

Enrolled Senate Bill 84

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CHAPTER

AN ACT

Relating to correction of erroneous material in Oregon law; creating new provisions; amending ORS 1.560, 3.434, 18.845, 18.896, 25.280, 25.287, 30.908, 35.315, 45.250, 51.080, 59.245, 59.885, 60.121, 82.025, 86.155, 87.242, 87.570, 87.705, 87.930, 90.396, 90.532, 92.405, 94.585, 107.105, 109.252, 116.007, 131.550, 131.602, 132.550, 135.185, 135.921, 137.225, 137.656, 144.102, 144.270, 144.460, 147.450, 147.465, 147.471, 151.211, 153.005, 163.275, 163.730, 164.015, 164.075, 164.085, 164.135, 164.415, 164.805, 169.166, 174.535, 181.010, 181.511, 181.521, 181.530, 182.454, 182.456, 182.460, 190.520, 196.810, 196.855, 196.860, 197.646, 197.732, 198.360, 209.200, 215.213, 215.283, 215.455, 236.350, 238A.400, 243.800, 246.565, 254.470, 260.007, 267.090, 279A.025, 280.070, 283.305, 285C.050, 285C.090, 285C.306, 287.252, 288.160, 289.010, 294.160, 294.725, 294.735, 319.510, 342.144, 348.280, 348.702, 351.086, 351.890, 367.171, 377.727, 390.715, 408.070, 408.225, 409.450, 414.805, 416.422, 416.483, 418.475, 418.992, 419A.047, 419A.250, 419B.090, 420.040, 421.084, 423.010, 426.020, 430.405, 430.695, 431.045, 431.220, 432.510, 438.150, 438.210, 440.335, 441.030, 441.063, 441.084, 442.120, 442.495, 442.830, 443.035, 443.225, 443.437, 446.525, 446.721, 448.123, 448.279, 452.240, 453.520, 455.110, 456.585, 459.311, 460.165, 461.110, 462.150, 465.386, 466.510, 468.110, 468A.160, 468B.555, 469.611, 470.065, 471.810, 475A.005, 479.210, 479.250, 479.630, 480.095, 480.210, 480.215, 480.244, 480.530, 480.540, 480.555, 480.565, 480.580, 480.615, 480.630, 496.275, 507.050, 530.030, 530.040, 530.170, 530.490, 530.628, 543.017, 561.144, 571.057, 578.090, 583.425, 583.518, 607.328, 616.345, 616.385, 616.850, 618.010, 618.066, 622.080, 632.595, 633.015, 633.055, 633.065, 633.077, 633.088, 634.212, 646.605, 646.661, 646.686, 646.691, 650.145, 650.165, 652.420, 653.280, 656.172, 657.078, 657.092, 657.321, 657.331, 657.370, 657.458, 659A.820, 660.010, 660.155, 662.805, 663.150, 670.304, 677.785, 677.805, 677.812, 688.830, 691.405, 701.055, 701.500, 709.030, 709.535, 711.550, 713.045, 716.592, 722.004, 735.430, 735.465, 735.470, 735.740, 742.560, 743.556, 744.001, 744.056, 748.603, 802.250, 810.540, 825.490, 825.494 and 837.990 and ORCP 78 C and 79 E; and repealing ORS 182.451, 632.405, 632.505 and 722.002.

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

SECTION 1. ORS 174.535 is amended to read:

174.535. It is the policy of the Legislative Assembly to revise sections from Oregon Revised Statutes and Oregon law periodically in order to maintain accuracy. However, nothing in chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999,

chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, [or] chapter 22, Oregon Laws 2005, **or this 2007 Act** is intended to alter the legislative intent or purpose of statutory sections affected by chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, [and] chapter 22, Oregon Laws 2005, **and this 2007 Act** except insofar as the amendments thereto, or repeals thereof, specifically require.

NOTE: Sets forth Reviser's Bill policy statement.

SECTION 2. ORS 1.560 is amended to read:

1.560. In any case in which the judge desires the appointment of private counsel, the judge shall so notify the State Court Administrator. The State Court Administrator, under the direction of the Supreme Court, may authorize the judge to employ private counsel under the following circumstances:

(1) [Where] **When** the judge is a defendant in an action, suit or proceeding and there is no other party directly interested in the outcome of the action, suit or proceeding who should fairly bear the cost of representation; [or]

(2) [Where] **When** the judge is a defendant in an action, suit or proceeding and the State Court Administrator concludes that no party interested in the outcome of the action, suit or proceeding will provide adequate representation for the judge; or

(3) In any action, suit or proceeding, [where] **when** the State Court Administrator finds that employing private counsel is necessary to protect the public interest, the integrity of the judicial system, or the interests of the judge in performing duties as a state officer.

NOTE: Removes superfluous conjunction in (1); updates word choice in (1), (2) and (3).

SECTION 3. ORS 3.434 is amended to read:

3.434. (1) No later than January 1, 1999, the presiding judge of each judicial district shall adopt a plan to coordinate the provision of services to families involved in domestic relations or other family court proceedings.

(2) The presiding judge of the judicial district shall establish a local family law advisory committee for the judicial district. The committee will prepare the plan required by subsection (1) of this section. The membership of the local advisory committee must reflect the diversity of the judicial district and must include, in addition to the presiding judge or a judge designated by the presiding judge, the trial court administrator and business, social service, community and government representatives who must be knowledgeable in family and family law issues. In judicial districts composed of more than one county, the presiding judge may establish a local advisory committee in each county or establish one or more committees to serve multiple counties.

(3)(a) At a minimum, the local family law advisory committee shall address the following in the plan:

(A) Mandates for mediation of child custody or parenting time disputes, requiring each party to attend either a group or private mediation orientation session;

(B) Methods of coordinating cases when the same child or family is involved in multiple cases; and

(C) The need for, and provision of, conciliation services, mediation services, child custody evaluations, parent education and visitation services.

(b) The local advisory committee may include other elements in the plan, including but not limited to:

(A) The need for, and provision of, services relating to prevention and early intervention; and

(B) The use of settlement options such as mediation, conciliation, arbitration and settlement conferences.

(c) The local advisory committee shall include in the plan a list of mediators qualified to provide mediation in cases involving spousal support and division of property issues. Once the list is developed, the judicial district shall maintain the list.

(4) The local family law advisory committee shall present the plan to the county governing body of each county within the judicial district and to the presiding judge of the judicial district for their approval. The local advisory committee shall send copies of the plan to the Chief Justice of the [Oregon] Supreme Court and those members of the Oregon House of Representatives and the Oregon Senate who represent the areas within the judicial district.

(5) The local family law advisory committee may assist in implementing, monitoring and revising the plan. The local advisory committee, working in conjunction with legal service providers, may coordinate access to family law resources, including family law facilitation and other services.

NOTE: Corrects official title in (4).

SECTION 4. ORCP 78 C is amended to read:

C Application. Section B of this rule does not apply to an order or judgment for the payment of money, except orders and judgments for the payment of sums ordered pursuant to ORS 107.095 and 107.105 (1)(i), and money for support, maintenance, nurture, education, or attorney fees, in:

C(1) Actions for dissolution or annulment of marriage or separation from bed and board.

C(2) Proceedings upon support orders entered under ORS chapter 108, 109 or 110, or under ORS 416.400 to [416.470] **416.465**, 419B.400 or 419C.590.

NOTE: Corrects series reference in C(2) to reflect repeal of 416.470.

SECTION 5. ORCP 79 E is amended to read:

E Scope of rule.

E(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to [107.732] **107.735** or 124.005 to 124.040.

E(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D of this rule.

E(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

NOTE: Corrects series reference in E(1) to reflect addition of 107.735 to series.

SECTION 6. ORS 18.845 is amended to read:

18.845. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
 - (b) \$170 per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).

- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.
- (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).
- (9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (10) A homestead (house, [*mobile home or houseboat*] **manufactured dwelling or floating home**) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:
 - (a) For a [*mobile home or houseboat*] **manufactured dwelling or floating home** located on land that is not owned by you, \$20,000. If you jointly own the [*mobile home or houseboat*] **manufactured dwelling or floating home** with another person who is also liable on the debt, \$27,000.
 - (b) For a [*mobile home or houseboat*] **manufactured dwelling or floating home** located on land that is owned by you, \$23,000. If you jointly own the [*mobile home or houseboat*] **manufactured dwelling or floating home** with another person who is also liable on the debt, \$30,000.
 - (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.
- (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.
- (12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.
 - *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
 - *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.
 - *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
 - *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
- (18) Provisions and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (20) Public or private pensions.
- (21) Veterans' benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
- (27) Professionally prescribed health aids for you or any of your dependents.
- *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- (29) Your right to receive, or property traceable to:
 - (a) An award under any crime victim reparation law.
 - (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
 - (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(30) Amounts paid to you as an earned income tax credit under federal tax law.

*(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(32) Equitable interests in property.

(33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

(34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

(1) Fill out the Challenge to Garnishment form that you received with this notice.

(2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.

(3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOWING PURPOSES:

(1) To claim such exemptions from garnishment as are permitted by law.

(2) To assert that property is not garnishable property under ORS 18.618.

(3) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed.

YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment.

The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and 18.708.

NOTE: Updates (10) in form to conform to terminology used in judgment statutes. See amendments by chapter 542, Oregon Laws 2005.

SECTION 7. ORS 18.896 is amended to read:

18.896. (1) The challenge to execution form described in this section does not expand or restrict the law relating to exempt property. A determination as to whether property is exempt from attachment or execution must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

(2) A challenge to execution form must be in substantially the following form:

_____ COURT
COUNTY OF _____

_____) CHALLENGE TO
Plaintiff,) EXECUTION
)
vs.) Case No. _____
)
_____)
Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone	Telephone
Number _____	Number _____
(Required)	(Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

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State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

- (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:
 - (a) 75 percent of your take-home wages; or
 - (b) \$170 per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.
- (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).
- (9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, [*mobile home or houseboat*] **manufactured dwelling or floating home**) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a [*mobile home or houseboat*] **manufactured dwelling or floating home** located on land that is not owned by you, \$20,000. If you jointly own the [*mobile home or houseboat*] **manufactured dwelling or floating home** with another person who is also liable on the debt, \$27,000.

(b) For a [*mobile home or houseboat*] **manufactured dwelling or floating home** located on land that is owned by you, \$23,000. If you jointly own the [*mobile home or houseboat*] **manufactured dwelling or floating home** with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

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*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

(20) Public or private pensions.

(21) Veterans' benefits and loans.

(22) Medical assistance benefits.

(23) Health insurance proceeds and disability proceeds of life insurance policies.

(24) Cash surrender value of life insurance policies not payable to your estate.

(25) Federal annuities.

(26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

(27) Professionally prescribed health aids for you or any of your dependents.

*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

*(29) Your right to receive, or property traceable to:

*(a) An award under any crime victim reparation law.

*(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.

*(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(30) Amounts paid to you as an earned income tax credit under federal tax law.

(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(32) Equitable interests in property.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

NOTE: Updates (10) in form to conform to terminology used in judgment statutes. See amendments by chapter 542, Oregon Laws 2005.

SECTION 8. ORS 25.280 is amended to read:

25.280. In any judicial or administrative proceeding for the establishment or modification of a child support obligation under ORS chapters 107, 108, 109 and 416, and ORS chapter 110 or ORS 419B.400, 419B.923, 419C.590 or 419C.610, the amount of support determined by the formula established [pursuant to ORS 25.270 to 25.287] **under ORS 25.275**, 107.105, 416.415, 416.435 and 419B.400 or 419C.590 shall be presumed to be the correct amount of the obligation. This shall be a rebuttable presumption and a written finding or a specific finding on the record that the application of the formula would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption. The following criteria shall be considered in making the finding:

- (1) Evidence of the other available resources of a parent;
- (2) The reasonable necessities of a parent;
- (3) The net income of a parent remaining after withholdings required by law or as a condition of employment;
- (4) A parent's ability to borrow;
- (5) The number and needs of other dependents of a parent;
- (6) The special hardships of a parent including, but not limited to, any medical circumstances of a parent affecting the parent's ability to pay child support;
- (7) The needs of the child;
- (8) The desirability of the custodial parent remaining in the home as a full-time parent and homemaker;
- (9) The tax consequences, if any, to both parents resulting from spousal support awarded and determination of which parent will name the child as a dependent; and
- (10) The financial advantage afforded a parent's household by the income of a spouse or another person with whom the parent lives in a relationship similar to husband and wife.

NOTE: Inserts more specific reference in lead-in.

SECTION 9. ORS 25.287 is amended to read:

25.287. (1)(a) The entity providing support enforcement services under ORS 25.080 may initiate proceedings to modify a support obligation to ensure that the support obligation is in accordance with the formula established under ORS [25.270 to 25.287] **25.275**.

(b) Proceedings under this subsection may occur only after two years have elapsed from the later of the following:

- (A) The date the original support obligation took effect;
- (B) The date any previous modification of the support obligation took effect; or
- (C) The date of any previous review and determination under this subsection that resulted in no modification of the support obligation.

(c) For purposes of paragraph (b) of this subsection, a support obligation or modification takes effect on the first date on which the obligor is to pay the established or modified support amount.

(d) The only issues at proceedings under this subsection are whether two years have elapsed, as described in paragraph (b) of this subsection, and whether the support obligation is in substantial compliance with the formula established under ORS [25.270 to 25.287] **25.275**.

(e) Upon review, if the administrator determines that a support obligation does not qualify for modification under this section, a party may object to the determination within 30 days after the

date of the determination. A hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Appeal of the order of the administrative law judge may be taken to the circuit court of the county in which the support obligation has been entered or registered for a hearing de novo. The appeal to the court shall be by petition for review filed within 60 days after entry of the order of the administrative law judge.

(f) If the court, the administrator or the administrative law judge finds that more than two years have elapsed, as described in paragraph (b) of this subsection, the court, the administrator or the administrative law judge shall modify the support order to bring the support obligation into substantial compliance with the formula established under ORS [25.270 to 25.287] **25.275**, regardless of whether there has been a substantial change in circumstances since the support obligation was last established, modified or reviewed. Proceedings by the administrator or administrative law judge under this subsection shall be conducted according to the provisions of ORS 416.425 and 416.427.

(g) The provisions of this subsection apply to any support obligation established by a support order under ORS chapter 24, 107, 108, 109, 110 or 416 or ORS 419B.400 or 419C.590.

(2) The entity providing support enforcement services shall state in the document initiating the proceeding, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including a proceeding brought under ORS 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the child, other than the support obligation the entity seeks to modify.

(3) The entity providing support enforcement services shall include with the document initiating the proceeding a certificate regarding any pending support proceeding and any existing support order other than the support obligation the entity seeks to modify. The entity providing support enforcement services shall use a certificate that is in a form prescribed by the administrator and shall include information required by the administrator and subsection (2) of this section.

(4) The administrator, court or administrative law judge may use the provisions of subsection (1) of this section when a support order was entered in another state and registered in Oregon, the provisions of ORS chapter 110 apply and more than two years have elapsed as provided in subsection (1)(b) of this section.

(5) Notwithstanding the provisions of this section, proceedings may be initiated at any time to modify a support obligation based upon a substantial change of circumstances under any other provision of law.

(6) The obligee is a party to any action to modify a support obligation under this section.

NOTE: Inserts more specific reference in (1)(a), (d) and (f).

SECTION 10. ORS 30.908 is amended to read:

30.908. (1) Notwithstanding ORS 30.020, a product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component must be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered:

(a) The death or specific injury, disease or damage for which the plaintiff seeks recovery;

(b) The tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant; and

(c) All other elements required to establish plaintiff's claim for relief.

(2) A product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component is not subject to ORS 30.905 or any other statute of repose in Oregon Revised Statutes.

(3) For the purposes of subsection (1) of this section, an action for wrongful death must be commenced not later than two years after the earliest date that the discoveries required by subsection (1) of this section are made by any of the following persons:

(a) The decedent;

- (b) The personal representative for the decedent; or
- (c) Any person for whose benefit the action could be brought.

(4) Subsections (1) to [(4)] (3) of this section do not apply to a person that supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component, and the person shall remain subject to the limitations on actions imposed by ORS 30.020 and 30.905, if:

(a) The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and

(b) The person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time.

(5) A physician licensed pursuant to ORS chapter 677 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the physician to a patient as part of a medical implant procedure.

(6) A health care facility licensed under ORS chapter 442 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the facility to a patient as part of a medical implant procedure.

NOTE: Narrows internal reference in (4) to applicable subsections.

SECTION 11. ORS 35.315 is amended to read:

35.315. If motion is made by either party before the formation of the jury, the court shall order a view of the property in question[; *and*,]. Upon the return of the jury, the evidence of the parties may be heard and the verdict of the jury given.

NOTE: Conforms punctuation to legislative style.

SECTION 12. ORS 45.250 is amended to read:

45.250. (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association [which] that is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead; [or]

(b) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; [or]

(c) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; [or]

(d) Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(e) The deposition was taken in the same proceeding pursuant to ORCP 39 I.

(3) For the purpose of subsection (2)(c) of this section, the failure of a party to serve a witness at the time of deposition with a subpoena that requires the appearance of the witness at trial or other hearing does not constitute sufficient grounds to deny the use of the deposition of that witness at the trial or other hearing without further showing of a lack of diligence on the part of the party offering the deposition.

NOTE: Corrects word choice in (1)(a) and (b); removes superfluous conjunctions in (2).

SECTION 13. ORS 51.080 is amended to read:

51.080. (1) A justice court has jurisdiction, but not exclusive, of the following actions:

[(1)] (a) For the recovery of money or damages only, when the amount claimed does not exceed \$5,000.

[(2)] (b) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$5,000.

[(3)] (c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$5,000.

[(4)] (d) [*Also,*] To give judgment without action, upon the confession of the defendant for any of the causes specified in this section, except for a penalty or forfeiture imposed by statute.

[(5)] (2) For purposes of this section, the amount claimed, value of property, damages or any amount in controversy does not include any amount claimed as costs and disbursements or attorney fees as defined by ORCP 68 A.

NOTE: Reorganizes section to correct read-in problem; deletes superfluous language in (1)(d).

SECTION 14. ORS 59.245 is amended to read:

59.245. The Director of the Department of Consumer and Business Services:

(1) May make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated or is about to violate any provision of the Oregon Securities Law or any rule or order of the director, or to aid in the enforcement of the Oregon Securities Law or in the formulation of rules and forms thereunder;

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation of the Oregon Securities Law or any rule or order of the director; and

(4) If the director has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, [*the director*] may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation.

