(b) of this section, the officer or other person may issue the citation to the person seen.

(3) For purposes of this section, a parking space includes any adjacent access aisle as described in ORS 447.233.

(4) The offense described in this section, blocking a parking space reserved for *[disabled]* persons **with disabilities**, is a Class D traffic violation except that a person in violation of this section shall pay a minimum fine of \$50. Notwithstanding any other provision of law, a court may not suspend imposition or execution of a sentence to pay at least the minimum fine required by this section unless the court finds that the defendant is indigent.

SECTION 338. ORS 811.625 is amended to read:

811.625. (1) A person commits the offense of *[the]* unlawful use of a disabled person parking permit *[by a nondisabled person]* if the person:

(a) Is not a *[disabled]* person **with a disability** and is not transporting the holder of a disabled person parking permit to or from the parking location; and

(b) Uses a disabled person parking permit described under ORS 811.602 or 811.606 to exercise any privileges granted under ORS 811.635.

(2) The offense described in this section, unlawful use of a disabled person parking permit *[by a nondisabled person]*, is a Class A traffic violation except that a person in violation of this section shall pay a minimum fine of \$450. Notwithstanding any other provision of law, a court may not suspend imposition or execution of a sentence to pay at least the minimum fine required by this section.

SECTION 339. ORS 811.630 is amended to read:

811.630. (1) A person commits the offense of misuse of a program placard if the person:

(a) Is the driver of a vehicle that is being used as part of a program for the transportation of *[disabled]* persons **with disabilities**; and

(b) Uses a program placard described under ORS 811.607 for any purpose other than exercising privileges granted under ORS 811.637.

(2) The offense described in this section, misuse of a program placard, is a Class A traffic violation except that a person in violation of this section shall pay a minimum fine of \$190 for a first offense and a minimum fine of \$450 for each subsequent offense. Notwithstanding any other provision of law, a court may not suspend imposition or execution of a sentence to pay at least the minimum fine required by this section.

SECTION 340. ORS 811.632 is amended to read:

811.632. (1) A law enforcement agency authorized to enforce parking laws may appoint volunteers to issue citations for violations of ORS 811.615, 811.617, 811.625 and 811.630, or of ordinances dealing with parking privileges for *[disabled]* persons **with disabilities**. Volunteers appointed under this subsection must be at least 21 years of age. The law enforcement agency appointing the volunteers may establish any other qualifications the agency deems desirable.

(2) Any agency appointing volunteers under this section shall provide training to the volunteers before authorizing them to issue citations.

(3) A citation issued by a volunteer appointed under this section shall have the same force and effect as a citation issued by a police officer for the same offense.

SECTION 341. ORS 811.635 is amended to read:

811.635. All of the following apply to the parking privileges granted to *[disabled]* persons **with disabilities** under a disabled person parking permit other than a program placard described in ORS 811.607:

(1) The privileges granted under a permit may be exercised notwithstanding ORS 811.575, any authority granted under ORS 810.160 or parking restrictions imposed by any city or county and without violation thereof.

(2) Subject to the limitations under subsection (3) of this section, a permit allows its holder, or another person while transporting its holder to or from the parking location, to exercise the following privileges:

(a) Park a motor vehicle in any public parking zone restricted as to the length of time permitted therein without incurring penalties imposed for overtime parking in such zones.

(b) Park a motor vehicle in any public parking zone with metered parking without being required to pay any parking meter fee.

(3) The privileges granted under subsection (2) of this section do not include any of the following:

(a) Parking in zones where stopping, parking or standing of all motor vehicles is prohibited.

(b) Parking in the late evening or overnight where such parking is prohibited.

(c) Parking in zones reserved for special types of motor vehicles or activities.

(d) Parking in zones where parking is permitted only for 30 minutes or less.

(4) In addition to other privileges granted under a permit, the person issued a permit, or another person while transporting the person issued the permit to or from the parking location, may use the permit to park in a parking space that is marked or signed to provide parking for *[disabled]* persons **with disabilities** without violation of ORS 811.615.