NOTE: Corrects read-in problem in (4).

SECTION 15. ORS 59.885 is amended to read:

59.885. The Director of the Department of Consumer and Business Services:

(1) May make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated any provision of ORS 59.840 to 59.980 or any rule or order of the director, or to aid in the enforcement of ORS 59.840 to 59.980 or in the formulation of rules and forms thereunder;

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation under this section or ORS 59.890, 59.992 or 59.996 or any rule or order of the director after an action taken under this section or ORS 59.890, 59.992 or 59.996; and

(4) If the director has reasonable cause to believe that any person has been engaged, is engaging or is about to engage in any violation of any provision of ORS 59.840 to 59.980, [*the director*] may issue an order, subject to ORS 59.905, directed to the person, and to any other person directly or indirectly controlling the person, to cease and desist from the violation or threatened violation.

NOTE: Corrects read-in problem in (4).

SECTION 16. ORS 60.121 is amended to read:

60.121. (1) The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) The Secretary of State shall be an agent of a corporation including a dissolved corporation upon whom any such process, notice or demand may be served whenever the corporation fails to

appoint or maintain a registered agent in this state or whenever the corporation's registered agent cannot with reasonable diligence be found at the registered office.

(3) Service shall be made on the Secretary of State by:

(a) Serving the Secretary of State or a clerk on duty at the office a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, and the required fee for each party being served or by mailing to the office a copy of the process, notice or demand and the required fee for each party being served by certified or registered mail;

(b) Transmittal by the person instituting the proceedings of notice of the service on the Secretary of State and copy of the process, notice or demand and accompanying papers to the corporation being served by certified or registered mail:

(A) At the last registered office of the corporation as shown by the records on file in the office of the Secretary of State[,]; and

(B) At such address the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(c) Filing with the appropriate court or other body, as part of the return of service, the return receipt of mailing and an affidavit of the person initiating the proceedings stating that this section has been complied with.

(4) The Secretary of State shall keep a record of all processes, notices and demands served upon the Secretary of State under this section.

(5) After completion of initial service upon the Secretary of State, no additional documents need be served upon the Secretary of State to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law, or enlarge the purposes for which service on the Secretary of State is permitted where such purposes are limited by other provisions of law.

NOTE: Conforms punctuation in (3)(b)(A) to legislative style.

SECTION 17. ORS 82.025 is amended to read:

82.025. ORS 82.010 (3) and (4) and 82.020 do not apply to:

(1) Any financial institution or trust company, as those terms are defined in ORS 706.008, any consumer finance licensee under ORS chapter 725[,], or any pawnbroker licensed under ORS chapter 726.

(2) Any lender approved by the Secretary of Housing and Urban Development of the United States for participation in any mortgage insurance program under the National Housing Act (12 U.S.C. 1701 et seq.).

(3) Any loan secured by a first lien on real property or made to finance the acquisition of real property and secured by any lien on that property.

(4) Any loan [*which*] **that** is secured by real property, [*which is*] scheduled under the loan agreement to be repaid in substantially equal payments and [*which is*] made by a lender described in this subsection. A lender under this subsection is one who makes, invests in or arranges real property loans, including loans secured by first liens on residential manufactured homes, aggregating more than \$1 million per year. Under this subsection, payments shall be ["substantially equal"] if, under the terms of the loan agreement, no single scheduled payment is more than twice the amount of any other scheduled payment.

(5) Any loan wholly or partially secured or covered by guarantees or insurance by the Federal Housing Administration, the United States Department of Veterans Affairs or [*the Farmers Home Administration of the United States*] **Rural Development or the Farm Service Agency of the United States Department of Agriculture**, any department, bureau, board, commission or agency of the United States, or any corporation wholly owned, directly or indirectly by the United States.

(6) Any loan permitted under applicable federal law and regulations from a tax qualified retirement plan to a person then a participant under the plan.

(7) Any bona fide sale or resale of securities or commercial paper.

(8) Any interest charge by broker-dealers registered under the Securities Exchange Act of 1934 for carrying a debit balance in an account for a customer if the debit balance is payable on demand and secured by stocks or bonds.

NOTE: Strikes serial comma in (1); corrects word choice and eliminates unnecessary punctuation in (4); updates reference to federal agency in (5) to reflect reorganization within the United States Department of Agriculture.

SECTION 18. ORS 86.155 is amended to read:

86.155. (1) As used in this section:

(a) "Credit agreement" means any promissory note, loan agreement or other agreement [*which*] **that** provides for advances subsequent to the date of recording of the line of credit instrument [*which*] **that** secures [*such*] **the** note or agreement.

(b) "Line of credit instrument" means a mortgage or trust deed [*which*] **that** secures a consumer or commercial credit agreement and creates a lien on specified real property up to a stated amount, provided that the front page of the mortgage or trust deed, or a memorandum thereof:

(A) Contains the legend "line of credit mortgage," "line of credit trust deed" or "line of credit instrument" either in capital letters or underscored above the body of the mortgage or trust deed;

(B) States the maximum principal amount to be advanced pursuant to the credit agreement; and

(C) States the term or maturity date, if any, of the credit agreement exclusive of any option to renew or extend [*such*] **the** term [*of*] **or** maturity date.

(c) "Residential line of credit instrument" means any line of credit instrument creating a lien on real property upon which are situated or will be constructed four or fewer residential units, one of which, at the time the credit agreement is entered into, is the borrower's residence or is intended, following construction, to be a residence of the borrower.

(2) A line of credit instrument shall have priority, regardless of the knowledge of the lienholder of any intervening lien, as of its date of recording as to the following advances whether [*such*] **the** advances are optional or obligatory advances:

(a) Principal advances made any time pursuant to the credit agreement, to the extent the total outstanding advances do not exceed the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section;

(b) Interest, lawful charges and advances made any time pursuant to the credit agreement for the reasonable protection of the real property including, but not limited to, advances to pay real property taxes, hazard insurance premiums, maintenance charges imposed under a declaration or restrictive covenant and reasonable attorney fees, whether or not [*such*] **the** interest, lawful charges or advances [*shall exceed*] **exceed** the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section; and

(c) Advances made any time after the date of recording and pursuant to a credit agreement that is not secured by a residential line of credit instrument to complete construction of previously agreed-upon improvements on the real property, whether or not [*such*] **the** advances exceed the maximum principal amount stated in the line of credit instrument under subsection (1)(b)(B) of this section provided, however, that the front page of the instrument states that the maximum principal amount to be advanced pursuant to the credit agreement may be exceeded by advances to complete construction pursuant to this subsection.

(3) Actions that do not affect the priority granted to the advances set forth in subsection (2) of this section shall include, but not be limited to, those actions set forth in ORS 86.095 (1). If any modification to a credit agreement increases the maximum principal amount to be advanced pursuant to the credit agreement, then principal advances that are made that exceed the original maximum principal amount stated in the line of credit instrument shall have priority as of the date of recording an amendment to the line of credit instrument that states the increased maximum principal amount.

(4) In the case of a residential line of credit instrument, the debtor may limit the indebtedness secured by that line of credit instrument to the amount of the credit outstanding by delivering a notice by personal service upon the lienholder or trust deed beneficiary or by mailing a notice by

certified mail, return receipt requested, to the lienholder or trust deed beneficiary at the address given for payment or, if none, to the address of the lienholder or trust deed beneficiary indicated in the line of credit instrument or deed of trust. To be sufficient to limit indebtedness under this subsection, the notice must:

- (a) State that it is made under this section;
 - (b) Contain the legal description in the line of credit instrument or the street address of the real property;
 - (c) Provide the information necessary to locate the line of credit instrument in the public record;
 - (d) State the debtor's intention to limit the amount of credit secured by the line of credit instrument to the amount owed at the time the notice is received;
 - (e) State the date sent; and
 - (f) Be signed and acknowledged by all debtors obligated under the line of credit instrument.
- (5) Not later than the 20th day after receipt of the notice described in subsection (4) of this section, the lienholder or trust deed beneficiary shall:
- (a) Indorse on the notice, or on an addendum to the notice, the principal amount of the indebtedness secured by the line of credit instrument on the date the lienholder or trust deed beneficiary received notice;
 - (b) Sign and acknowledge the notice or the addendum, if applicable; and
 - (c) Record the notice and addendum in the public record where the line of credit instrument was originally recorded.
- (6) If the lienholder or trust deed beneficiary fails to record the notice and addendum, if applicable, within the time period specified in subsection (5) of this section, the debtor may record the notice in the public record where the line of credit instrument was originally recorded, together with proof of receipt by, or personal delivery to, the lienholder or trust deed beneficiary.

(7) Notwithstanding subsection (4) of this section, the line of credit instrument shall continue to have priority as of its date of recording as to:

- (a) Principal advances, including any advance the creditor is required to honor, that were made before a notice under subsection (4) of this section is received;
- (b) Interest, lawful charges and advances described in subsection (2)(b) and (c) of this section; and
- (c) All advances made after a notice under subsection (4) of this section is received [*which*] **that** are within the amount owed at the time the notice under subsection (4) of this section is given.

NOTE: Corrects and updates word choice in (1)(a), (1)(b) lead-in, (1)(b)(C), (2) lead-in, (2)(b), (2)(c) and (7)(c).

SECTION 19. ORS 87.242 is amended to read:

87.242. (1) A person claiming a lien created by ORS 87.216, 87.222 or 87.232 shall file a written notice of claim of lien with the recording officer of the county in which the lien debtor resides, or, if the lien debtor is a business, the county in which the lien debtor has its principal place of business, not later than 60 days after the close of the furnishing of the labor, services or materials. A person claiming a lien created by ORS 87.226 shall file a written notice of claim of lien with the Secretary of State not later than 75 days after the close of the furnishing of the labor, services or materials. The Secretary of State shall include a notice of claim of lien that is filed with the secretary under this subsection in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(2) The notice of claim of lien required under subsection (1) of this section shall be a statement in writing verified by the oath of the lien claimant and must contain:

- (a) A true statement of the lien claimant's demand after deducting all credits and offsets;
- (b) The name of the owner of the chattel to be charged with the lien;
- (c) A description of the labor, services or materials provided by the lien claimant for the benefit of the owner of the chattel to be charged with the lien;
- (d) A description of the chattel to be charged with the lien sufficient for identification;

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

(f) The date on which payment was due to the lien claimant for labor, services or materials;

(g) The terms of extended payment; and

(h) Such other information as the Secretary of State may require for the written notice of claim of lien created by ORS 87.226.

(3) If the person entitled to a lien under ORS 87.216 to 87.232 does not properly file a notice of claim of lien within the time required by subsection (1) of this section, the person waives the right to the lien.

NOTE: Supplies missing comma in (2)(c).

SECTION 20. ORS 87.570 is amended to read:

87.570. The form of the notice required by ORS 87.565 shall be substantially as follows:

Notice is hereby given that _____ has rendered hospitalization services or medical treatment for _____, a person who was injured on the ____ day of _____ in the city of _____, county of _____, State of _____, on or about the ____ day of _____, and the _____ (name of claimant) hereby claims a lien upon any money due or owing or any claim for compensation, damages, contribution, settlement, award or judgment from any person alleged to have caused [said] **the** injuries and any other person liable for the injury or obligated to compensate the injured person on account of [said] **the** injuries. The lien applies to any person or insurer that provides for payment for hospitalization services or medical treatment rendered to the injured person, including an insurer that provides personal injury protection coverage or similar no-fault medical insurance. The hospitalization services or medical treatment was rendered to the injured person between the _____ day of _____ and the ____ day of _____.

STATEMENT OF AMOUNT DUE

[_____]

[_____]

[_____]

Thirty days have not elapsed since that time. The claimant's demand for [said] hospitalization services or medical treatment is in the sum of \$_____ and no part thereof has been paid, except \$_____, and there is now due and owing and remaining unpaid thereof, after deducting all credits and offsets the sum of \$_____, in which amount lien is hereby claimed.

_____, Claimant.

State of Oregon,)

) ss.

County of _____)

I, _____, being first duly sworn on oath say: That I am _____ named in the foregoing claim of lien; that I have read the same and know the contents thereof and believe the same to be true.

Subscribed and sworn to before me this ____ day of _____, 2_____.

_____, Notary Public.

NOTE: Removes archaic language and extraneous lines from form.

SECTION 21. ORS 87.705 is amended to read:

87.705. (1) An agricultural producer that delivers or transfers agricultural produce for consideration to a purchaser has a lien for the contract price of that produce, or for the reasonable value of the produce if there is no contract price. The lien created by this section attaches to all agricultural produce, whether in a raw or processed condition, delivered or transferred to the purchaser by any agricultural producer and to all other inventory of the purchaser. The lien also attaches to proceeds received by the purchaser from the sale by the purchaser to a third party of any raw or processed agricultural produce. If the agricultural produce that an agricultural producer delivers to the purchaser consists of meat animals, the lien also attaches to all accounts receivable by the purchaser from the sale of any agricultural produce to a third party. The lien on the agricultural produce, inventory, proceeds or accounts receivable attaches on the date physical possession of the agricultural produce is delivered or transferred by the agricultural producer to the purchaser or an agent of the purchaser.

(2) An agricultural producer that claims a lien under subsection (1) of this section need not file any notice in order to perfect the lien. The agricultural producer must file a notice of lien as provided in ORS 87.710 to extend the lien beyond the normal expiration date.

(3) The lien created by this section is subject to the provisions of ORS [79.3070 (1)] **79.0320 (1)**.

(4) An agreement by an agricultural producer purporting to waive the right to file notice under ORS 87.710 of a lien created by this section is void as contrary to public policy.

NOTE: Replaces reference to repealed statute in (3) with comparable active statute.

SECTION 22. ORS 87.930 is amended to read:

87.930. If the Secretary of State receives notice of a lien created under ORS 87.226, 87.705 or 87.755, the Secretary of State, upon request, shall furnish the person who filed the lien with a list of persons who have filed a financing statement under ORS [79.4010] **79.0501** that perfects a security interest in the inventory, proceeds or accounts receivable of the lien debtor or purchaser. The list must include:

(1) The name and address of the secured party for each statement or notice;

(2) The filing number and date of filing for the financing statement in the index maintained by the Secretary of State; and

(3) Other information that the Secretary of State considers necessary or proper.

NOTE: Replaces reference to repealed statute in lead-in with comparable active statute.

SECTION 23. ORS 90.396 is amended to read:

90.396. (1) Except as provided in subsection (2) of this section, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, the landlord may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict substantial personal injury, or inflicts any substantial personal injury, upon a person on the premises other than the tenant;

(b) The tenant or someone in the tenant's control recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;

(c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises;

(d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(e)(A) The tenant intentionally provided substantial false information on the application for the tenancy within the past year;

(B) The false information was with regard to a criminal conviction of the tenant that would have been material to the landlord's acceptance of the application; and

(C) The landlord terminates the rental agreement within 30 days after discovering the falsity of the information; or

(f) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. For purposes of this paragraph, an act is outrageous in the extreme if the act is not described in paragraphs (a) to (e) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours, considering the seriousness of the act or the risk to others. An act that is outrageous in the extreme is more extreme or serious than an act that warrants a 30-day termination under ORS 90.392. Acts that are "outrageous in the extreme" include, but are not limited to, the following acts by a person:

(A) Prostitution or promotion of prostitution, as described in ORS 167.007 and 167.012;

(B) Manufacture, delivery or possession of a controlled substance, as described in ORS 475.005, but not including:

(i) The medical use of marijuana in compliance with ORS 475.300 to 475.346;

(ii) Possession of, or delivery for no consideration of, less than one avoirdupois ounce of marijuana as described in ORS [475.840 (2)(b) or (4)(f)] **475.860 (3) or 475.864 (3)**; or

(iii) Possession of prescription drugs;

(C) Intimidation, as described in ORS 166.155 and 166.165; or

(D) Burglary as described in ORS 164.215 and 164.225.

(2) If the cause for a termination notice given pursuant to subsection (1) of this section is based upon the acts of the tenant's pet, the tenant may cure the cause and avoid termination of the tenancy by removing the pet from the premises prior to the end of the notice period. The notice must describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at least 24 hours' written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this subsequent violation.

(3) For purposes of subsection (1) of this section, someone is in the tenant's control if that person enters or remains on the premises with the tenant's permission or consent after the tenant reasonably knows or should know of that person's act or likelihood to commit any act of the type described in subsection (1) of this section.

(4) An act can be proven to be outrageous in the extreme even if the act is one that does not violate a criminal statute. Notwithstanding the references to criminal statutes in subsection (1)(f) of this section, the landlord's burden of proof in an action for possession under subsection (1) of this section is the civil standard of proof by a preponderance of the evidence.

(5) If a good faith effort by a landlord to terminate the tenancy under subsection (1)(f) of this section and to recover possession of the rental unit under ORS 105.105 to 105.168 fails by decision of the court, the landlord may not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

NOTE: Replaces references to deleted subsections in (1)(f)(B)(ii) with comparable active law.

SECTION 24. ORS 90.532 is amended to read:

90.532. (1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:

(a) A relationship between the tenant and the utility or service provider in which:

(A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and

(B) The landlord does not act as a provider.

(b) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and

(C) The landlord includes the cost of the utility or service in the tenant's rent or bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning the provider's charge to the landlord as measured by a master meter.

(c) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space; and

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

(2) To assess a tenant for a utility or service charge for any billing period, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that the tenant is to pay the landlord[,] and the due date for making the payment. The due date may not be less than 14 days from the date of service of the notice.

(3) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS [90.400] **90.394**, but is grounds for termination of a rental agreement for cause under ORS 90.630.

(4) The landlord is responsible for maintaining the utility or service system, including any submeter, consistent with ORS 90.730. After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.

(5) A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:

(a) Public utility as defined in ORS 757.005;

(b) Municipal utility operating under ORS chapter 225;

(c) People's utility district organized under ORS chapter 261;

(d) Cooperative organized under ORS chapter 62;

(e) Domestic water supply district organized under ORS chapter 264; or

(f) Water improvement district organized under ORS chapter 552.

(6) A landlord who provides utilities or services only to tenants of the landlord in compliance with this section and ORS 90.534 and 90.536 is not a public utility for purposes of ORS chapter 757.

NOTE: Strikes errant comma in (2); replaces reference to repealed statute in (3) with comparable active statute.

SECTION 25. ORS 92.405 is amended to read:

92.405. (1) Unless the making of a public report has been waived, a person may not sell or lease a lot, parcel or interest in a subdivision or series partition prior to the issuance of the report.