SECTION 342. ORS 811.637 is amended to read:

811.637. (1) Notwithstanding ORS 811.635, a program placard described under ORS 811.607 confers only the following privileges:

(a) It authorizes the driver of a vehicle that is being used as part of the program to which the placard was issued to park the vehicle for three hours or less in any public parking zone restricted as to the length of time permitted therein without incurring penalties for overtime parking in such zones;

(b) It authorizes the driver of a vehicle that is being used as part of the program to which the placard was issued to park the vehicle for three hours or less in any public parking zone with metered parking without being required to pay any parking meter fee; and

(c) It authorizes the driver of a vehicle that is being used as part of the program to which the placard was issued to park the vehicle for three hours or less in any parking space that is marked or signed to provide parking for *[disabled]* persons **with disabilities** without violation of ORS 811.615, so long as the vehicle conspicuously displays the permit.

(2) The privileges granted under subsection (1) of this section do not include any of the following:

(a) Parking in zones where stopping, parking or standing of all motor vehicles is prohibited.

(b) Parking in the late evening or overnight where such parking is prohibited.

(c) Parking in zones reserved for special types of motor vehicles or activities.

(d) Parking in zones where parking is permitted only for 30 minutes or less.

SECTION 343. ORS 813.270 is amended to read:

813.270. The Intoxicated Driver Program Fund is created to consist of moneys placed in the fund under ORS 813.030 and 813.240 or as otherwise provided by law and of gifts and grants made to the

fund for carrying out the purposes of the fund. The moneys in the fund may be used only for the following purposes:

(1) To pay for providing treatment for individuals who enter diversion agreements under ORS 813.200 and who are found to be indigent. Payment for treatment under this subsection may include treatment for problem drinking, alcoholism or drug dependency. Payment shall be made as provided by the Director of Human Services by rule to agencies or organizations providing treatment.

(2) To pay for evaluation as provided by law of programs used for diversion agreements.

(3) To pay the cost of administration of the fund by the Director of Human Services.

(4) To pay for materials, resources and training supplied by the Director of Human Services to those persons, organizations or agencies performing the diagnostic assessments or providing education or treatment to persons under diversion agreements.

(5) To pay for providing treatment programs required under ORS 813.020 and treatment or information programs required under ORS 471.432 for individuals who are found to be indigent.

(6) To pay for special services required to enable a [disabled] person **with a disability**, or a person whose proficiency in the use of English is limited because of the person's national origin, to participate in treatment programs that are used for diversion agreements under ORS 813.200 or are required under ORS 813.020. This subsection applies:

(a) Whether or not the person is indigent; and

(b) Only to special services required solely because of the person's disability or limited proficiency in the use of English.

SECTION 344. ORS 814.110 is amended to read:

814.110. (1) This section establishes rights for pedestrians who are blind or blind and deaf. The rights established by this section are enforced by ORS 811.035 and 814.120. The following definitions apply to this section and to ORS 811.035 and 814.120:

[(a) "Blind person" means a person who has 20/200 vision or less, or a visual field of 20 degrees or less.]

[(b)] (a) "Dog guide" means a dog that is wearing a dog guide harness and is trained to lead or guide a [blind] person **who is blind**.

(b) "**Person who is blind**" means a person who has 20/200 vision or less, or a visual field of 20 degrees or less.

(c) "White cane" means a cane or walking stick that is white in color or white with a red tip.

(2) This section and ORS 811.035 and 814.120 grant and enforce the following rights for pedestrians who are blind or blind and deaf:

(a) A **person who is** blind or blind and deaf [person] may carry and use a white cane on the highways and other public places of this state for the purposes of identification and mobility.

(b) Any [blind] person who is **blind and** deaf may use a white cane marked by a six-inch wide chartreuse colored strip at the tip end.

(3) A **pedestrian who is** blind or blind and deaf [pedestrian] **and** who is not carrying a white cane or not accompanied by a dog guide has all the rights and privileges granted by law to all pedestrians.

SECTION 345. ORS 814.120 is amended to read:

814.120. (1) A person commits the offense of unlawful use of a white cane [by a sighted person] if the person uses or carries a white cane on the highways or any other public place of this state and the person is not blind or blind and deaf.

(2) This section is subject to the provisions and definitions relating to the rights of pedestrians who are blind or blind and deaf under ORS 814.110.

(3) The offense described in this section, unlawful use of a white cane [by a sighted person], is a Class D traffic violation.

SECTION 346. ORS 814.528 is amended to read:

814.528. (1) A person commits the offense of operation of a motor assisted scooter in a crosswalk if the person fails to walk the motor assisted scooter in a crosswalk.

(2) This section does not apply to a *[disabled]* person **with a disability** operating a motor assisted scooter in a crosswalk.

(3) The offense described in this section, operation of a motor assisted scooter in a crosswalk, is a Class D traffic violation.

SECTION 347. ORS 815.110 is amended to read:

815.110. This section establishes requirements for ORS 815.115. The requirements under this section are in addition to any other requirements for lighting equipment provided by law. Except as specifically provided by an exemption under ORS 815.120, a person violates ORS 815.115 if the person does not comply with any of the following requirements:

(1) The following types of vehicles must display slow-moving vehicle emblems described under ORS 815.060:

(a) Vehicles or combinations of vehicles designed for customary use at speeds of less than 25 miles per hour.

(b) Golf carts or similar vehicles when operated by a *[disabled]* person **with a disability**.

(c) Class I all-terrain vehicles operated on a highway under ORS 821.191 (1).

(2) Slow-moving vehicle emblems must meet the requirements for such emblems established by the Department of Transportation by rule under ORS 815.060.

(3) Slow-moving vehicle emblems shall be displayed on the rear of the power unit. When a combination of vehicles is being operated in a manner that obscures the emblem mounted on the power unit, an additional emblem shall be displayed on the rear of the rearmost vehicle in the combination.

SECTION 348. ORS 815.300 is amended to read:

815.300. This section establishes exemptions from the requirements under ORS 815.295 to be equipped with a certified pollution control system. Exemptions established by this section are in addition to any exemptions established by ORS 801.026. The exemptions established in this section are also applicable to requirements for certification of pollution control equipment before registration under ORS 803.350 and 803.465. All of the following vehicles are exempt from the requirements under ORS 815.295:

(1) Any vehicle that is not a motor vehicle.

(2) Any vehicle unless the vehicle is registered within:

(a) The boundaries of the metropolitan service district formed under ORS chapter 268 for the metropolitan area, as defined in ORS 268.020, which includes the City of Portland, Oregon.

(b) Boundaries designated by the Environmental Quality Commission under ORS 468A.390.

(3) Any new motor vehicle or new motor vehicle engine when the registration results from the initial retail sale thereof.

(4) Any motor vehicle:

(a) Not registered in areas designated under subsection (2)(a) of this section, including any expansion of such boundary under subsection (2)(b) of this section, with a model year that predates by more than 20 years the year in which registration or renewal of registration is required; or

(b) Registered in areas designated under subsection (2)(a) of this section, including any expansion of such boundary under subsection (2)(b) of this section, with a model year of 1974 or earlier.

(5) Motor vehicles that are registered as farm vehicles under ORS 805.300 or apportioned farm vehicles under ORS 805.300.

(6) Special interest vehicles that are maintained as collectors' items and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property.

(7) Fixed load vehicles.

(8) Vehicles that are proportionally registered under ORS 826.009 and 826.011 in accordance with agreements established under ORS 826.007.

(9) Electric motor vehicles. This subsection does not exempt hybrid motor vehicles that use electricity and another source of motive power.

(10) First response rescue units operated by political subdivisions of this state that are not used to transport persons *[suffering from illness, injury or disability]* **who are ill or injured or who have disabilities**.

(11) A vehicle that is currently registered in Oregon at the time application for new registration is received by the Department of Transportation if the new registration is a result of a change in the registration or plate type and the application is received at least four months prior to the expiration of the existing registration.

(12) Golf carts.

(13) Any Class I, Class II or Class III all-terrain vehicle.