(2) A copy of the public report, when issued, must be given to the prospective purchaser by the subdivider, series partitioner or developer, or [their agents] **an agent of the subdivider, series partitioner or developer**, prior to the execution of a binding contract or agreement for the sale or lease of a lot, parcel[,] or interest in a subdivision or series partition. The subdivider, series partitioner or developer, or [their agents] **an agent of the subdivider, series partitioner or developer**, shall take a receipt from the prospective purchaser or lessee upon delivery of a copy of the Real Estate Commissioner's public report[, and]. The receipt must be kept on file within this state in the possession of the subdivider, series partitioner or developer subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report may not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of the public report for the use of subdividers, series partitioners and developers.

(5) The requirements of this section extend to lots, parcels or other interests sold by the subdivider, series partitioner or developer after repossession.

(6) In addition to other sanctions provided by law, a violation of subsection (1), (2) or (3) of this section is an unlawful practice subject to ORS 646.608.

NOTE: Corrects grammar, strikes serial comma and truncates lengthy sentence in (2).

SECTION 26. ORS 94.585 is amended to read:

94.585. A declarant may amend the declaration or initial bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, [*the Farmer's Home Administration of the United States*] **Rural Development or the Farm Service Agency of the United States Department of Agriculture**, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home **Loan** Mortgage [*Loan*] Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon [*which*] **that** insures, guarantees or provides financing for a planned community or lots in a planned community. However, if the need to amend the declaration or the initial bylaws occurs after the turnover to the homeowners association has occurred, the amendment must be approved by the association in accordance with the approval provisions of the declaration or bylaws.

NOTE: Corrects names of federal agencies and word choice.

SECTION 27. ORS 107.105 is amended to read:

107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment:

(a) For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during the marriage[,] and for minor children born to the parties prior to the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a hearing to decide the custody issue prior to any other issues. When appropriate, the court shall recognize the value of close contact with both parents and encourage joint parental custody and joint responsibility for the welfare of the children.

(b) For parenting time rights of the parent not having custody of such children[,] and for visitation rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of the parents requests the court to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality parenting time and [*assuring*] **ensuring** the safety of the parties, if implicated. The court may deny parenting time to the noncustodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties. If the court awards parenting time to a noncustodial parent who has committed abuse, the court shall make adequate provision for the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

(c) For the support of the children of the marriage by the parties. In ordering child support, the formula established [*by ORS 25.270 to 25.287*] **under ORS 25.275** shall apply. The court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support. The court is not required to order support for any minor child who has become self-supporting, emancipated or married[,] or who has ceased to attend school after becoming 18 years of age.

(d) For spousal support, an amount of money for a period of time as may be just and equitable for one party to contribute to the other, in gross or in installments or both. The court may approve an agreement for the entry of an order for the support of a party. In making the spousal support

order, the court shall designate one or more categories of spousal support and shall make findings of the relevant factors in the decision. The court may order:

(A) Transitional spousal support as needed for a party to attain education and training necessary to allow the party to prepare for reentry into the job market or for advancement therein. The factors to be considered by the court in awarding transitional spousal support include but are not limited to:

- (i) The duration of the marriage;
- (ii) A party's training and employment skills;
- (iii) A party's work experience;
- (iv) The financial needs and resources of each party;
- (v) The tax consequences to each party;
- (vi) A party's custodial and child support responsibilities; and
- (vii) Any other factors the court deems just and equitable.

(B) Compensatory spousal support when there has been a significant financial or other contribution by one party to the education, training, vocational skills, career or earning capacity of the other party and when an order for compensatory spousal support is otherwise just and equitable in all of the circumstances. The factors to be considered by the court in awarding compensatory spousal support include but are not limited to:

- (i) The amount, duration and nature of the contribution;
- (ii) The duration of the marriage;
- (iii) The relative earning capacity of the parties;
- (iv) The extent to which the marital estate has already benefited from the contribution;
- (v) The tax consequences to each party; and
- (vi) Any other factors the court deems just and equitable.

(C) Spousal maintenance as a contribution by one spouse to the support of the other for either a specified or an indefinite period. The factors to be considered by the court in awarding spousal maintenance include but are not limited to:

- (i) The duration of the marriage;
- (ii) The age of the parties;
- (iii) The health of the parties, including their physical, mental and emotional condition;
- (iv) The standard of living established during the marriage;
- (v) The relative income and earning capacity of the parties, recognizing that the wage earner's continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property;
- (vi) A party's training and employment skills;
- (vii) A party's work experience;
- (viii) The financial needs and resources of each party;
- (ix) The tax consequences to each party;
- (x) A party's custodial and child support responsibilities; and
- (xi) Any other factors the court deems just and equitable.

(e) For the delivery to one party of such party's personal property in the possession or control of the other at the time of the giving of the judgment.

(f) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. A retirement plan or pension or an interest therein shall be considered as property. The court shall consider the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets. There is a rebuttable presumption that both spouses have contributed equally to the acquisition of property during the marriage, whether such property is jointly or separately held. Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of coownership, and a transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require

full disclosure of all assets by the parties in arriving at a just property division. In arriving at a just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal support in lieu of a share of property, the court shall so state on the record[,] and shall order the obligor to provide for and maintain life insurance in an amount commensurate with the obligation and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior to the termination of such support and such insurance is not in force, the court may modify the method of payment of spousal support under the judgment or order of support from installments to a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with the present value of the spousal support at the time of death. The obligee or attorney of the obligee shall cause a certified copy of the judgment to be delivered to the life insurance company or companies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy.

(g) For the creation of trusts as follows:

(A) For the appointment of one or more trustees to hold, control and manage for the benefit of the children of the parties, of the marriage or otherwise[,] such of the real or personal property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare, [;] and to collect, receive, expend, manage or invest any sum of money awarded for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) For the establishment of the terms of the trust and provisions for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court may make and direct reasonable modifications in its terms.

(h) To change the name of either spouse to a name the spouse held before the marriage. The court shall order a change if it is requested by the affected party.

(i) For a money award for any sums of money found to be then remaining unpaid upon any order or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the limited judgment unless those amounts are included in the money award made by the general judgment.

(j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the action in favor of a party or in favor of a party's attorney.

(2) In determining the proper amount of support and the proper division of property under subsection (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences on the parties of its proposed judgment.

(3) Upon the filing of the judgment, the property division ordered shall be deemed effective for all purposes. This transfer by judgment, which shall [*effect*] **affect** solely owned property transferred to the other spouse as well as commonly owned property in the same manner as would a declaration of a resulting trust in favor of the spouse to whom the property is awarded, [*shall not be deemed*] **is not** a taxable sale or exchange.

(4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separation or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court rendering the judgment may provide in a supplemental judgment for any relief provided for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only during the pendency of the appeal. A supplemental judgment under this subsection may be enforced as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this subsection may be appealed in the same manner as provided for supplemental judgments modifying a domestic relations judgment under ORS 19.275.

(5) If an appeal is taken from the judgment or other appealable order in a suit for annulment or dissolution of a marriage or for separation[,] and the appellate court awards costs and disbursements to a party, [it] **the court** may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of the judgment, showing among other things that the original parties to the judgment and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS 105.405[,] for the partition of real property, and the court granting the judgment shall have in the first instance and retain jurisdiction in equity therefor.

NOTE: Strikes errant commas in (1)(a), (b), (c) and (6); corrects word choice in (1)(b); inserts more specific reference in (1)(c); corrects and updates punctuation in (1)(g)(A); updates word choice in (3); strikes errant comma and clarifies pronoun in (5).

SECTION 28. ORS 109.252 is amended to read:

109.252. (1) Unless the court or administrator finds good cause not to proceed in a proceeding under ORS 109.125 to 109.230 and 416.400 to 416.465, in which paternity is a relevant fact, the court or administrator, as defined in ORS 25.010, upon [his or her] **the court's or administrator's** own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly[,] shall, order the mother, child, alleged father and any other named respondent who may be the father to submit to blood tests. If any person refuses to submit to such tests, the court or administrator may resolve the question of paternity against such person or enforce [its] **the court's or administrator's** order if the rights of others and the interests of justice so require.

(2) When child support enforcement services are being provided under ORS 25.080, the Child Support Program shall pay any costs for blood tests subject to recovery from the party who requested the tests. If the original test result is contested prior to the entry of an order establishing paternity, the court or administrator shall order additional testing upon request and advance payment by the party making the request.

NOTE: Conforms terminology in (1) to legislative style; corrects comma placement in (1).

SECTION 29. ORS 116.007 is amended to read:

116.007. (1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives[,] and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS chapter 129 and this section and distributed as follows:

(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration.

(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in section 2056 of the Internal Revenue Code (26 U.S.C. 2056), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.

NOTE: Corrects punctuation in (1) to clarify placement of “court costs” within sentence.

SECTION 30. ORS 131.550 is amended to read:

131.550. As used in ORS 131.550 to 131.600:

(1) “Acquiesce in prohibited conduct” means that a person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid the use of the property in the course of prohibited conduct. For purposes of this subsection, “reasonable action under the circumstances” includes, but is not limited to:

- (a) Reporting the prohibited conduct to a law enforcement agency;
- (b) Commencing action that will assert the rights of the affiant as to the property interest;
- (c) Terminating a rental agreement; or

(d) Seeking an abatement order under the provisions of ORS 105.505 to 105.520 or 105.550 to 105.600[,] or under any ordinance or regulation allowing abatement of nuisances.

(2) “All persons known to have an interest” means:

(a) Any person who has, prior to the time the property is seized for criminal forfeiture, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property that has been seized for criminal forfeiture;

(b) Any person from whose custody the property was seized; or

(c) Any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.

(3) “Attorney fees” has the meaning given that term in ORCP 68 A.

(4) “Financial institution” means any person lawfully conducting business as:

(a) A financial institution or trust company, as those terms are defined in ORS 706.008;

(b) A consumer finance company subject to the provisions of ORS chapter 725;

(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage servicing company or other mortgage company;

(d) An officer, agency, department or instrumentality of the federal government, including but not limited to:

(A) The Secretary of Housing and Urban Development;

(B) The Federal Housing Administration;

(C) The United States Department of Veterans Affairs;

[*(D) The Farmers Home Administration;*]

(D) Rural Development and the Farm Service Agency of the United States Department of Agriculture;

(E) The Federal National Mortgage Association;

(F) The Government National Mortgage Association;

(G) The Federal Home Loan Mortgage [*Association*] **Corporation;**

- (H) The Federal Agricultural Mortgage Corporation; and
 - (I) The Small Business Administration;
 - (e) An agency, department or instrumentality of this state, including but not limited to:
 - (A) The Housing and Community Services Department;
 - (B) The Department of Veterans' Affairs; and
 - (C) The Public Employees Retirement System;
 - (f) An agency, department or instrumentality of any municipality in this state, including but not limited to such agencies as the Portland Development Commission;
 - (g) An insurer as defined in ORS 731.106;
 - (h) A private mortgage insurance company;
 - (i) A pension plan or fund or other retirement plan; and
 - (j) A broker-dealer or investment adviser representative as defined in ORS 59.015.
- (5) "Forfeiture counsel" means an attorney designated to represent a seizing agency in criminal forfeiture actions or proceedings.
- (6) "Instrumentality" means property that is used or intended for use in prohibited conduct or that facilitates prohibited conduct.
- (7) "Law enforcement agency" means any agency that employs police officers or prosecutes criminal cases.
- (8) "Official law enforcement use" means a use that may reasonably be expected to result in the identification, apprehension or conviction of criminal offenders.
- (9) "Police officer" has the meaning given that term in ORS 133.525.
- (10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, maintained by or realized through an act or omission that constitutes prohibited conduct, and includes any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.
- (11) "Prohibited conduct" means:
- (a) For purposes of proceeds, a felony or a Class A misdemeanor.
 - (b) For purposes of instrumentalities, any crime listed in ORS 131.602.
- (12) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.
- (13) "Seizing agency" means a law enforcement agency that has seized property for criminal forfeiture.
- (14) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, to destroy, defeat or injure a person.

NOTE: Strikes errant comma in (1)(d); corrects names of federal agencies in (4)(d).

SECTION 31. ORS 131.602 is amended to read:

131.602. The crimes to which ORS 131.550 (11)(b) applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Custodial interference in the second degree, as defined in ORS 163.245.
- (9) Custodial interference in the first degree, as defined in ORS 163.257.
- (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

(15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.

(16) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.

(17) Theft in the second degree, as defined in ORS 164.045.

(18) Theft in the first degree, as defined in ORS 164.055.

(19) Aggravated theft in the first degree, as defined in ORS 164.057.

(20) Theft by extortion, as defined in ORS 164.075.

(21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.

(22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.

(23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.

(24) Unauthorized use of a vehicle, as defined in ORS 164.135.

(25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

(26) Laundering a monetary instrument, as defined in ORS 164.170.

(27) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.

(28) Burglary in the second degree, as defined in ORS 164.215.

(29) Burglary in the first degree, as defined in ORS 164.225.

(30) Possession of a burglary tool or theft device, as defined in ORS 164.235.

(31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.

(32) Arson in the second degree, as defined in ORS 164.315.

(33) Arson in the first degree, as defined in ORS 164.325.

(34) Computer crime, as defined in ORS 164.377.

(35) Robbery in the third degree, as defined in ORS 164.395.

(36) Robbery in the second degree, as defined in ORS 164.405.

(37) Robbery in the first degree, as defined in ORS 164.415.

(38) Unlawful labeling of a sound recording, as defined in ORS 164.868.

(39) Unlawful recording of a live performance, as defined in ORS 164.869.

(40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.

(41) A violation of ORS 164.877.

(42) Endangering aircraft, as defined in ORS 164.885.

(43) Interference with agricultural operations, as defined in ORS 164.887.

(44) Forgery in the second degree, as defined in ORS 165.007.

(45) Forgery in the first degree, as defined in ORS 165.013.

(46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.

(47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.

(48) Criminal possession of a forgery device, as defined in ORS 165.032.

(49) Criminal simulation, as defined in ORS 165.037.

(50) Fraudulently obtaining a signature, as defined in ORS 165.042.

(51) Fraudulent use of a credit card, as defined in ORS 165.055.

(52) Negotiating a bad check, as defined in ORS 165.065.

(53) Possessing a fraudulent communications device, as defined in ORS 165.070.

(54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.

(55) Falsifying business records, as defined in ORS 165.080.

(56) Sports bribery, as defined in ORS 165.085.

(57) Sports bribe receiving, as defined in ORS 165.090.

(58) Misapplication of entrusted property, as defined in ORS 165.095.

(59) Issuing a false financial statement, as defined in ORS 165.100.

(60) Obtaining execution of documents by deception, as defined in ORS 165.102.

(61) A violation of ORS 165.543.

(62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.

(63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.

- (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (65) Identity theft, as defined in ORS 165.800.
- (66) A violation of ORS 166.190.
- (67) Unlawful use of a weapon, as defined in ORS 166.220.
- (68) A violation of ORS 166.240.
- (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- (70) A violation of ORS 166.270.
- (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (72) A violation of ORS 166.275.
- (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (74) A violation of ORS 166.370.
- (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- (78) A violation of ORS 166.410.
- (79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (80) Improperly transferring a firearm, as defined in ORS 166.418.
- (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (82) A violation of ORS 166.429.
- (83) A violation of ORS 166.470.
- (84) A violation of ORS 166.480.
- (85) A violation of ORS 166.635.
- (86) A violation of ORS 166.638.
- (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- (88) A violation of ORS 166.720.
- (89) Prostitution, as defined in ORS 167.007.
- (90) Promoting prostitution, as defined in ORS 167.012.
- (91) Compelling prostitution, as defined in ORS 167.017.
- (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (97) Possession of a gambling device, as defined in ORS 167.147.
- (98) Possession of a gray machine, as defined in ORS 167.164.
- (99) Cheating, as defined in ORS 167.167.
- (100) Tampering with drug records, as defined in ORS 167.212.
- (101) A violation of ORS 167.262.
- (102) Research and animal interference, as defined in ORS 167.312.
- (103) Animal abuse in the first degree, as defined in ORS 167.320.
- (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (105) Animal neglect in the first degree, as defined in ORS 167.330.
- (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (107) Involvement in animal fighting, as defined in ORS 167.355.
- (108) Dogfighting, as defined in ORS 167.365.
- (109) Participation in dogfighting, as defined in ORS 167.370.
- (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (111) Interference with livestock production, as defined in ORS 167.388.
- (112) A violation of ORS 167.390.

- (113) A violation of ORS 471.410.
- (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- (115) Illegally selling drug equipment, as defined in ORS 475.960.
- (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- (120) A violation of ORS 475.916.
- (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.904 [(2)].
- (123) Misuse of an identification card, as defined in ORS 807.430.
- (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.
- (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- (126) Using an invalid license, as defined in ORS 807.580.
- (127) Permitting misuse of a license, as defined in ORS 807.590.
- (128) Using another's license, as defined in ORS 807.600.
- (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.
- (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.
- (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- (132) A violation of ORS 180.440 (2).
- (133) A violation described in ORS 475.846 to 475.894, if it is a felony.
- (134) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (133) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

NOTE: Deletes erroneous subsection reference in (122).

SECTION 32. ORS 132.550 is amended to read:

132.550. The indictment shall contain substantially the following:

- (1) The name of the circuit court in which it is filed; *[and]*
- (2) The title of the action; *[and]*
- (3) A statement that the grand jury accuses the defendant or defendants of the designated offense or offenses; *[and]*
- (4) A separate accusation or count addressed to each offense charged, if there be more than one; *[and]*
- (5) A statement in each count that the offense charged therein was committed in a designated county; *[and]*
- (6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time; *[and]*
- (7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; *[and]*
- (8) The signatures of the foreman and of the district attorney; and
- (9) The date the indictment is filed with the clerk of the court.

NOTE: Removes superfluous conjunctions.

SECTION 33. ORS 135.185 is amended to read:

135.185. If it appears from the preliminary hearing that there is probable cause to believe that a crime has been committed and that the defendant committed it, the magistrate shall make a written order holding the defendant for further proceedings on the charge. When hearsay evidence was admitted at the preliminary hearing, the magistrate, in determining the existence of probable cause, shall consider:

(a) The extent to which the hearsay quality of the evidence affects the weight it should be given[,] and

(b) The likelihood of evidence other than hearsay being available at trial to provide the information furnished by hearsay at the preliminary hearing.

NOTE: Restructures section to conform to legislative style.