(14) An original equipment manufacturer vehicle that is engineered, designed, produced and warranted to use natural gas as its only fuel source.

SECTION 349. ORS 820.210 is amended to read:

820.210. (1) Golf carts operated in accordance with an ordinance adopted under ORS 810.070 are exempt from registration requirements under the vehicle code.

(2) Golf carts or substantially similar vehicles that are operated by *[disabled]* persons **with disabilities** at not more than 15 miles an hour are exempt from registration requirements under the vehicle code.

(3) Notwithstanding any provision of the vehicle code relating to vehicle equipment and condition, upon designation of a portion of a highway becoming effective under an ordinance adopted under ORS 810.070, it shall be lawful to drive golf carts on highways or portions thereof so designated in accordance with the rules and regulations prescribed by the local authority.

SECTION 350. ORS 820.220 is amended to read:

820.220. (1) A person commits the offense of operation of a low-speed vehicle in a prohibited area if the person is a *[disabled]* person **with a disability** and the person operates a golf cart or substantially similar motor vehicle on any highway with a speed designation greater than 25 miles per hour.

(2) The offense described in this section, operation of low-speed vehicle in prohibited area, is a Class D traffic violation.

SECTION 351. ORS 822.105 is amended to read:

822.105. In addition to exemptions from the vehicle code under ORS 801.026, ORS 822.100 does not apply to the following:

(1) An insurance adjuster authorized to do business under ORS 744.505 or 744.515 who is disposing of vehicles for salvage.

(2) Road rollers, farm tractors, trolleys or traction engines.

(3) Implements of husbandry, well-drilling machinery and *[invalid chairs]* **wheelchairs**.

(4) Golf carts.

SECTION 352. ORS 825.017 is amended to read:

825.017. Except as provided in ORS 825.026, this chapter does not apply to the persons or vehicles described in this section. The exemption under this section applies to the following persons and vehicles:

(1) Vehicles being used by, or under contract with, any school board, district or person responsible for the administration of elementary or secondary school activities, and engaged exclusively in transporting students or combinations of students and other persons to or from school, to or from authorized school activities or other activities sponsored by the State Board of Higher Education, or for purposes provided under ORS 332.427. This exemption shall not be affected by the charging of a fee to cover the costs of the transportation.

(2) Vehicles being used in a taxicab operation if the vehicle:

(a) Is a passenger vehicle with a passenger seating capacity that does not exceed five;

(b) Carries passengers for hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; and

(c) Is transporting persons or property, or both, between points in Oregon.

(3) Vehicles being used for the transportation of property by private carrier by means of a single vehicle or combination of vehicles with a combined weight that does not exceed 8,000 pounds.

(4) Vehicles being used in operating implements of husbandry.

(5) Vehicles being used as a hearse or ambulance.

(6) Vehicles being used over any private road or thoroughfare.

(7) Vehicles being used on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products as defined in ORS 321.005, or the product of forest products converted to a form other than logs at or near the harvesting site, or when used for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with:

(a) An agency of the United States;

(b) The State Board of Forestry;

(c) The State Forester; or

(d) A licensee of an agency named in this subsection.

(8) Vehicles being used on any county road for the removal of forest products as defined in ORS 321.005, or the products of forest products converted to a form other than logs at or near the harvesting site, if:

(a) The use is pursuant to a written agreement entered into with the State Board of Forestry, the State Forester or an agency of the United States, authorizing the owner of the motor vehicle to use the road and requiring the owner to pay for or to perform the construction or maintenance of the county road, including any operator of a motor vehicle retained to transport logs, poles and piling for the owners who are exempt under this section;

(b) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of the county road; and

(c) Copies of the agreements or permits required by this subsection are filed with the Director of Transportation.

(9) Vehicles being used in the transportation of persons for hire if the operation:

(a) Is performed by a nonprofit entity;

(b) Is not in competition with a regular route full-service scheduled carrier of persons that is subject to the provisions of this chapter or a service provided by a mass transit district formed under ORS chapter 267;

(c) Is performed by use of vehicles operating in compliance with ORS 820.020 to 820.070; and

(d) Is approved by the Department of Transportation as complying with paragraphs (a) to (c) of this subsection.