SECTION 34. ORS 135.921, as amended by section 75, chapter 702, Oregon Laws 2005, is amended to read:

135.921. (1) The filing fee paid by a defendant at the time of filing a petition for a possession of marijuana diversion agreement as provided in ORS 135.909 shall be \$233 and shall be ordered paid as follows if the petition is allowed:

(a) \$123 to the Department of Revenue for deposit in the Criminal Fine and Assessment Account; and

(b) \$110 to be distributed as provided for the disposition of costs under ORS 153.630.

(2) If less than the \$233 filing fee is paid to the court by the defendant under subsection (1) of this section, the money actually received shall be allocated in the amounts provided first to the State Treasurer and the remainder as provided for the disposition of costs under ORS 153.630.

(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$90 directly to the agency or organization providing the diagnostic assessment.

(4) The Chief Justice of the [*Oregon*] Supreme Court may require that any or all fees distributed by circuit courts under this section be distributed through the offices of the State Court Administrator.

NOTE: Corrects official title in (4).

SECTION 35. ORS 137.225 is amended to read:

137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court [*wherein that*] **where the** conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court [*which*] **that** would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of [*such*] **the** arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state [*shall not be*] **is not** included.

(2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity **shall** be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction," or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (11) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order *[which]* **that** shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of *[such an]* **the** order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of *[such an]* **the** order, *[such]* **the** conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to *[their]* **its** occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction of:

(a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; and

(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(e) A violation, whether under state law or local ordinance.

(f) An offense committed before January 1, 1972, *[which]* **that** if committed after that date would be:

(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(D) A violation.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A person convicted of, or arrested for, a state or municipal traffic offense[;].

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction [which] **that** has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable; or].

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

(8) The provisions of subsection (1) of this section apply to convictions and arrests [which] **that** occurred before, as well as those [which] **that** occurred after, September 9, 1971. There [shall be] **is** no time limit for making [such] **an** application.

(9) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred [shall] **do** not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

(10) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order [shall have] **has** no other effect on the orders setting aside the conviction or the arrest record.

(11) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

- (a) Abandonment of a child, ORS 163.535.
- (b) Attempted assault in the second degree, ORS 163.175.
- (c) Assault in the third degree, ORS 163.165.
- (d) Coercion, ORS 163.275.
- (e) Criminal mistreatment in the first degree, ORS 163.205.
- (f) Attempted escape in the first degree, ORS 162.165.
- (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- (h) Intimidation in the first degree, ORS 166.165.
- (i) Attempted kidnapping in the second degree, ORS 163.225.
- (j) Criminally negligent homicide, ORS 163.145.
- (k) Attempted robbery in the second degree, ORS 164.405.
- (L) Robbery in the third degree, ORS 164.395.
- (m) Supplying contraband, ORS 162.185.
- (n) Unlawful use of a weapon, ORS 166.220.

(12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

NOTE: Updates word choice in (1)(a) and (b), (3), (4), (5)(f) lead-in, (6)(b), (8), (9) and (10); supplies missing word and comma in (2)(a); corrects identification in (2)(a) and (c) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau; conforms punctuation in (6) to legislative style.

SECTION 36. ORS 137.656 is amended to read:

137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning.

(2) The primary duty of the commission is to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

- (a) Capacity, utilization and type of state and local prison and jail facilities;
- (b) Implementation of community corrections programs;
- (c) Alternatives to the use of prison and jail facilities;
- (d) Appropriate use of existing facilities and programs;
- (e) Whether additional or different facilities and programs are necessary;
- (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders; and
- (g) Methods of reducing the risk of future criminal conduct.

(3) Other duties of the commission are:

(a) To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.

(b) To provide Oregon criminal justice analytical and statistical information to federal agencies and serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination **of information** on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To receive grant applications to start or expand drug court programs as defined in ORS 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

(4) The commission shall establish by rule the information that must be submitted under ORS 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection must be approved by the Chief Justice of the Supreme Court before it takes effect.

NOTE: Supplies missing words in (3)(b).

SECTION 37. ORS 144.102 is amended to read:

144.102. (1) The State Board of Parole and Post-Prison Supervision or local supervisory authority responsible for correctional services for a person shall specify in writing the conditions of post-prison supervision imposed under ORS 144.096. A copy of the conditions shall be given to the person upon release from prison or jail.

(2) The board or the supervisory authority shall determine, and may at any time modify, the conditions of post-prison supervision, which may include, among other conditions, that the person shall:

(a) Comply with the conditions of post-prison supervision as specified by the board or supervisory authority.

(b) Be under the supervision of the Department of Corrections and its representatives or other supervisory authority and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the board, the department or the supervisory authority.

(d) Report to the parole officer as directed by the board, the department or the supervisory authority.

(e) Not own, possess or be in control of any weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the board or supervisory authority may, at its discretion, punish violations of post-prison supervision.

(h) Attend a victim impact treatment session in a county that has a victim impact program. If the board or supervisory authority requires attendance under this paragraph, the board or supervisory authority may require the person, as an additional condition of post-prison supervision, to pay a reasonable fee to the victim impact program to offset the cost of the person's participation. The board or supervisory authority may not order a person to pay a fee in excess of \$5 under this paragraph.

(i) If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:

- (A) When supervision begins;
- (B) Within 10 days of a change in residence;
- (C) Once each year within 10 days of the person's date of birth;
- (D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(3)(a) The board or supervisory authority may establish special conditions as the board or supervisory authority determines necessary because of the individual circumstances of the person on post-prison supervision.

(b) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, the board or supervisory authority shall include all of the following as special conditions of the person's post-prison supervision:

(A) Agreement to comply with any curfew set by the board, the supervisory authority or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board, supervisory authority or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

(M) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board, supervisory authority or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or the director of the super-

visory authority, or a designee of the board or director. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:

(i) "Dwelling" has the meaning given that term in ORS 469.160.

(ii) "Dwelling" does not include a residential treatment facility or a halfway house.

(iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(c)(A) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection (6) of this section;

(ii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the post-prison supervision; or

(iv) The person resides in a halfway house. As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(B) A victim may request imposition of the special condition of post-prison supervision described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board or supervisory authority imposes the special condition of post-prison supervision described in this paragraph and if at any time during the period of post-prison supervision the victim moves to within three miles of the person's residence, the board or supervisory authority may not require the person to change the person's residence in order to comply with the special condition of post-prison supervision.

(4)(a) The board or supervisory authority may require the person to pay, as a condition of post-prison supervision, any compensatory fines, restitution or attorney fees:

(A) As determined, imposed or required by the sentencing court; or

(B) When previously required as a condition of any type of supervision that is later revoked.

(b) The board may require a person to pay restitution as a condition of post-prison supervision imposed for an offense other than the offense for which the restitution was ordered if the person:

(A) Was ordered to pay restitution as a result of another conviction; and

(B) Has not fully paid the restitution by the time the person has completed the period of post-prison supervision imposed for the offense for which the restitution was ordered.

(5) A person's failure to apply for or accept employment at any workplace where there is a labor dispute in progress does not constitute a violation of the conditions of post-prison supervision. As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.

(6)(a) When a person is released from imprisonment on post-prison supervision, the board shall order, as a condition of post-prison supervision, that the person reside for the first six months after release in the county where the person resided at the time of the offense that resulted in the imprisonment.

(b) Upon motion of the board, the person, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:

(A) The person provides proof of employment with no set ending date in a county other than the established county of residence;

(B) The person is found to pose a significant danger to a victim of the person's crime, or a victim or victim's family is found to pose a significant danger to the person residing in the established county of residence;

(C) The person has a spouse or biological or adoptive family residing in a county other than the established county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the post-prison supervision;

(D) As another condition of post-prison supervision, the person is required to participate in a treatment program that is not available in the established county of residence;

(E) The person desires to be released to another state; or

(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) The board shall determine the county where the person resided at the time of the offense by establishing the person's last address at the time of the offense. In making its determination, the board shall examine all of the following:

(i) An Oregon driver license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**;

(iv) Records maintained by the Department of Human Services; and

(v) Records maintained by the Department of Corrections.

(B) When the person did not have an identifiable address of record at the time of the offense, the person is considered to have resided in the county where the offense occurred.

(C) If the person is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(D) In determining the person's county of residence for purposes of this subsection, the board may not consider offenses committed by the person while the person was incarcerated in a Department of Corrections facility.

(7) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

NOTE: Corrects identification in (6)(c)(A)(iii) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau.

SECTION 38. ORS 144.270 is amended to read:

144.270. (1) The State Board of Parole and Post-Prison Supervision, in releasing a person on parole, shall specify in writing the conditions of the parole and a copy of such conditions shall be given to the person paroled.

(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the parolee shall:

(a) Accept the parole granted subject to all terms and conditions specified by the board.

(b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the board or the parole officer.

(d) Report to the parole officer as directed by the board or parole officer.

(e) Not own, possess or be in control of any weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the board may, in its discretion, suspend or revoke parole if it determines that the parole is not in the best interest of the parolee, or in the best interest of society.

(3)(a) The board may establish such special conditions as it determines are necessary because of the individual circumstances of the parolee.

(b) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, the board shall include all of the following as special conditions of the person's parole:

- (A) Agreement to comply with any curfew set by the board or the supervising officer.
- (B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board or supervising officer.
- (C) A prohibition against being present more than one time, without the prior written approval of the board or supervising officer, at a place where persons under 18 years of age regularly congregate.
- (D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
- (E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.
- (F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
- (G) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board or supervising officer.
- (H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.
- (I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board if the representative has reasonable grounds to believe that evidence of a violation of a condition of parole will be found.
- (J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of parole.
- (K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board or supervising officer.
- (L) A prohibition against using a post-office box unless approved by the board or supervising officer.
- (M) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:
- (i) "Dwelling" has the meaning given that term in ORS 469.160.
 - (ii) "Dwelling" does not include a residential treatment facility or a halfway house.
 - (iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.
- (c)(A) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board, if requested by the victim, shall include as a special condition of the person's parole that the person not reside within three miles of the victim unless:
- (i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection (5) of this section;
 - (ii) The person demonstrates to the board by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the parole; or

(iv) The person resides in a halfway house. As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(B) A victim may request imposition of the special condition of parole described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board imposes the special condition of parole described in this paragraph and if at any time during the period of parole the victim moves to within three miles of the parolee's residence, the board may not require the parolee to change the parolee's residence in order to comply with the special condition of parole.

(4) It is not a cause for revocation of parole that the parolee failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning [for] **given** that term [provided] in ORS 662.010.

(5)(a) When the board grants an inmate parole from the custody of the Department of Corrections, the board shall order, as a condition of parole, that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in the imprisonment.

(b) Upon motion of the board, an inmate, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:

(A) The inmate provides proof of a job with no set ending date in a county other than the established county of residence;

(B) The inmate is found to pose a significant danger to the victim of the offender's crime, or the victim or victim's family is found to pose a significant danger to the inmate residing in the county of residence;

(C) The inmate has a spouse or biological or adoptive family residing in other than the county of residence who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole;

(D) As another condition of parole, the inmate is required to participate in a treatment program [which] **that** is not available or located in the county of residence;

(E) The inmate desires to be paroled to another state; or

(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) For purposes of this subsection, "residency" means the last address at the time of the offense, as established by an examination of all of the following:

(i) An Oregon driver license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police[, *Bureau of Criminal Identification*]

bureau of criminal identification;

(iv) Records maintained by the Department of Human Services; and

(v) Records maintained by the Department of Corrections.

(B) When an inmate did not have one identifiable address of record at the time of the offense, the inmate shall be considered to have resided in the county where the offense occurred.

(C) If the inmate is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(D) If the inmate is being rereleased after revocation of parole, the county of residence shall be determined according to the date of the arrest resulting in a conviction of the underlying offense.

(E) In determining the inmate's county of residence, a conviction for an offense that the inmate committed while incarcerated in a state corrections institution may not be considered.

(6) When the board grants an inmate parole from the custody of the Department of Corrections and if the inmate is required to report as a sex offender under ORS 181.595, the board, as a condition of parole, shall order the inmate to report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:

- (a) When supervision begins;
- (b) Within 10 days of a change in residence;
- (c) Once each year within 10 days of the inmate's date of birth;
- (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and
- (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(7) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

NOTE: Corrects word choice in (4) and (5)(b)(D); corrects identification in (5)(c)(A)(iii) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau.

SECTION 39. ORS 144.460 is amended to read:

144.460. The Department of Corrections may contract with the governing bodies of political subdivisions in this state, with the federal government and with any private agencies approved by the department for the quartering in suitable local facilities of persons enrolled in work release programs. Each such facility having six or more residents must be licensed under ORS 443.400 to 443.455 [*and 443.991 (2)*] and must satisfy standards established by the Department of Corrections to [*assure*] **ensure** adequate supervision, custody, health and safety of persons quartered therein.

NOTE: Deletes inappropriate reference to penalty section; corrects word choice.

SECTION 40. ORS 147.450 is amended to read:

147.450. As used in ORS 147.450 to 147.471 [*and section 31, chapter 870, Oregon Laws 2001*]:

- (1) "Domestic violence" has the meaning given that term in ORS 135.230; and
- (2) "Sexual assault" means any unwanted sexual contact as defined in ORS 163.305.

NOTE: Deletes reference to outdated temporary provision in lead-in.

SECTION 41. ORS 147.465 is amended to read:

147.465. (1) If sufficient funds are available in the Oregon Domestic and Sexual Violence Services Fund, the Attorney General or the Attorney General's designee may make grants from the fund to carry out the plan developed under ORS 147.456.

(2) The Attorney General may hire staff necessary to accomplish the purposes of the plan developed under ORS 147.456.

(3) In accordance with ORS chapter 183, the Attorney General shall adopt rules necessary to carry out the provisions of ORS 147.450 to 147.471 [*and section 31, chapter 870, Oregon Laws 2001*].

NOTE: Deletes reference to outdated temporary provision in (3).

SECTION 42. ORS 147.471 is amended to read:

147.471. (1) [*After development of the plan described in ORS 147.456 and presentation of the plan to the appropriate interim legislative committee as required in section 31, chapter 870, Oregon Laws 2001,*] There is created an advisory council that shall consist of at least 15, but not more than 20, members. The council shall advise the Department of Justice on the administration of the policies and practices of the domestic and sexual violence services program. Members shall be appointed by and serve at the pleasure of the Attorney General. Membership in the council shall:

- (a) Accurately reflect the diversity of the population in Oregon as well as the diversity of individuals needing services;
- (b) Be composed of both lay and professionally trained individuals with expertise in domestic violence and sexual assault services;
- (c) Include representatives of other state agencies providing services;
- (d) Include representatives of professional, civil or other public or private organizations;
- (e) Include private citizens interested in service programs; and
- (f) Include recipients of assistance or services or their representatives.

(2) Members of the advisory council may not receive compensation for their services. Members of the advisory council other than members employed in full-time public service shall be reimbursed by the Department of Justice for their actual and necessary expenses incurred in the performance of their duties. The reimbursement shall be subject to the provisions of ORS 292.210 to 292.288. Members of the advisory council who are employed in full-time public service may be reimbursed by their employing agencies for their actual and necessary expenses incurred in the performance of their duties.

NOTE: Deletes outdated provisions in (1) lead-in.

SECTION 43. ORS 151.211 is amended to read:

151.211. For purposes of ORS 151.211 to 151.221:

- (1) "Bar member" means an individual who is an active member of the Oregon State Bar.
- (2) "Chief Justice" means the Chief Justice of the [Oregon] Supreme Court.
- (3) "Commission" means the Public Defense Services Commission.
- (4) "Director" means the public defense services executive director appointed under ORS 151.216.

(5) "Office of public defense services" means the office established by the commission under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

NOTE: Corrects official title in (2).

SECTION 44. ORS 153.005 is amended to read:

153.005. As used in this chapter:

- (1) "Enforcement officer" means:
 - (a) A member of the Oregon State Police.
 - (b) A sheriff or deputy sheriff.
 - (c) A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.
 - (d) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state.
 - (e) An investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.
 - (f) Any other person specifically authorized by law to issue citations for the commission of violations.

(2) "Traffic offense" has the meaning given that term in ORS 801.555.

[2] **(3) "Violation"** means an offense described ORS 153.008.

[3] **(4) "Violation proceeding"** means a judicial proceeding initiated by issuance of a citation that charges a person with commission of a violation.

[4] *"Traffic offense" has the meaning given that term in ORS 801.555.*

NOTE: Alphabetizes definitions.

SECTION 45. ORS 163.275 is amended to read:

163.275. (1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

- (a) Unlawfully cause physical injury to some person; [or]
- (b) Unlawfully cause damage to property; [or]
- (c) Engage in conduct constituting a crime; [or]
- (d) Falsely accuse some person of a crime or cause criminal charges to be instituted against the person; [or]
- (e) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat [shall not be] **is not** deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; [or]

(f) Testify falsely or provide false information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(2) Coercion is a Class C felony.

NOTE: Removes superfluous conjunctions in (1); updates word choice in (1)(e).

SECTION 46. ORS 163.730 is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school; or

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, [parent,] spouse, grandparent, stepparent and stepchild.

(6) "Law enforcement officer" means any person employed in this state as a police officer by a county sheriff, constable, marshal or municipal or state police agency.

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

NOTE: Eliminates duplicative reference in (5).

SECTION 47. ORS 164.015 is amended to read:

164.015. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; [or]

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065; [or]

(3) Commits theft by extortion as provided in ORS 164.075; [or]

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

NOTE: Removes superfluous conjunctions.

SECTION 48. ORS 164.075 is amended to read:

164.075. (1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

(a) Cause physical injury to some person; [or]

(b) Cause damage to property; [or]

(c) Engage in other conduct constituting a crime; [or]

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person; [or]

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; [or]

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business,[,] except that such conduct [shall not be] **is not** considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; [or]

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; [or]

(h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony.

NOTE: Removes superfluous conjunctions in (1); updates word choice and punctuation in (1)(f).

SECTION 49. ORS 164.085 is amended to read:

164.085. (1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind [which] **that** the actor does not believe to be true; [or]

(b) Fails to correct a false impression [which] **that** the person previously created or confirmed; [or]

(c) Prevents another from acquiring information pertinent to the disposition of the property involved; [or]

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance [which] **that** the person does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055, or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed [shall] **may** not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

NOTE: Removes superfluous conjunctions and corrects word choice in (1); inserts comma to improve readability and updates word choice in (3).

SECTION 50. ORS 164.135 is amended to read:

164.135. (1) A person commits the crime of unauthorized use of a vehicle when:

(a) The person takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner; [or]

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a

specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, the person intentionally uses or operates it, without consent of the owner, for the person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope of the operator's employment.