(10) Vehicles being used in transporting [*disabled*] persons **with disabilities**, with or without their supervisors or assistants, to or from rehabilitation facilities or child care services if the motor vehicle is a passenger motor vehicle with a seating capacity of not more than 12 passengers. The exemption provided by this subsection applies only when the motor vehicle is operated by or under contract with any person responsible for the administration of rehabilitation facilities as defined in ORS 344.710 to 344.730 or child care services provided by a facility licensed under ORS 657A.030 and 657A.250 to 657A.450.

(11) Vehicles owned or operated by the United States or by any governmental jurisdiction within the United States except when owned or operated as a carrier of property for hire.

(12) Vehicles owned or operated by a mass transit district created under ORS chapter 267.

(13) Vehicles owned or operated by, or under contract with, a person responsible for the construction or reconstruction of a highway under contract with the Department of Transportation or with an agency of the United States when operated within the immediate construction project as described in the governmental agency contract during the construction period.

(14) Vehicles owned or operated by, or under contract with, a charitable organization when exclusively engaged in performing transportation, either one way or round trip, necessary to the op-

eration of the charitable organization. As used in this subsection, "charitable organization" means an organization that has no capital stock and no provision for making dividends or profits, but derives its funds principally from public and private charity and holds them in trust for the promotion of the welfare of others and not for profit. Any organization claiming an exemption under this subsection shall file an affidavit with the department stating that it is organized and operated in accordance with the requirements of this subsection.

(15) Vehicles with a maximum speed that does not exceed 35 miles per hour that are designed for off-road use and that are operated on the public highways in any one calendar year a number of miles that does not exceed 15 percent of the total number of miles the vehicle is operated for that calendar year.

(16) Passenger vehicles with a passenger seating capacity that does not exceed five when used in the transportation of new telephone books.

(17) A vehicle that is used in a limousine service operation in which the destination and route traveled may be controlled by the passenger and the fare is calculated on the basis of any combination of initial fee, distance traveled and waiting time if the vehicle:

- (a) Is a passenger vehicle with a passenger seating capacity that does not exceed eight;
- (b) Carries passengers for hire between points in Oregon; and
- (c) Operates on an irregular route basis.

(18) Fire trucks and rescue vehicles that are designated as emergency vehicles by the Department of Transportation under ORS 801.260, while involved in emergency and related operations.

SECTION 353. Section 9, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 872, Oregon Laws 1991, section 32, chapter 280, Oregon Laws 1995, section 2, chapter 451, Oregon Laws 1995, and section 1, chapter 384, Oregon Laws 1999, is amended to read:

Sec. 9. As used in sections 9 to 14, chapter 290, Oregon Laws 1987, unless the context requires otherwise:

(1) "Adaptive equipment" means equipment that permits a *[disabled]* person **with a disability**, other than a person who is **hard of** hearing or speech impaired, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment or a signal device.

(3) "Assistive telecommunication device" means a device that utilizes a keyboard, acoustic coupler, display screen, Braille display, speakerphone or amplifier to enable **people who are deaf, deaf-blind, severely hard of** hearing *[impaired]* or severely speech impaired *[people]* to communicate effectively on the telephone.

(4) "Audiologist" means a person who has a master's or doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech-Language-Hearing Association.

(5) "Deaf" means a profound hearing loss, as determined by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(6) "Deaf-blind" means a hearing loss and a visual impairment, as determined by a licensed physician and by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that require use of an assistive telecommunication device to communicate effectively on the telephone.

(7) [*Disabled*] "**Disability**" means a physical condition, as determined by a licensed physician or vocational rehabilitation counselor of the Department of Human Services, other than hearing or speech impairment that requires use of adaptive equipment to utilize the telephone.

(8) "Physician" means an applicant's primary care physician or a medical specialist who is able to determine an applicant's disability and to whom the applicant was referred by the primary care physician.