NOTE: Removes superfluous conjunction in (1).

SECTION 51. ORS 164.415 is amended to read:

164.415. (1) A person commits the crime of robbery in the first degree if the person violates ORS 164.395 and the person:

- (a) Is armed with a deadly weapon; *[or]*
- (b) Uses or attempts to use a dangerous weapon; or
- (c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class A felony.

NOTE: Removes superfluous conjunction in (1).

SECTION 52. ORS 164.805 is amended to read:

164.805. (1) A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility; *[or]*

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle *[which]* **that** the person is operating; *except that*. This subsection *[shall]* **does** not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Department of Transportation or a person operating a school bus described under ORS 801.460.

(2) As used in this section[,]:

(a) **"Public transportation facility" has the meaning given that term in ORS 164.365.**

(b) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.

[(3) As used in this section, "public transportation facility" has the meaning provided for in ORS 164.365.]

[(4)] (3) Offensive littering is a Class C misdemeanor.

NOTE: Removes superfluous conjunction in (1); updates punctuation and word choice in (1)(c); restructures definitions to conform to legislative style.

SECTION 53. ORS 169.166 is amended to read:

169.166. Notwithstanding ORS 169.140 and 169.150 and except as otherwise provided in ORS 414.805 and 414.807:

(1) An individual who receives medical services not provided by the county or city while in the custody of a local correctional facility or juvenile detention facility is liable:

(a) To the provider of the medical services not provided by the county or city for the charges and expenses therefor; and

(b) To the keeper of the local correctional facility for any charges or expenses paid by the keeper of the facility for the medical services not provided by the county or city.

(2) A person providing medical services not provided by the county or city to an individual described in subsection (1)(a) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the keeper of the local correctional facility.

(3)(a) Except as otherwise provided in subsection (4) of this section, if the provider has not been paid within 45 days of the date of the billing, the provider may bill the keeper of the local correctional facility who shall pay the account in accordance with ORS 169.140 and 169.150.

(b) A bill submitted to the keeper of a local correctional facility under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care **service** contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care **service** contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care **service** contractor after receiving payment from the keeper of the facility, the provider shall repay the keeper the amount received from the keeper less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) Except as otherwise provided by ORS 30.260 to 30.300 and federal civil rights laws, upon release of the individual from the actual physical custody of the local correctional facility, the keeper of the local correctional facility is not liable for the payment of charges and expenses for medical services provided to the individual.

NOTE: Standardizes terminology in (3)(b) and (c).

SECTION 54. ORS 181.010 is amended to read:

181.010. As used in ORS 181.010 to 181.560 and 181.715 to 181.730, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**.

(2) "Criminal justice agency" means:

(a) The Governor;

(b) Courts of criminal jurisdiction;

(c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutive functions, attorney employees of the office of public defense services and nonprofit public defender organizations established under contract with the Public Defense Services Commission;

(e) Law enforcement agencies;

(f) The Department of Corrections;

(g) The State Board of Parole and Post-Prison Supervision;

(h) The Department of Public Safety Standards and Training; and

(i) Any other state or local agency with law enforcement authority designated by order of the Governor.

(3) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Designated agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order

or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(7) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest.

(8) "Law enforcement agency" means county sheriffs, municipal police departments, State Police, other police officers of this **state** and other states and law enforcement agencies of the federal government.

(9) "State Police" means the members of the state police force appointed under ORS 181.250.

(10) "Superintendent" means the Superintendent of State Police.

NOTE: Corrects identification in (1) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau; corrects grammar in (8).

SECTION 55. ORS 181.511 is amended to read:

181.511. (1) A law enforcement agency immediately upon the arrest of a person for a crime for which criminal offender information must be provided under ORS 181.515 shall:

(a) Place the arrested person's fingerprints and identifying data on forms prescribed or furnished by the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**, photograph the arrested person[,] and promptly transmit the form and photograph to the bureau.

(b) If the arrest is disposed of by the arresting agency, cause the disposition report to be completed and promptly transmitted to the bureau.

(c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded, except as otherwise provided in section 3, chapter 553, Oregon Laws 1987, to the court that will dispose of the charge, for further action in accordance with ORS 181.521.

(2) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole prints, toe prints[,] or other personal identifiers when, in the discretion of the agency, it is necessary to effect identification of the persons or to the investigation of the crime charged.

(3) A law enforcement agency, for the purpose of identification, may record and submit to the bureau the fingerprints of persons arrested for crimes for which criminal offender information is not required under ORS 181.515.

NOTE: Corrects identification in (1)(a) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau; strikes serial commas in (1)(a) and (2).

SECTION 56. ORS 181.521 is amended to read:

181.521. When a court receives a disposition report from a law enforcement agency pursuant to ORS 181.511, the court shall transmit disposition information to the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification** in a manner and format determined by the State Court Administrator after consultation with the bureau.

NOTE: Corrects identification of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau.

SECTION 57. ORS 181.530 is amended to read:

181.530. (1) The superintendent of any institution of this state shall notify the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification** prior to the release or immediately after the escape from [*such*] **the** institution[,] of any person committed to [*such*] **the** institution[,] for a crime for which a report is required or under civil commitment as a sexually dangerous person. 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 required by subsection (1) of this section, the bureau shall notify all law enforcement agencies in the county in which the person was convicted or from which the person was committed and in the county, if known, in which the person will reside.

NOTE: Corrects identification in (1) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau; updates word choice and comma use in (1).

SECTION 58. ORS 182.451 is repealed.

NOTE: Consolidates lists of semi-independent state agencies. See amendments to 182.454 in section 59.

SECTION 59. ORS 182.454 is amended to read:

182.454. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

- (1) The Appraiser Certification and Licensure Board.
- (2) The State Board of Architect Examiners.
- (3) The State Board of Examiners for Engineering and Land Surveying.
- (4) The State Board of Geologist Examiners.
- (5) The State Landscape Architect Board.
- (6) The Oregon Board of Optometry.
- (7) The Oregon Patient Safety Commission.
- (8) The Oregon Wine Board.

(9) The State Board of Massage Therapists.

(10) The Physical Therapist Licensing Board.

(11) The State Landscape Contractors Board.

NOTE: Consolidates lists of semi-independent state agencies. See repeal of 182.451 in section 58.

SECTION 60. ORS 182.456 is amended to read:

182.456. As used in ORS 182.456 to 182.472:

(1) "Board" means a [*board established as a*] semi-independent state agency [*under ORS 182.451 or a board or commission*] listed [*under*] **in** ORS 182.454.

(2) "License" includes licenses, registrations, certifications, permits or other forms of permission required by law to pursue an occupation or engage in a business regulated by a board.

NOTE: Deletes reference to repealed statute in (1). See section 58.

SECTION 61. ORS 182.460 is amended to read:

182.460. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, [279,] 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to a board. A board is subject to all other statutes governing a state agency that do not conflict with ORS 182.456 to 182.472, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183, and a board's employees are included within the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, the following provisions shall apply to a board:

- (a) ORS 240.309 (1) to (6) and 240.321;
- [(b) ORS 279.835 to 279.855;]
- [(c)] (b) ORS 279A.250 to 279A.290;
- [(d)] (c) ORS 282.210 to 282.230; and
- [(e)] (d) ORS 293.240.

(3) In carrying out the duties, functions and powers of a board, the board may contract with any state agency for the performance of duties, functions and powers as the board considers appropriate. A state agency [*shall*] **may** not charge a board an amount that exceeds the actual cost of those services. ORS 182.456 to 182.472 do not require an agency to provide services to a board other than pursuant to a voluntary interagency agreement or contract.

(4) A board shall adopt personnel policies and contracting and purchasing procedures. The Oregon Department of Administrative Services shall review those policies and procedures for compliance with applicable state and federal laws and collective bargaining contracts.

(5) Except as otherwise provided by law, directors and employees of a board are eligible to receive the same benefits as state employees and are entitled to retain their State of Oregon hire dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer of all accumulated state agency leaves.

NOTE: Removes chapter reference in (1) rendered obsolete by restructuring of public contracting law (see chapter 794, Oregon Laws 2003); removes corresponding series reference in (2); corrects word choice in (3).

SECTION 62. ORS 190.520 is amended to read:

190.520. (1) The State Board of Higher Education shall:

(a) Annually estimate the population as of July 1 of each city and county within the state and no later than December 15 of each year prepare a certificate of population showing the board's estimate of the population of each city and county within the state as of July 1. The board's estimate may be based upon statistical or other pertinent data or upon an actual count. The certificate shall also indicate the results of any enumeration of cities or annexed areas made after July 1.

(b) Annually estimate the number of persons between the ages of 4 and 20 who resided in each county as of October 25. The board shall certify such estimate to the Superintendent of Public Instruction and to the executive officer of the administrative office of each county, as defined in ORS 328.001, by January 1 of each year.

(c) Upon an official request from a city, county, political subdivision, public corporation or state agency, cause to be conducted at the expense of the requesting party an actual count of the population of the area specified in the request and prepare a certificate of population based upon such count.

(d) Upon the incorporation of a city, cause to be conducted at the expense of the city an actual count of the population of the city. The board shall prepare a certificate of population based upon such count. If the election of officers of the newly incorporated city is held 40 days or more before the end of the calendar quarter, the certificate shall be prepared before the end of the calendar quarter. If the election is held less than 40 days before the end of the calendar quarter, the certificate shall be prepared before the end of the calendar quarter next following the election.

(2) All certificates prepared under this section shall be filed with the [*Center for Population Research and Census*] **Portland State University Population Research Center.**

NOTE: Corrects name of center in (2).

SECTION 63. ORS 196.810 is amended to read:

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, no person or governmental body may remove any material from the beds or banks or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (5) and (13), if any removal or fill activity is proposed in essential indigenous anadromous salmonid habitat, except for those activities customarily associated with agriculture, a permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this section shall be further defined and designated by rule by the Department of State Lands in consultation with the State Department of Fish and Wildlife and in consultation with other affected parties.

(c) No person may be required to obtain a permit under paragraph (b) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a designated essential indigenous anadromous salmonid habitat segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (b) of this subsection.

(d) No permit may be required under paragraph (b) of this subsection for construction or maintenance of fish passage and fish screening structures that are constructed, operated or maintained under ORS 498.311, 498.316, 498.326 or 509.600 to 509.645.

(e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(f) As used in paragraphs (b) and (c) of this subsection:

(A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.

(C) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(D) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(E) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(2) No governmental body may issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any governmental body entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.

NOTE: Standardizes terminology in (1)(a) to correspond with definition in 196.800.

SECTION 64. ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section 97, chapter 14, Oregon Laws 2003, is amended to read:

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person or governmental body may not remove any material from the beds or banks or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan.

(b) A permit is not required under paragraph (a) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a particular stream segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (a) of this subsection.

(c) A permit is not required under paragraph (a) of this subsection for construction or maintenance of fish passage and fish screening structures associated with irrigation ditches or the maintenance of drainage ditches that are constructed, operated or maintained under ORS 498.311, 498.316, 498.326 or 509.600 to 509.645.

(d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(2) A governmental body may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any governmental body entered into before September 13, 1967. However, a contract, permit or lease may not be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.

(5) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

NOTE: Standardizes terminology in (1)(a) to correspond with definition in 196.800.

SECTION 65. ORS 196.855 is amended to read:

196.855. The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a [wetlands] wetland conservation plan, is a public nuisance.

NOTE: Standardizes terminology to correspond with definition in 196.800.

SECTION 66. ORS 196.860 is amended to read:

196.860. (1) If the Director of the Department of State Lands determines that material is being removed from or filling is occurring in any of the waters of this state without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a [wetlands] wetland conservation plan, the director may:

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to 196.905, as soon as possible.

(b) For the purpose of investigating conditions relating to [such] the removal or filling, through the employees or the duly authorized representatives of the Department of State Lands, enter at reasonable times upon any private or public property.

(c) Conduct public hearings in accordance with ORS chapter 183.

(d) Publish findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

(e) Give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the director may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905

may be enjoined in civil abatement proceedings brought in the name of the State of Oregon.[] and] In any such proceedings the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from [such] **the** violation. Proceedings thus brought by the director shall set forth if applicable the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from [such] **the** violation.

(2)(a) In addition to the administrative action the director may take under subsection (1) of this section, the director may enter an order requiring any person to cease and desist from any violation if the director determines that [such] **the** violation presents an imminent and substantial risk of injury, loss or damage to water resources.

[(a)] (b) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) [Shall] **May** not be stayed during the pendency of a hearing conducted under paragraph [(b)] (c) of this subsection.

[(b)] (c) If a person subject to an order under this subsection files a timely demand for hearing, the director shall hold a contested case hearing according to the applicable provisions of ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

[(c)] (d) Neither the director nor any duly authorized representative of the department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

[(d)] (e) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing [such] **the** order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the director's order in the same manner as with an order of that court.

(3) As used in this section, "violation" means removing material from or placing fill in[,] any of the waters of this state without a permit or in a manner contrary to the conditions set out in a permit issued under ORS 196.825.

NOTE: Standardizes terminology in (1) lead-in to correspond with definition in 196.800; updates word and punctuation choice in (1)(b) and (f), (2)(a), (b)(D) and (e) and (3); restructures (2) to conform to legislative style.

SECTION 67. ORS 197.646 is amended to read:

197.646. (1) A local government shall amend its acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with:

(a) A new statutory requirement; or

(b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission.

(2) Periodic review is not the implementation process for new statutory, land use planning goal or rule requirements.

(3)(a) The Department of Land Conservation and Development shall notify local governments when a new statutory requirement or a new land use planning goal or rule requirement adopted by the commission requires changes to an acknowledged comprehensive plan, a regional framework plan and land use regulations implementing either plan.

(b) The commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, a regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new statutory requirement, if the legislation does not specify a time period for compliance; and

(B) A new land use planning goal or rule requirement adopted by the commission.

(4) When a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan as required by subsection (1) of this section, the new statutory, land use planning goal or rule requirements apply directly to the local government's land use decisions. The failure to adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

NOTE: Supplies missing articles in (3) and (4).

SECTION 68. ORS 197.732 is amended to read:

197.732. (1) **As used in this section:**

(a) **“Compatible” is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**

(b) **“Exception” means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:**

(A) **Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;**

(B) **Does not comply with some or all goal requirements applicable to the subject properties or situations; and**

(C) **Complies with standards under subsection (2) of this section.**

[(1)] (2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas [which] that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

[(2) “Compatible,” as used in subsection (1)(c) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.]

(3) The commission shall adopt rules establishing:

(a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

(b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection [(1)(c)(A)] (2)(c)(A) of this section; and

(c) Which uses allowed by the applicable goal must be found impracticable under subsection [(1)] (2) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons [which] that demonstrate that the standards of subsection [(1)] (2) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The [board] **Land Use Board of Appeals** or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection [(1)] (2) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons [which] **that** sets forth the basis for the determination that the standards of subsection [(1)] (2) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 (3).

[(8) As used in this section, "exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:]

[(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;]

[(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and]

[(c) Complies with standards under subsection (1) of this section.]

[(9)] (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, continues to be valid and is not [be] subject to this section.

NOTE: Moves definitions to conform with legislative style; adjusts internal references to reflect restructuring; corrects word choice in (2)(c)(B), (4) and (6)(c); sets forth official title in (6)(a); corrects syntax in (8).

SECTION 69. ORS 198.360 is amended to read:

198.360. (1) After the hearing, if the county board finds that the district is in fact operating as an active district, or that there is need for the district, the board shall continue the hearing until the reports required under ORS 294.555 and 297.405 to 297.555 are properly filed. When the county board finds that the reports have been filed, it may:

(a) Enter an order terminating all further proceedings under ORS 198.345 to 198.365; or

(b) If the functions of the district could be performed by a county service district, [it may] continue the hearing and initiate proceedings to incorporate or annex the area within the district in a county service district organized under ORS 451.410 to 451.610.

(2) If the county board proceeds as provided by subsection (1)(b) of this section and the district is terminated as provided by ORS 451.577, the county board shall thereafter enter an order terminating all further proceedings under ORS 198.345 to 198.365.

NOTE: Corrects read-in problem in (1)(b).

SECTION 70. ORS 209.200 is amended to read:

209.200. In the resurvey of lands surveyed under the authority of the United States, the county surveyor or a registered professional land surveyor shall observe the following rules:

(1) Section and quarter-section corners, and all other corners established and approved by the General Land Office or its successors, must stand as the legal and permanent corners.

(2) [They] **A legal and permanent corner** must be reestablished at the identical spot where the original corner was located by the government survey, when [this] **the identical spot** can be determined.

(3) When [this cannot be done, then such corners] **the identical spot cannot be determined, the legal and permanent corner** must be reestablished with reference to the current United States Manual of Surveying Instructions.

NOTE: Clarifies pronouns in (2) and (3).

SECTION 71. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

- (a) Public or private schools, including all buildings essential to the operation of a school.
- (b) Churches and cemeteries in conjunction with churches.
- (c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 [(1)(a) or (b)] **(2)(a) or (b)**.

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 [(1)(a) or (b)] **(2)(a) or (b)**.

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

- (o) Transmission towers over 200 feet in height.
- (p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
- (q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
- (r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
- (s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.
- (t) Room and board arrangements for a maximum of five unrelated persons in existing residences.
- (u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:
 - (A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and
 - (B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.
 - (v) Operations for the extraction and bottling of water.
 - (w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.
 - (x) A landscaping business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
- (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:
 - (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.
 - (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.
 - (c) Complies with such other conditions as the governing body or its designee considers necessary.
- (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:
 - (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

NOTE: Adjusts references in (1)(h) and (i) to correspond with amendments to 197.732 by section 68.

SECTION 72. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by

sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 [(1)(a) or (b)] **(2)(a) or (b)**.

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 [(1)(a) or (b)] **(2)(a) or (b)**.

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

- (A) Has intact exterior walls and roof structure;
- (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (C) Has interior wiring for interior lights;
- (D) Has a heating system; and
- (E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

- (A) A public right of way;
- (B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(z) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscaping business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

NOTE: Adjusts references in (1)(g) and (h) to correspond with amendments to 197.732 by section 68.

SECTION 73. ORS 215.455 is amended to read:

215.455. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 [*shall not be*] **is not** a basis for an exception under ORS 197.732 [(1)(a) or (b)] **(2)(a) or (b)**.

NOTE: Updates syntax; adjusts reference to correspond with amendments to 197.732 by section 68.

SECTION 74. ORS 236.350 is amended to read:

236.350. As used in ORS 236.350 to 236.370:

[(1) "*Police officer*" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security.]

[(2)] (1) "Disciplinary action" means any action taken against a police officer by a public employer for the purpose of punishing the officer, including dismissal, demotion, suspension without pay, reduction in salary, written reprimand or transfer.

[(3)] (2) "Just cause" means a cause reasonably related to the employee's ability to perform required work. The term includes any willful violation of reasonable work rules, regulations or written policies.

(3) "Police officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security.

NOTE: Alphabetizes definitions.

SECTION 75. ORS 238A.400 is amended to read:

238A.400. (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in

substantially equal installments paid over a period of 5, 10, 15 or 20 years. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection [(4)] (5) of this section. The Public Employees Retirement Board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection. The board by rule may establish minimum monthly amounts payable under this subsection. The board may require that a lump sum payment, or an installment schedule different than the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not adequate to generate the minimum monthly amounts specified by the rule.

(3) A member of the individual account program electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.

(4) A member who is entitled to receive retirement benefits under ORS chapter 238 may receive vested amounts in the member's employee account, rollover account and employer account in the manner provided by this section when the member retires for service under the provisions of ORS chapter 238.

(5) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on August 29, 2003. The board shall adopt rules implementing those minimum distribution requirements.

NOTE: Corrects internal reference in (2) to reflect amendments by section 10, chapter 152, Oregon Laws 2005.

SECTION 76. ORS 243.800 is amended to read:

243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to 243.945, the State Board of Higher Education shall establish and administer an Optional Retirement Plan for administrative and academic employees of the Oregon University System who are eligible for membership in the Public Employees Retirement System. The Optional Retirement Plan must be a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under subsection (7) of this section without the transfer being treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts, fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

(2) The State Board of Higher Education shall select at least two life insurance companies providing fixed and variable annuities and at least two investment companies providing mutual funds, but not more than five companies in total, for the purpose of providing benefits under the Optional Retirement Plan. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

(3) An administrative or academic employee may make an irrevocable election to participate in the Optional Retirement Plan within six months after being employed. An election under this subsection is effective on the first day of the month following six full months of employment.

(4) An administrative or academic employee who does not elect to participate in the Optional Retirement Plan:

(a) Remains or becomes a member of the Public Employees Retirement System in accordance with ORS chapters 238 and 238A; or

(b) Continues to be assisted by the State Board of Higher Education under ORS 243.920 if the employee is being so assisted.

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as those employees are employed in the Oregon University System and the plan is in effect.

(6)(a) An administrative or academic employee who elects to participate in the Optional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is not vested shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 as of the effective date of the election, and the amount credited to the member account of the member shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of this section.

(b) An administrative or academic employee who elects to participate in the Optional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes a written request to the Public Employees Retirement Board for a transfer of the amounts credited to the member account of the member to the Optional Retirement Plan. A request for a transfer must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer all amounts credited to the member account of the member directly to the Optional Retirement Plan, and shall terminate all rights, privileges and options of the employee under ORS chapter 238.

(c) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered to be a terminated member of the pension program by the Public Employees Retirement Board as of the effective date of the election.

(d) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered an inactive member of the pension program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the pension program. If the actuarial equivalent of the employee's benefit under the pension program at the time that the election becomes effective is \$5,000 or less, the employee may make a written request to the Public Employees Retirement Board for a transfer of the employee's interest under the pension program to the Optional Retirement Plan. The request must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit under the pension program directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the pension program.

(e) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the individual account program of the Oregon Public Service Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall be considered an inactive member of the individual account program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the individual account program. An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a member of the individual account program of the Oregon Public Service Retirement Plan, may make a written request to the Public Employees Retirement Board that all amounts in the member's employee account, rollover account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the Optional Retirement Plan. The request must be made at the time the member elects to participate

in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the individual account program upon making the transfer.

(f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retirement Board *[shall]* **may** not treat any employee as an inactive member under the provisions of this subsection for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that the employee be separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust.

(7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6) of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board and *[shall]* **may** not be made available to the employee.

(8) An employee participating in the Optional Retirement Plan shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the Optional Retirement Plan.

(9) The State Board of Higher Education shall contribute monthly to the Optional Retirement Plan the percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System, before any offset under ORS [238.225 (9)] **238.229 (2)**, if the employee had not elected to participate in the Optional Retirement Plan.

(10) Both employee and employer contributions to an Optional Retirement Plan shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.

(11) Benefits under the Optional Retirement Plan are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

(12) The percentage of salary contributed by the State Board of Higher Education under subsection (9) of this section on behalf of an employee is not affected by reason of the employee having a break in service, as described by ORS 238A.025.

NOTE: Updates word choice in (6)(f) and (7); replaces reference to deleted subsection in (9) with comparable active law.

SECTION 77. ORS 246.565 is amended to read:

246.565. (1) Any voting machine or vote tally system involving the use of computers, a computer network, computer program, computer software or computer system shall be subject to audit by the Secretary of State at any time for the purpose of checking the accuracy of the voting machine or vote tally system.

(2) The county clerk shall obtain a copy of the written instructions for the operation and maintenance of any component of a vote tally system described in subsection (1) of this section. The clerk shall obtain the copy from the manufacturer or vendor of any component and shall retain the copy.

(3) The county clerk shall keep a log of all maintenance performed on any component of a vote tally system after the component is purchased and installed. The county clerk shall distinguish maintenance performed during the period that occurs after the preparatory test conducted under ORS 254.235 (1) and before the public certification test conducted under ORS 254.525 [(4)].

(4) As used in this section:

(a) "Computer" means, but is not limited to, an electronic device *[which]* **that** performs logical, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and in-

cludes all input, output, processing, storage, software or communication facilities [*which*] **that** are connected or related to such a device in a system or network.

(b) "Computer network" means, but is not limited to, the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.

(c) "Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, [*which*] **that** permits the functioning of a computer system in a manner designed to provide appropriate products from [*such*] **the** computer system.

(d) "Computer software" means, but is not limited to, computer programs, procedures and associated documentation concerned with the operation of a computer system.

(e) "Computer system" means, but is not limited to, a set of related, connected or unconnected computer equipment, devices and software.

NOTE: Deletes erroneous subsection reference in (3); updates word choice in (4)(a) and (c).

SECTION 78. ORS 254.470 is amended to read:

254.470. (1) An election by mail shall be conducted as provided in this section. The Secretary of State may adopt rules governing the procedures for conducting an election by mail.

(2) The Secretary of State by rule shall establish requirements and criteria for the designation of places of deposit for the ballots cast in the election. The rules shall also specify the dates and times the places of deposit must be open and the security requirements for the places of deposit. At a minimum, the places designated under this section shall be open on the date of the election for a period of eight or more hours, but must be open until at least 8 p.m. At each place of deposit designated under this section, the county clerk shall prominently display a sign stating that the location is an official ballot drop site.

(3)(a) Except as provided in paragraphs (b), (c) and (d) of this subsection, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope not sooner than the 18th day before the date of an election conducted by mail and not later than the 14th day before the date of the election, to each active elector of the electoral district as of the 21st day before the date of the election.

(b) Notwithstanding paragraph (a) of this subsection, if the county clerk determines that an active elector of the electoral district as of the 21st day before the date of the election does not receive daily mail service from the United States Postal Service, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope to the elector not sooner than the 20th day before the date of an election conducted by mail and not later than the 18th day before the date of the election.

(c) Notwithstanding paragraph (a) of this subsection, the Secretary of State by rule shall specify the date on which all ballots shall be mailed for any state election conducted by mail under ORS 254.465 (2).

(d) Notwithstanding paragraph (a) of this subsection, in the case of ballots to be mailed to addresses outside this state to electors who are not long-term absent electors, the county clerk may mail the ballots not sooner than the 29th day before the date of the election.

(4) For an election held on the date of a primary election:

(a) The county clerk shall mail the official ballot of a major political party to each elector who is registered as being affiliated with the major political party as of the 21st day before the date of the election.

(b) The county clerk shall mail the official ballot of a major political party to an elector not affiliated with any political party if the elector has applied for the ballot as provided in this subsection and that party has provided under ORS 254.365 for a primary election that admits electors not affiliated with any political party.

(c) An elector not affiliated with any political party who wishes to vote in the primary election of a major political party shall apply to the county clerk in writing. The application shall indicate which major political party ballot the elector wishes to receive. Except for electors described in

subsection (5) of this section, and subject to ORS 247.203, the application must be received by the county clerk not later than 5 p.m. of the 21st day before the date of the election.

(d) If the primary election ballot includes city, county or nonpartisan offices or measures, an elector not eligible to vote for party candidates shall be mailed a ballot limited to those offices and measures for which the elector is eligible to vote.

(5) For each elector who updates a voter registration after the deadline in ORS 247.025, the county clerk shall make the official ballot, the return identification envelope and the secrecy envelope available either by mail or at the county clerk's office or at another place designated by the county clerk. An elector to whom this subsection applies must request a ballot from the county clerk.

(6) The ballot or ballot label shall contain the following warning:

Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting is subject to a fine.

(7) Upon receipt of any ballot described in this section, the elector shall mark the ballot, sign the return identification envelope supplied with the ballot and comply with the instructions provided with the ballot. The elector may return the marked ballot to the county clerk by United States mail or by depositing the ballot at the office of the county clerk, at any place of deposit designated by the county clerk or at any location described in ORS 254.472 or 254.474. The ballot must be returned in the return identification envelope. If the elector returns the ballot by mail, the elector must provide the postage. A ballot must be received at the office of the county clerk, at the designated place of deposit or at any location described in ORS 254.472 or 254.474 not later than the end of the period determined under subsection (2) of this section on the date of the election.

(8) An elector may obtain a replacement ballot if the ballot is destroyed, spoiled, lost or not received by the elector. Replacement ballots shall be issued and processed as described in this section and ORS 254.480. The county clerk shall keep a record of each replacement ballot provided under this subsection. Notwithstanding any deadline for mailing ballots in subsection (3) [or (4)] of this section, a replacement ballot may be mailed, made available in the office of the county clerk or made available at one central location in the electoral district in which the election is conducted. The county clerk shall designate the central location. A replacement ballot need not be mailed after the fifth day before the date of the election.

(9) A ballot shall be counted only if:

- (a) It is returned in the return identification envelope;
- (b) The envelope is signed by the elector to whom the ballot is issued; and
- (c) The signature is verified as provided in subsection (10) of this section.

(10) The county clerk shall verify the signature of each elector on the return identification envelope with the signature on the elector's registration card, according to the procedure provided by rules adopted by the Secretary of State. If the county clerk determines that an elector to whom a replacement ballot has been issued has voted more than once, the county clerk shall count only one ballot cast by that elector.

(11) At 8 p.m. on election day, electors who are at the county clerk's office, a site designated under subsection (2) of this section or any location described in ORS 254.472 or 254.474 and who are in line waiting to vote or deposit a voted ballot shall be considered to have begun the act of voting.

NOTE: Corrects syntax in (7); deletes erroneous internal reference in (8).

SECTION 79. ORS 260.007 is amended to read:

260.007. As used in this chapter, "contribute," "contribution," "expend" or "expenditure" does not include:

(1) Any written news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other regularly published publication, unless a political committee owns the facility[;].

(2) An individual's use of the individual's own personal residence, including a community room associated with the individual's residence, to conduct a reception for a candidate or political committee[,] and the individual's cost of invitations, food and beverages provided at the reception[;].

(3) A vendor's sale of food and beverages for use in a candidate's or political committee's campaign at a charge less than the normal comparable charge, if the charge is at least equal to the cost of the food or beverages to the vendor[;].

(4) Any unreimbursed payment for travel expenses an individual, including a candidate, makes on behalf of a candidate or political committee[;].

(5) Any loan of money made by a financial institution as defined in ORS 706.008, other than any overdraft made with respect to a checking or savings account, if the loan bears the usual and customary interest rate for the category of loan involved, is made on a basis that [assures] **ensures** repayment, is evidenced by a written instrument and is subject to a due date or amortization schedule. However, each indorser or guarantor of the loan shall be considered to have contributed that portion of the total amount of the loan for which that person agreed to be liable in a written agreement, except if the indorser or guarantor is the candidate's spouse[;].

(6) Nonpartisan activity designed to encourage individuals to vote or to register to vote[;].

(7) Any communication a membership organization or corporation makes to its members, shareholders or employees if the membership organization or corporation is not organized primarily for the purpose of influencing an election[;].

(8) The payment of compensation for legal and accounting services rendered to a candidate or political committee if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of [insuring] **ensuring** compliance with the provisions of this chapter; and].

(9) The payment by a state or local committee of a political party of the costs of preparation, display or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing, of three or more candidates for any public office for which an election is held in this state. This subsection does not apply to costs incurred by the committee with respect to a display of any such listing made on broadcasting stations or in newspapers, magazines or similar types of general public political advertising.

NOTE: Adjusts punctuation to account for intervening periods; strikes errant comma in (2); corrects word choice in (5) and (8).

SECTION 80. ORS 267.090 is amended to read:

267.090. Except as provided in ORS 267.112:

(1) [District] Board members [shall] **of a mass transit district may** not be elected at the time of formation, but if a district is formed, the Governor shall, within 60 days after receiving a certified copy of the formation order, appoint from subdistricts the members of the first board of directors of the district, designate one **member as** the temporary chairperson[,] and fix the time and place of the organizational meeting. [If the district has formed before October 4, 1977, the Governor, within 60 days after October 4, 1977, shall appoint from subdistricts a new board of directors, designate one as temporary chairperson, and fix the time and place of the organizational meeting.]

(2) The board of directors of a mass transit district shall consist of seven members. One director shall be appointed from each of seven subdistricts. The Governor shall appoint as one of the directors a person who regularly uses the services provided by a mass transit system. Directors shall reside in the subdistrict from which they are respectively appointed. The subdistricts shall be as nearly equal in population as possible based on the latest federal census[,] and shall be designed to [assure] **ensure** representation of the most populous city, other cities and unincorporated territory in the proposed district proportionate to their respective populations provided that if less than the entire district is taxed by the district, the subdistricts shall be wholly within the taxed area. The

district or, if the taxed area is less than the entire district, the taxed area shall be divided into subdistricts initially, and after each succeeding federal census, by the Secretary of State.

(3) The term of office of a director is four years, but each director shall serve at the pleasure of the Governor. Before the expiration of the term of a director, the director's successor shall be appointed. A director is eligible for reappointment. In case of a vacancy for any cause, the Governor shall appoint a person to serve for the unexpired term. A director whose term has expired shall continue to serve until the appointment of a successor unless discharged by the Governor.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

NOTE: Corrects syntax and deletes outdated provisions in (1); corrects word choice and punctuation in (2).

SECTION 81. 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 under ORS 279.835 to 279.855.

NOTE: Deletes reference to repealed statute in (3)(e). See section 58.

SECTION 82. ORS 280.070 is amended to read:

280.070. (1) An election within a county for the purpose of approving a tax levy or tax rate under ORS 280.060 shall be called by the county court or board of county commissioners and shall be held on a date specified in ORS 203.085.

(2) An election within a city for the purpose of approving a tax levy or tax rate under ORS 280.060 or under section 11 (3)(c), Article XI of the Oregon Constitution, shall be called by the governing body of the city and held on a date specified in ORS 221.230.

(3) An election within a political subdivision other than a county or city for the purpose of approving a tax levy or tax rate under ORS 280.060 or under section 11 (3)(c), Article XI of the Oregon Constitution, shall be called by the governing body of the subdivision and held on a date specified in ORS 255.345.

(4)(a) The ballot title for a measure authorizing the imposition of local option taxes shall contain the following additional statement:

This measure may cause property taxes to increase more than three percent.

(b) The [statements] **statement** required by this subsection [shall] **may** not be considered for purposes of the word count limitations under ORS 250.035.

(c) The [statements] **statement** required by this subsection shall be placed after the question on the ballot title.

(5) As part of the question, the ballot title for a measure authorizing the imposition of local option taxes shall state:

(a) The length in years of the period during which the proposed local option tax will be imposed.

(b) The first fiscal year in which the proposed local option tax will be imposed.

(6) As part of the question, the ballot title for a measure authorizing the establishment of a permanent rate limitation shall contain the following information:

(a) The tax rate per \$1,000 of assessed value of the proposed permanent rate limitation.

(b) The first fiscal year in which the proposed permanent rate limitation will be imposed.

(7) The ballot title for a measure authorizing the imposition of local option taxes or a permanent rate limitation shall be in compliance with ORS 250.036.

NOTE: Changes term from plural to singular to reflect removal of additional statement by section 22, chapter 632, Oregon Laws 1999, and updates word choice in (4).

SECTION 83. ORS 283.305 is amended to read:

283.305. As used in ORS 283.305 to 283.350:

(1) **“Alternative fuel” means natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.**

[1] (2) **“Authorized driver” means any of the following who has a valid driver license and an acceptable driving record:**

(a) A salaried state employee, including an agent of the state;

(b) A volunteer, appointed in writing, whose written description of duties includes driving motor vehicles;

(c) An agency client required to drive motor vehicles as part of a rehabilitation or treatment program authorized by law;

(d) Any personnel of any unit of government whose use of motor vehicles is permitted by an authorized intergovernmental agreement;

(e) Any student enrolled at any state institution of higher education and whose use of motor vehicles meets the requirements of ORS 283.310; and

(f) An inmate of a correctional institution with specific Department of Corrections approval who is accompanied by a supervising correctional institution employee or who is performing a specific work assignment driving a special purpose vehicle required for that assignment and within the visual range of a supervising correctional institution employee who is at the work assignment site or who is part of the transport caravan.

[2] *“Alternative fuel” means natural gas, liquefied petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.*

(3) **“Motor vehicles” includes state-owned, leased or otherwise controlled motor vehicles and the supplies, parts and equipment for the operation, maintenance or repair of such motor vehicles.**

(4) **“Official state business” means activity conducted by a state agency that advances the lawful policies of the agency as specified by the Oregon Department of Administrative Services by rule.**

(5) **“Standard passenger vehicle” means a motor vehicle that is commonly known as a sedan or a station wagon and that is not equipped with special or unusual equipment.**

(6) **“State agency” or “agency” includes the Legislative Assembly, at its option, or any of its statutory, standing, special or interim committees, at the option of such committee.**

NOTE: Alphabetizes definitions.