(9) "Recipient" means a person who receives adaptive equipment, an assistive telecommunication device or a signal device.

(10) “Severely **hard of hearing** [*impaired*]” means a hearing loss, as determined by an audiologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(11) “Severely speech impaired” means a speech disability, as determined by a speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(12) “Signal device” means a mechanical device that alerts a **person who is deaf, deaf-blind** or severely **hard of hearing** [*impaired person*] of an incoming telephone call.

(13) “Speech-language pathologist” means a person who has a master’s degree or equivalency in speech-language pathology and a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(14) “Telecommunications relay center” means a facility authorized by the Public Utility Commission to provide telecommunications relay service.

(15) “Telecommunications relay service” means the provision of voice and teletype communication between users of some assistive telecommunication devices and other parties.

SECTION 354. Section 10, chapter 290, Oregon Laws 1987, as amended by section 3, chapter 872, Oregon Laws 1991, and section 2, chapter 384, Oregon Laws 1999, is amended to read:

Sec. 10. It is recognized that a large number of people in this state, through no fault of their own, are unable to utilize telecommunication equipment due to the inability to hear or speak well enough or due to other disabilities. It is also recognized that present technology is available, but at significant cost, that would allow these people to utilize telecommunication equipment in their daily activities. There is, therefore, a need to make **available** such technology in the form of assistive telecommunication devices and a telecommunications relay service [*available to*] **for people who are deaf, severely hard of hearing** [*and*] **or severely** speech impaired [*people*] or adaptive equipment for [*disabled*] people **with disabilities** at no additional cost beyond normal telephone service. The provision of assistive telecommunication devices and a telecommunications relay service or adaptive equipment would allow those formerly unable to use telecommunication systems to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities. The assistive telecommunication devices or adaptive equipment would be provided on a loan basis to each recipient, to be returned if the recipient moves out of the state.

SECTION 355. Section 11, chapter 290, Oregon Laws 1987, as amended by section 4, chapter 872, Oregon Laws 1991, and section 3, chapter 384, Oregon Laws 1999, is amended to read:

Sec. 11. (1) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute assistive telecommunication devices to persons who are deaf, [*or*] severely **hard of hearing**, [*or*] **severely** speech impaired or deaf-blind and establish a dual party relay system making telephone service generally available to persons who are deaf, [*or*] severely **hard of hearing**, [*or*] **severely** speech impaired or deaf-blind.

(2) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute adaptive equipment to make telephone service generally available to persons with physical disabilities.

SECTION 356. Section 12, chapter 290, Oregon Laws 1987, as amended by section 5, chapter 872, Oregon Laws 1991, is amended to read:

Sec. 12. (1) A Telecommunication Devices Access Program Advisory Committee shall be established to advise the Public Utility Commission concerning matters of general development, implementation and administration of the Telecommunication Devices Access Program.

(2) The Telecommunication Devices Access Program Advisory Committee shall include:

(a) Nine consumers including seven who are deaf or **hard of hearing** [*impaired*], one who is speech impaired and one who [*is disabled*] **has a disability**;

(b) One professional in the field of speech impairment, hearing impairment or deafness or disability;

(c) One member of the Public Utility Commission or a designee of the commission; and

(d) One representative from those telephone companies interested in providing telecommunication devices access relay services.

SECTION 357. Section 14, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 115, Oregon Laws 1989, section 7, chapter 872, Oregon Laws 1991, section 33, chapter 280, Oregon Laws 1995, and section 5, chapter 384, Oregon Laws 1999, is amended to read:

Sec. 14. (1)(a) In order to be eligible to receive assistive telecommunication devices or adaptive equipment, individuals must be certified as deaf, severely **hard of** hearing [*impaired*], severely speech impaired or deaf-blind by a licensed physician, audiologist, speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services. Certification implies that the individual cannot use the telephone for expressive or receptive communication.

(b) No more than one assistive telecommunication device or adaptive equipment device shall be provided to a household. However, two assistive telecommunication devices or adaptive equipment devices may be provided to a household if more than one eligible person permanently resides in the household. Households without any assistive telecommunication devices or adaptive equipment shall be given priority over households with one assistive telecommunication device or adaptive equipment device when such devices are distributed.

(c) Nothing in sections 9 to 14, chapter 290, Oregon Laws 1987, shall require a telecommunications utility to provide an assistive telecommunication device to any person in violation of ORS 646.730.

(2)(a) In order to be eligible to receive adaptive equipment, individuals must be certified to have the required disability by a person or agency designated by the Public Utility Commission to make such certifications. Certification implies that the individual is unable to use the telephone.

(b) Nothing in sections 9 to 14, chapter 290, Oregon Laws 1987, shall require a telecommunications utility to provide adaptive equipment to any person in violation of ORS 646.730.

SECTION 358. Section 15, chapter 736, Oregon Laws 2003, as amended by section 3, chapter 757, Oregon Laws 2005, is amended to read:

Sec. 15. As used in sections 15 to 22, chapter 736, Oregon Laws 2003:

(1) "Assessment rate" means the rate established by the Director of Human Services under section 17, chapter 736, Oregon Laws 2003.

(2) "Gross revenue":

(a) Means the revenue paid to a long term care facility for patient care, room, board and services, less contractual adjustments; and

(b) Does not include revenue derived from sources other than operations, including but not limited to interest and guest meals.

(3) "Long term care facility" has the meaning given that term in ORS 442.015, but does not include an intermediate care facility for [*the mentally retarded*] **persons with mental retardation**.

(4) "Patient days" means the total number of patients occupying beds in a long term care facility, determined as of 11:59 p.m. of each day, for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a long term care facility patient is admitted and discharged on the same day, the patient shall be deemed present on 11:59 p.m. of that day.

(5) "Waivered long term care facility" means:

(a) A long term care facility operated by a continuing care retirement community that is registered under ORS 101.030 and that admits:

(A) Residents of the continuing care retirement community; or

(B) Residents of the continuing care retirement community and nonresidents; or

(b) A long term care facility that is annually identified by the Department of Human Services as having a Medicaid recipient census that exceeds the census level established by the department.

SECTION 359. Section 2, chapter 204, Oregon Laws 2005, is amended to read:

Sec. 2. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall adopt rules to prohibit the termination of local exchange residential service if the termination would significantly endanger a customer, or a person in the household of the customer, who is:

- (a) At risk of domestic violence, as defined in ORS 135.230;
- (b) At risk of unwanted sexual contact, as defined in ORS 163.305;
- (c) A person with [*disabilities*] **a disability**, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e);
- (d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e); or
- (e) A victim of stalking, as described in ORS 163.732.

(2) A customer may establish that termination of local exchange residential service would significantly endanger the customer, or a person in the household of the customer, by providing a telecommunications public utility with an affidavit signed by the customer stating that termination would place the customer, or a person in the household of the customer, at significant risk of domestic violence, as defined in ORS 135.230, or of unwanted sexual contact, as defined in ORS 163.305. The customer must attach to the affidavit a copy of an order issued under ORS 30.866, [107.700 to 107.732] **107.700 to 107.735**, 124.005 to 124.040 or 163.738 that restrains another person from contact with the customer, or a person in the household of the customer, or a copy of any other court order that restrains another person from contact with the customer, or a person in the household of the customer, by reason of a risk described in subsection (1) of this section or by reason of stalking.

(3) The commission shall require that each telecommunications public utility establish procedures for submitting and receiving affidavits under subsection (2) of this section.

(4) This section does not apply to termination of any telecommunication service other than local exchange residential service.

(5) A customer submitting an affidavit as provided by subsection (2) of this section is not excused from paying for telecommunication service. Customers are required to enter into a reasonable payment agreement with the telecommunications public utility if an overdue balance exists. Local exchange residential service may be terminated if a customer refuses to enter into or fails to abide by the terms of a reasonable payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not have the technical ability to terminate toll telecommunication service without also terminating local exchange residential service.

Passed by Senate March 5, 2007

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Secretary of Senate

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President of Senate

Passed by House April 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State