SECTION 84. ORS 285C.050 is amended to read:

285C.050. As used in ORS 285C.050 to 285C.250, unless the context requires otherwise:

(1) **“Assessment date” and “assessment year” have the meanings given those terms in ORS 308.007.**

(2) **“Authorized business firm” means an eligible business firm that has been authorized under ORS 285C.140.**

(3) "Business firm" means a person operating or conducting one or more trades or businesses but does not include any governmental agency, municipal corporation or nonprofit corporation.

(4) "County average annual wage" means:

(a) The most recently available average annual covered payroll for the county in which the enterprise zone is located, as determined by the Employment Department; or

(b) If the enterprise zone is located in more than one county, the highest county average annual wage as determined under paragraph (a) of this subsection.

(5) "Electronic commerce" means engaging in commercial or retail transactions predominantly over the Internet or a computer network, utilizing the Internet as a platform for transacting business, or facilitating the use of the Internet by other persons for business transactions, and may be further defined by the Economic and Community Development Department by rule.

(6) "Eligible business firm" means a firm engaged in an activity described under ORS 285C.135 that may file an application for authorization under ORS 285C.140.

(7) "Employee" means a person who works more than 32 hours per week, but does not include a person with a temporary or seasonal job or a person hired solely to construct qualified property.

(8) "Enterprise zone" means one of the 30 areas designated or terminated and redesignated by order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one of the areas designated by the Director of the Economic and Community Development Department under ORS 285C.080, a federal enterprise zone area designated under ORS 285C.085, an area designated under ORS 285C.250 or a reservation enterprise zone designated under ORS 285C.306.

(9) "Federal enterprise zone" means any discrete area wholly or partially within this state that is designated as an empowerment zone, an enterprise community, a renewal community or some similar designation for purposes of improving the economic and community development of the area.

(10) "First-source hiring agreement" means an agreement between an authorized business firm and a publicly funded job training provider whereby the provider refers qualified candidates to the firm for new jobs and job openings in the firm.

(11) "In service" means being used or occupied or fully ready for use or occupancy for commercial purposes consistent with the intended operations of the business firm as described in the application for authorization.

(12) "Modification" means modernization, renovation or remodeling of an existing building, structure or real property machinery or equipment.

(13) "New employees hired by the firm":

(a) Includes only those employees of an authorized business firm engaged for a majority of their time in eligible operations.

(b) Does not include individuals employed in a job or position that:

(A) Is created and first filled after December 31 of the first tax year in which qualified property of the firm is exempt under ORS 285C.175;

(B) Existed prior to the submission of the relevant application for authorization; or

(C) Is performed primarily at a location outside of the enterprise zone.

(14) "Publicly funded job training provider" includes but is not limited to a community college, a service provider under the federal Workforce Investment Act Title I-B (29 U.S.C. 2801 et seq.), or a similar program.

(15) "Qualified business firm" means a business firm described in ORS 285C.200, the qualified property of which is exempt from property tax under ORS 285C.175.

(16) "Qualified property" means property described under ORS 285C.180.

(17) "Rural enterprise zone" means:

(a) An enterprise zone located in an area of this state in which an urban enterprise zone could not be located; or

(b) A reservation enterprise zone designated under ORS 285C.306.

(18) "Sparsely populated county" means a county with a density of 100 or fewer persons per square mile, based on the most recently available population figure for the county from the Portland State University [*Center for Population Research and Census*] **Population Research Center**.

(19) "Sponsor" means:

(a) The city, county or port, or any combination of cities, counties or ports, that received approval of an enterprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS 285C.065 and 285C.075, under ORS 285C.085 or under ORS 285C.250;

(b) The tribal government, in the case of a reservation enterprise zone; or

(c) A city, county or port that joined the enterprise zone through a boundary change under ORS 285C.115 (7) or a port that joined the enterprise zone under ORS 285C.068.

(20) "Tax year" has the meaning given that term in ORS 308.007.

(21) "Urban enterprise zone" means an enterprise zone in a metropolitan statistical area, as defined by the most recent federal decennial census, that is located inside a regional or metropolitan urban growth boundary.

(22) "Year" has the meaning given that term in ORS 308.007.

NOTE: Corrects name of center in (18).

SECTION 85. ORS 285C.090 is amended to read:

285C.090. (1) A proposed enterprise zone must be located in a local area in which:

(a) Fifty percent or more of the households have incomes below 80 percent of the median income of this state, as defined by the most recent federal decennial census;

(b) The unemployment rate is at least 2.0 percentage points greater than the comparable unemployment rate for this entire state, as defined by the most recently available data published or officially provided and verified by the United States Government, the Employment Department of this state, the Portland State University [*Center for Population Research and Census*] **Population Research Center** or special studies conducted under a contract with a regional academic institution; or

(c) The Economic and Community Development Department determines on a case-by-case basis using evidence provided by the cities, counties or ports applying for designation of the proposed enterprise zone that there exists a level of economic hardship at least as severe as that described in paragraph (a) or (b) of this subsection. The evidence shall be based on the most recently available data from official sources and may include, but is not limited to, a contemporary decline of the population in the proposed enterprise zone, the percentage of persons in the proposed enterprise zone below the poverty level relative to the percentage of the entire population of this state below the poverty level or the unemployment rate for the county or counties in which the proposed enterprise zone is located.

(2) An enterprise zone must consist of a total area of not more than 12 square miles in size. The area of the zone shall be calculated by excluding that portion of the zone that lies below the ordinary high water mark of a navigable body of water.

(3) Except as provided in subsection (4) of this section:

(a) An enterprise zone must have 12 miles or less as the greatest distance between any two points within the zone; and

(b) Unconnected areas of an enterprise zone may not be more than five miles apart.

(4) Unconnected areas of a rural enterprise zone may not be more than 15 miles apart when an unconnected area is entirely within a sparsely populated county, and the zone:

(a) Must have 20 miles or less as the greatest distance between any two points within the zone, if only a portion of the zone is contained within a sparsely populated county; or

(b) Must have 25 miles or less as the greatest distance between any two points within the zone, if the zone is entirely contained within a sparsely populated county.

(5) This section does not apply to the designation or redesignation of a reservation enterprise zone.

NOTE: Corrects name of center in (1)(b).

SECTION 86. ORS 285C.306 is amended to read:

285C.306. (1) Trust land of an Indian tribe that meets all of the following requirements is designated as a reservation enterprise zone for the purposes of ORS 285C.300 to 285C.320:

(a) The Indian tribe is a federally recognized Indian tribe;

(b) The reservation of the Indian tribe is entirely within the boundaries of this state;
(c) The land for which zone designation is sought is land held in trust by the United States for the benefit of the Indian tribe and is located entirely within the boundaries of the reservation;

(d) Fifty percent or more of the households within the boundaries of the reservation have incomes below 80 percent of the median income of this state, as defined by the most recent federal decennial census; and

(e) The unemployment rate within the reservation for all enrolled members of the tribe is at least 2.0 percentage points greater than the comparable unemployment rate for this state, as defined by the most recently available data published or officially provided and verified by the United States Government, the Employment Department, the Portland State University [*Center for Population Research and Census*] **Population Research Center** or a special study conducted under a contract with a regional academic institution.

(2) At the request of a tribal government, the Economic and Community Development Department shall determine if trust land is designated as a reservation enterprise zone under this section.

NOTE: Corrects name of center in (1)(e).

SECTION 87. ORS 287.252 is amended to read:

287.252. (1) The governing body of any incorporated city may issue and sell or exchange refunding bonds for the purpose of paying, redeeming or retiring any or all outstanding lawfully issued bonds of [*such*] **the** city, including bonds issued pursuant to applications to pay assessments in installments, when:

(a) The bonds have matured but have not been paid or canceled; [*or*]

(b) The bonds are about to mature and become payable; [*or*]

(c) The bonds are redeemable at the option of the city; or

(d) The holders of all or any part of any issue of bonds of the city are willing to surrender [*such*] **the** bonds, whether or not the bonds to be surrendered have matured or are about to mature or become payable.

(2) Refunding bonds issued under authority of subsection (1) of this section [*shall*] **may** not exceed in the aggregate the par amount of the bonds to be called, paid, redeemed or replaced, less the amount in the sinking fund, if any, applicable thereto.

(3) Refunding bonds [*shall*] **may** not be exchanged for outstanding bonds under authority of subsection (1) of this section until bids for the refunding bonds have been solicited in the manner prescribed by ORS 287.014 to 287.022.

NOTE: Updates word choice and removes superfluous conjunctions in (1); conforms word choice in (2) and (3) to legislative style.

SECTION 88. ORS 288.160 is amended to read:

288.160. (1) Proceeds of refunding bonds authorized by this section shall be used solely to refund bonds and pay related costs and expenses, and [*shall*] **may** not be used to pay for costs of operations or costs of projects not attributable to the refunding.

(2) If authorized by law other than ORS 288.150 to 288.165 and in the manner provided by law, a governmental unit may issue general obligation bonds to refund outstanding bonded indebtedness or to reimburse the governmental unit for costs of capital construction or improvements, if:

(a) The refunding general obligation bonds have been approved by the electors in a manner that qualifies under section 11 (11)(d)(ii), Article XI of the Oregon Constitution, and the obligations [*which*] **that** are refunded, or the first obligations in the series, if the refunding general obligation bonds are part of a series of refundings, or the costs [*which*] **that** are to be reimbursed, were incurred for capital construction or improvements; or

(b) The refunding general obligation bonds replace an issue of outstanding general obligations bonds [*which*] **that** were incurred for capital construction or improvements.

(3) For the purposes of this section, refunding general obligation bonds shall be deemed to replace outstanding general obligation bonds if:

(a) The refunded general obligation bonds are paid or lawfully deemed paid upon issuance of the refunding general obligation bonds; [*and*]

(b) The net proceeds of the refunding bonds shall be used to pay only the debt service on the refunded bonds and the costs of issuance of the refunding bonds; and

(c) The bond refunding satisfies at least one of the following tests:

(A) The principal amount of the refunding general obligation bonds does not exceed the outstanding principal amount of the refunded general obligation bonds, plus the amount of any authorized but unissued general obligation bonds of the governmental unit; *[or]*

(B) The total amount of principal and interest payable on the refunding general obligation bonds does not exceed the total amount of principal and interest payable on the refunded bonds as of the date of issuance of the refunding general obligation bonds; or

(C) The present value of the debt service on the refunding general obligation bonds does not exceed the present value of the debt service on the refunded general obligation bonds, with the present values calculated at the refunding bond yield.

(4) For purposes of *[section]* **sections** 11 (13) and 11b (3)(b), Article XI of the Oregon Constitution:

(a) If refunding general obligation bonds replace an issue of general obligation bonds, the refunding general obligation bonds shall be deemed to have been issued on the date of issuance of the bonds *[which]* **that** are replaced, or the first issue of general obligation bonds, if the refunding general obligation bonds are part of a series of refundings; and

(b) If the bonds *[which]* **that** are replaced were approved by the electors, the refunding general obligation bonds shall be deemed to have been specifically approved by the vote *[which]* **that** approved the bonds *[which]* **that** are replaced, or the first issue, in a series of refundings.

(5) Notwithstanding ORS 221.200, 255.085~~],~~ **or** 287.056 or any other law to the contrary, a ballot measure authorizing issuance of refunding general obligation bonds need not state the principal amount of refunding general obligation bonds, *[so]* **as** long as the refunding bonds comply with subsection (3) of this section. A ballot measure may authorize issuance of general obligation bonds to refund a specific series of outstanding general obligation bonds, or may authorize issuance of general obligation bonds to refund all or any portion of the outstanding bonds or future general obligation bonds, or any combination thereof.

(6) Refunded general obligation bonds shall be deemed paid within the meaning of subsection (3) of this section if:

(a) The refunded general obligation bonds are deemed paid or defeased under the provisions of the documents authorizing issuance of the refunded general obligation bonds; or

(b) The governmental unit complies with ORS 288.677.

(7) If a governmental unit issues general obligation bonds to refund general obligation bonds that were issued before December 5, 1996, the refunded general obligation bonds and the refunding general obligation bonds shall be treated as having been incurred to finance capital construction and improvements under the laws in effect at the time the refunded bonds were issued. The definitions described in section 11 (13), Article XI of the Oregon Constitution, or statutes enacted to interpret section 11 (13), Article XI of the Oregon Constitution, *[shall]* **do** not apply to the refunded bonds or the refunding bonds.

(8) A governmental unit may issue refunding bonds to refund obligations described in section 11 (5)(a)(A) and (B), Article XI of the Oregon Constitution. Ad valorem property taxes may be levied and collected to pay refunding bonds authorized by this subsection to the same extent that ad valorem property taxes could be levied and collected to pay the obligations that are refunded.

(9) A governmental unit may issue refunding bonds to refund bonds that are not general obligations or obligations described in section 11 (5)(a)(A) and (B), Article XI of the Oregon Constitution, but are secured by ad valorem property taxes. Ad valorem property taxes may be levied and collected to pay refunding bonds authorized by this subsection to the same extent that ad valorem property taxes could be levied and collected to pay the bonds that are refunded.

NOTE: Corrects word choice in (1), (2)(a) and (b), (4), (5) and (7); removes superfluous conjunctions in (3); conforms syntax in (5) to legislative style.

SECTION 89. ORS 289.010 is amended to read:

289.010. (1) The Legislative Assembly finds that by use of the powers and procedures described in this chapter for the assembling and financing of lands for housing, educational and cultural uses and for the construction and financing of facilities for such uses, financed through the issuance of revenue bonds secured solely by the properties and rentals thus made available, the state may be able to effect substantially the [provisions] **provision** of decent, affordable housing, the achievement of higher levels of learning and development of the intellectual capacities of citizens and expansion of the authorized services and resources for the intellectual and artistic enrichment of citizens.

(2) It is the purpose of this chapter to authorize the exercise of powers granted by this chapter by this state in addition to and not in lieu of any other powers it may possess.

NOTE: Improves word choice in (1).

SECTION 90. ORS 294.160 is amended to read:

294.160. (1) [After July 14, 1995,] The governing body of a city, county or other unit of local government shall provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated.

(2) Where a local government exercises authority to assume the responsibility for a program delivered by the state, the local government shall provide an opportunity to comment on the difference between the fee amount charged by the state for such service and the proposed local fee for the service.

NOTE: Removes obsolete provision in (1).

SECTION 91. ORS 294.725 is amended to read:

294.725. For the purposes of ORS 294.725 to 294.755:

(1) "Account balance" means the amount a political subdivision has paid into the Local Government Employer Benefit Trust Fund less the amount of unemployment benefits paid by the Employment Department on behalf of the political subdivision.

(2) "**Account reserve ratio**" means the account balance of the political subdivision on June 30, divided by gross wages paid to individuals subject to ORS chapter 657 during the four calendar quarters ending on June 30 by the political subdivision. The ratio shall be expressed as a percent carried to four decimal places.

[2] (3) "Aggregate benefit cost rate" means the total unemployment benefits paid during a cost rate period that is attributable to wages paid by all political subdivisions divided by the gross wages paid to individuals subject to ORS chapter 657 during the cost rate period by all political subdivisions. The rate shall be expressed as a percent and rounded to the nearest one-tenth of one percent.

[3] (4) "Benefit cost rate" means the total unemployment benefits paid during a cost rate period that is attributable to wages paid by a political subdivision divided by gross wages paid to individuals subject to ORS chapter 657 during the cost rate period by the political subdivision. The rate shall be expressed as a percent and carried to four decimal places.

[4] (5) "Cost rate period" means the prior three-year period ending June 30 of each year [except that with respect to June 30, 1977, the cost rate period is the two-year period ending June 30, 1977].

[5] "Account reserve ratio" means the account balance of the political subdivision on June 30, divided by gross wages paid to individuals subject to ORS chapter 657 during the four calendar quarters ending on such June 30 by such political subdivision. The ratio shall be expressed as a percent carried to four decimal places.]

(6) "Department" means the Employment Department.

(7) "Director" means the Director of the Employment Department.

(8) "Erroneous benefit payments" means any amount paid to an individual to which the individual is not entitled due to:

(a) Any error, whether or not due to misrepresentation or nondisclosure of material fact by the claimant; or

(b) An initial decision to pay benefits **that** is subsequently reversed by a decision finding the individual was not eligible for [such] **the** benefits and [such] **the** decision has become final.

(9) “Local Government Employer Benefit Trust Fund” or “fund” means the fund created by ORS 294.730.

[(9)] **(10)** “Political subdivision” means a political subdivision as defined by ORS 657.097.

[(10)] “*Local Government Employer Benefit Trust Fund*” or “*fund*” means the fund created by ORS 294.730.]

(11) “Unemployment benefits” or “benefits” means regular and extended benefits paid under ORS chapter 657.

NOTE: Alphabetizes definitions; updates word choice in (2); removes obsolete provision in (5); corrects read-in problem and updates word choice in (8)(b).

SECTION 92. ORS 294.735 is amended to read:

294.735. (1) A political subdivision shall pay into the **Local Government Employer Benefit Trust Fund** a percentage of the gross wages it pays to individuals in employment subject to ORS chapter 657, except that minor adjustments to wages in a calendar quarter on which payments have previously been made [shall] **may** not result in either a credit to the employer or an additional amount due the fund. [Such] **The** percentage shall be as determined in subsections (2) to (6) of this section.

(2) As soon as possible after June 30[, 1977, and each June 30 thereafter] **of each year**, the Employment Department shall for each political subdivision determine the benefit cost rate and the account reserve ratio applicable as of that June 30.

(3) The percentage rate assigned to a political subdivision whose account has been potentially chargeable with benefits for each of the last four calendar quarters ending on the June 30 immediately preceding the determination shall be the benefit cost rate of the political subdivision plus one-third of the difference obtained by subtracting the political subdivision’s account reserve ratio from 1.5 times the political subdivision’s benefit cost rate. The resulting rate shall be rounded up to the nearest one-tenth of one percent. A political subdivision’s rate shall be not less than one-tenth of one percent nor more than five percent.

(4) The percentage rate assigned to a political subdivision whose account has not been potentially chargeable with benefits for each of the last four quarters ending on the immediately preceding June 30 shall be the greater of one percent or 1.5 times the aggregate benefit cost rate for the cost rate period ending on that June 30.

(5) Notwithstanding subsections (3) and (4) of this section, a local government employer with an account balance on June 30 that is less than five percent of the taxable wage base currently in effect [shall] **may** not be assigned a rate of:

(a) Less than two percent if the payroll of the employer was less than \$25,000 during the four most recently completed calendar quarters; [or]

(b) Less than one percent if the payroll of the employer was \$25,000 or more but less than \$50,000 during the four most recently completed calendar quarters; [or]

(c) Less than one-half of one percent if the payroll of the employer was \$50,000 or more but less than \$100,000 during the four most recently completed calendar quarters; or

(d) Less than two-tenths of one percent if the payroll of the employer was \$100,000 or more during the four most recently completed calendar quarters.

(6) Percentages determined in subsections (3) to (5) of this section shall be applicable for the four-calendar-quarter period beginning July 1 of the year immediately following the determination.

(7)(a) In addition to the payment made into the fund under subsections (1) to (6) of this section, any political subdivision [which] **that** has a negative account balance at the end of a calendar quarter and had a negative account balance at the end of each of the three immediately preceding calendar quarters shall make additional payments into the fund during each of the next four calendar quarters. The additional payment required shall be computed as follows, with all computations omitting cents:

[(a)] **(A)** Multiply the gross payroll reported by the employer during the four most recent calendar quarters by the current percentage rate of payment into the fund.

[(b)] **(B)** Subtract the amount of benefits attributable to the employer that was reimbursed from the fund during the most recent four calendar quarters from the product determined in [paragraph (a) of this subsection] **subparagraph (A) of this paragraph.**

[(c)] **(C)** If the remainder obtained in [paragraph (b) of this subsection] **subparagraph (B) of this paragraph** is more than zero, subtract the remainder from the negative balance of the account.

[(d)] **(D)** If the remainder in [paragraph (b) of this subsection] **subparagraph (B) of this paragraph** is zero or less, make no adjustment to the amount of the negative balance of the account.

[(e)] **(E)** Divide the amounts determined in either [paragraph (c) or (d) of this subsection] **subparagraph (C) or (D) of this paragraph** by four. The resulting amount shall be the additional payment required for each quarter.

(b) Only one such determination shall be made in any four-quarter period. If the negative balance is eliminated before the end of the four quarters in which the additional payments were determined necessary, no further additional payments will be required under this subsection.

(8) During the first four calendar quarters in which a political subdivision is a participant in the fund, additional payments shall be required if the account balance of the political subdivision is negative at the end of any of the four quarters. The additional payment shall be determined in the same manner described in subsection (7) of this section except that the computation in subsection [(7)(a) and (b)] **(7)(a)(A) and (B)** of this section shall include only those quarters in which the political subdivision was a participant in the fund.

(9) Employers subject to the provisions of this section may request a refund of amounts in excess of the amount required to obtain the minimum contribution rate.

NOTE: Sets forth full name of fund, inserts comma for readability and updates word choice in (1); removes obsolete provision in (2); updates word choice and removes superfluous conjunctions in (5); restructures (7) to eliminate blank slug flush; corrects word choice in (7)(a); adjusts internal references in (7) and (8) to reflect restructuring.

SECTION 93. ORS 319.510 is amended to read:

319.510. ORS 319.510 to 319.880 may be cited as the Use Fuel Tax Law [of 1943].

NOTE: Conforms short title to legislative style.

SECTION 94. ORS 342.144 is amended to read:

342.144. (1) As used in this section, "American Indian tribe" means an Indian tribe as that term is defined in ORS 97.740.

(2) The Legislative Assembly declares that teaching American Indian languages is essential to the proper education of American Indian children.

(3) The Teacher Standards and Practices Commission shall establish an American Indian languages teaching license.

(4) Each American Indian tribe may develop a written and oral test that must be successfully completed by an applicant for an American Indian languages teaching license in order to determine whether the applicant is qualified to teach the tribe's native language. When developing the test, the tribe shall determine:

(a) Which dialects will be used on the test;

(b) Whether the tribe will standardize the tribe's writing system; and

(c) How the teaching methods will be evaluated in the classroom.

(5) The test shall be administered at an appropriate location that does not create hardship for the tribal members administering the test.

(6) The commission may not require an applicant to hold a specific academic degree, to complete a specific amount of education or to complete a teacher education program to receive an American Indian languages teaching license.

(7)(a) An American Indian languages teaching license qualifies the holder to accept a teaching position in a school district, public charter school, education service district, community college or state institution of higher education.

(b) A holder of an American Indian languages teaching license who does not also have a teaching license issued under ORS 342.125 may not teach in a school district or education service

district any subject other than the American Indian language [they are] **the holder of the license is approved to teach by the tribe.**

(c) A holder of an American Indian languages teaching license who does not also have a teaching license or registration issued under ORS 342.125 may not teach in a public charter school any subject other than the American Indian language [they are] **the holder of the license is approved to teach by the tribe.**

(8)(a) As used in this subsection, “technical assistance program” means a program provided to an American Indian languages teacher by a licensed teacher with three or more years of teaching experience. A technical assistance program may include direct classroom observation and consultation, assistance in instructional planning and preparation, support in implementation and delivery of classroom instruction, and other assistance intended to enhance the professional performance and development of the American Indian languages teacher.

(b) The holder of an American Indian languages teaching license who does not also have an administrative license, teaching license or registration issued under ORS 342.125 and who is employed by a school district, public charter school or education service district shall participate in a technical assistance program with a person holding a teaching license issued by the commission under ORS 342.125. The technical assistance program shall meet the guidelines specified in ORS 329.815 (1) to (3).

(9) An American Indian languages teaching license shall be valid for three years and may be renewed upon application from the holder of the license.

NOTE: Corrects pronoun-antecedent problem in (7)(b) and (c).

SECTION 95. ORS 348.280 is amended to read:

348.280. The Oregon Student Assistance Commission shall:

(1) Determine which students are eligible [*beneficiaries*] **to receive scholarships under ORS 348.270.**

(2) Grant the appropriate scholarships under ORS 348.270.

(3) Make necessary rules for application and distribution of the benefits available under ORS 348.270 and this section.

(4) Establish rules and procedures necessary to carry out the provisions of ORS 348.270 and this section, including but not limited to the usual and customary rules for analyzing financial need.

(5) In awarding scholarships pursuant to its authority under ORS 348.520, [*the Oregon Student Assistance Commission shall*] give priority to students who are eligible [*for*] **to receive** scholarships under ORS 348.270.

NOTE: Clarifies benefit for which students are eligible in (1); corrects read-in problem and word choice in (5).

SECTION 96. ORS 348.702 is amended to read:

348.702. (1) There is created within the Education Stability Fund the Oregon Growth Account, to which shall be credited, in the manner provided in subsection (2) of this section, 10 percent of the funds transferred under section 4, Article XV of the Oregon Constitution, from the Administrative Services Economic Development Fund to the Education Stability Fund. Separate records shall be maintained for moneys in the Oregon Growth Account that are available for the purposes specified in subsection (5) of this section. The account may be credited with [*such*] unrestricted appropriations, gifts, donations, grants or contract proceeds from any source, with investments or funds from any source[,] and with returns on investments made from the account.

(2) The Oregon Department of Administrative Services may credit to the Oregon Growth Account from the first funds transferred in a fiscal year to the Education Stability Fund under section 4, Article XV of the Oregon Constitution, an amount up to the amount the department estimates to be 10 percent of the funds required to be transferred to the Education Stability Fund for that fiscal year.

(3) If at the end of the fiscal year the amount credited to the Oregon Growth Account under subsection (2) of this section is less than or greater than 10 percent of the amount required to be

transferred under section 4, Article XV of the Oregon Constitution, to the Education Stability Fund, the amount credited to the Oregon Growth Account shall be adjusted in one of the following ways:

(a) The amount credited to the account in the following fiscal year may be adjusted;
(b) Any excess may be transferred from the Oregon Growth Account to the Education Stability Fund; or

(c) Any shortage may be transferred from the Education Stability Fund to the Oregon Growth Account from funds available for that purpose.

(4) Adjustments required by subsection (3) of this section shall be made without consideration of any interest or other earnings that have accrued during the fiscal year.

(5) The purpose of the Oregon Growth Account is to earn returns for the Education Stability Fund by making investments in or by providing seed capital for emerging growth businesses in traded sector industries.

(6) The investment of funds in the Oregon Growth Account shall be governed by the Oregon Growth Account Board.

NOTE: Deletes unnecessary word and serial comma in (1).

SECTION 97. ORS 351.086 is amended to read:

351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions of ORS chapters 240, [279,] 279A, 279B, 279C, 282 and 292 do not apply to the Oregon University System.

(2) Notwithstanding subsection (1) of this section, ORS 240.167, 240.185, [279.835 to 279.855,] 279A.065 (2), 279B.055 (3), 279C.380 (1)(a) and (3), 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870 and 292.043 apply to the Oregon University System.

(3) Notwithstanding any other law, the following provisions do not apply to the Oregon University System:

- (a) ORS 182.310 to 182.400;
- (b) ORS 273.413 to 273.456;
- (c) ORS 276.071 and 276.072; and
- (d) ORS 291.038.

(4) Notwithstanding subsection (3)(b) of this section, ORS 273.413 to 273.456 apply to any structure, equipment or asset owned by the Oregon University System that is encumbered by a certificate of participation.

(5) In carrying out the duties, functions and powers imposed by law upon the Oregon University System, the State Board of Higher Education or the Chancellor of the Oregon University System may contract with any public agency for the performance of such duties, functions and powers as the Oregon University System considers appropriate.

NOTE: Removes chapter reference in (1) rendered obsolete by restructuring of public contracting law (see chapter 794, Oregon Laws 2003); removes corresponding series reference in (2).

SECTION 98. ORS 351.890 is amended to read:

351.890. ORS 351.865 to 351.890 shall be known and cited as the [“]Research Policy Act. [of 1983.”]

NOTE: Conforms short title to legislative style.

SECTION 99. ORS 367.171 is amended to read:

367.171. An indenture under which grant anticipation revenue bonds are issued may provide for:

(1) The pledging of all or a portion of the moneys described in ORS 367.173 to the payment of the principal, interest, premium, if any, or the bond debt service of revenue bonds issued under ORS 367.161 to 367.181;

(2) Requirements concerning a particular series of revenue bonds issued under ORS 367.161 to 367.181;

(3) Requirements concerning moneys described in ORS 367.173 and payment on outstanding revenue bonds issued under ORS 367.161 to 367.181;

(4) A contractual undertaking for the benefit of bondholders concerning assessment, levy collection and deposit of moneys described in ORS 367.173;

(5) Provisions concerning the registration of revenue bonds or the recording or filing of the indenture;

(6) Provisions relating to a reserve account[. *Provisions under this subsection may include, but are not limited to,*] **including, but not necessarily limited to, provisions related to** the amount required for an account and provisions for replenishing the account from moneys described in ORS 367.173;

(7) Provisions concerning trustees including, but not limited to:

(a) Establishing funds, accounts or moneys described in ORS 367.173 over which the trustee will be custodian; and

(b) Providing that a trustee will be appointed; or

(8) Establishing the maturation date of the revenue bonds.

NOTE: Corrects punctuation in (6).

SECTION 100. ORS 377.727 is amended to read:

377.727. In addition to the provisions of ORS 377.725, directional signs shall meet the following requirements:

(1) The maximum area shall be 150 square feet[.], the maximum height shall be 20 feet[.] and the maximum length shall be 20 feet. Dimensions and area under this subsection shall be computed to include border and trim, but exclude supports.

(2) No directional sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate system or other freeway measured along the interstate highway or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled ways.

(3) No directional sign may be located within 2,000 feet of a rest area, park land or scenic area.

(4) No directional sign shall be located within one mile of any other directional sign facing the same direction of travel.

(5) No more than two directional signs pertaining to the same attraction or activity and facing in the same direction of travel may be erected along a single route approaching the attraction or activity.

(6) No directional signs located adjacent to the interstate system shall be located more than 75 air miles from the attraction or activity.

(7) The message on a directional sign shall be limited to identification and name of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number or exit numbers. Descriptive words or phrases describing the activity or its environs are prohibited. However, one standard size graphic may be placed on each sign if not prohibited by federal statutes or regulations.

(8) Privately owned activities or attractions eligible for directional signing are limited to [*the following:*] natural phenomena, scenic attractions, historic, educational, cultural, scientific and religious sites, and outdoor recreational areas.

(9) To be eligible for directional signing, privately owned attractions or activities must be nationally or regionally known[,] and of outstanding interest to the traveling public. The Department of Transportation shall, by rule, develop specific selection methods and criteria to be used in determining whether [*or not*] an activity qualifies for directional signing. Because viticultural areas defined by the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives** are scenic attractions and cultural sites that are regionally known and of outstanding interest to the traveling public, viticultural areas meet the qualifications under this subsection and subsection (8) of this section for directional signing.

(10) The Department of Transportation shall adopt such rules as it deems necessary to carry out the provisions of this section.

NOTE: Conforms punctuation to legislative style in (1) and (8); strikes errant comma, excises unnecessary verbiage and corrects name of renamed federal agency in (9).

SECTION 101. ORS 390.715 is amended to read:

390.715. (1) The State Parks and Recreation Department may issue permits under ORS 390.650 to 390.659 for pipelines, cable lines and other conduits across and under the ocean shore, state recreation areas and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. *[Such]* **A permit issued under this subsection** is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

(2) Whenever the issuance of a permit under subsection (1) *[hereof]* **of this section** will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of *[such]* **the** permit until *[such time as]* the permittee *[shall have obtained]* **obtains from the private owner** an easement, license or other written authorization *[from the private owner, which easement, license or other written authority must meet]* **that meets** the approval of the State Parks and Recreation Department, except as to the compensation to be paid to the private owner.

(3) All permits issued under this section are subject to conditions that will *[assure]* **ensure** safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the grantee or permittee.

NOTE: Updates word choice and syntax.

SECTION 102. ORS 408.070 is amended to read:

408.070. (1) The Director of Veterans' Affairs shall investigate from time to time the institutions or other places where financial aid is being furnished to any beneficiary under ORS 408.010 to 408.090[,] to ascertain whether *[or not]* the spirit of *[those sections]* **ORS 408.010 to 408.090** is being complied with. If the director determines, after such investigation as the director deems necessary, that any such institution or place is not furnishing bona fide courses of instruction to the beneficiary or beneficiaries, or that any beneficiary is abusing the privileges granted by ORS 408.020, no money shall be paid to any beneficiary who is not receiving bona fide instruction or who is abusing such privileges. In making the investigations, the director may use the services of any state or county agency, and *[said]* **the** agencies are required to render any such service requested by the director.

(2) The director may adopt *[and promulgate all necessary rules and regulations consistent with ORS 408.010 to 408.090 to carry those sections into effect]* **rules necessary to carry out ORS 408.010 to 408.090.**

NOTE: Updates syntax in (1); eliminates redundancy in (2).

SECTION 103. ORS 408.225 is amended to read:

408.225. (1) As used in ORS 408.225 to 408.235:

[(1)] (a) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

[(2)] (b) "Disabled veteran" means a person entitled to disability compensation under laws administered by the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

[(3)(a)] (c) "Veteran" means a person who:

(A) Served on active duty with the Armed Forces of the United States:

[(A)] (i) For a period of more than 178 consecutive days[,] and was discharged or released from active duty with other than a dishonorable discharge;

[(B)] (ii) For 178 days or less and was discharged or released from active duty with other than a dishonorable discharge because of a service-connected disability; **or**

[(C)] (iii) For at least one day in a combat zone and was discharged or released from active duty with other than a dishonorable discharge; **or**

[(D)] (B) Received a combat or campaign ribbon for service in the Armed Forces of the United States.

[(b)] (2) As used in *[this]* subsection (1)(c) **of this section**, "active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a

regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

NOTE: Restructures section to eliminate read-in problem.

SECTION 104. ORS 409.450 is amended to read:

409.450. As used in ORS 409.450 to 409.478:

(1) "Caregiver" means an individual providing ongoing care for an individual with special needs.

(2) "Community lifespan respite care program" means a noncategorical respite care program that:

(a) Is operated by community-based private nonprofit, for-profit or public agencies that provide respite care services;

(b) Receives funding through the Oregon Lifespan Respite Care Program established under ORS 409.458;

(c) Serves an area of one or more counties;

(d) Acts as a single local source of information and referral; and

(e) Facilitates access to local respite care services.

(3) "Noncategorical care" means care without regard to the status **of the individual receiving care**, including but not limited to age and type of special need [*of the individual receiving care*].

(4) "Provider" means an individual or agency selected by a family or caregiver to provide respite care to an individual with special needs.

(5) "Respite care" means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs.

(6) "Respite care services" includes:

(a) Recruiting and screening [*of*] paid and unpaid respite care providers;

(b) Identifying local training resources and organizing training opportunities for respite care providers;

(c) Matching [*of*] families and caregivers with providers and other types of respite care;

(d) Linking families and caregivers with payment resources;

(e) Identifying, coordinating and developing community resources for respite care;

(f) **Providing** quality assurance and evaluation; and

(g) Assisting families and caregivers to identify respite care needs and resources.

(7) "Special needs" includes:

(a) Alzheimer's disease and related disorders;

(b) Developmental disabilities;

(c) Physical disabilities;

(d) Chronic illness;

(e) Mental and emotional conditions that require supervision;

(f) Situations in which a high risk of abuse or neglect exists; and

(g) Such other situations or conditions as the Department of Human Services may establish by rule.

NOTE: Corrects syntax in (3); adjusts (6)(a), (c) and (f) to achieve parallel structure.

SECTION 105. ORS 414.805 is amended to read:

414.805. (1) An individual who receives medical services while in the custody of a law enforcement officer is liable:

(a) To the provider of the medical services for the charges and expenses therefor; and

(b) To the Department of Human Services for any charges or expenses paid by the Department of Human Services out of the Law Enforcement Medical Liability Account for the medical services.

(2) A person providing medical services to an individual described in subsection (1)(a) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the Department of Human Services out of the Law Enforcement Medical Liability Account.

(3)(a) If the provider has not been paid within 45 days of the date of the billing, the provider may bill the Department of Human Services who shall pay the account out of the Law Enforcement Medical Liability Account.

(b) A bill submitted to the Department of Human Services under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care **service** contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care **service** contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care **service** contractor after receiving payment from the Department of Human Services, the provider shall repay the department the amount received from the public agency less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) As used in this section:

(a) "Law enforcement officer" means an officer who is commissioned and employed by a public agency as a peace officer to enforce the criminal laws of this state or laws or ordinances of a public agency.

(b) "Public agency" means the state, a city, port, school district, mass transit district or county.

NOTE: Standardizes terminology in (3)(b) and (c).

SECTION 106. ORS 416.422 is amended to read:

416.422. (1) Past support may not be ordered for any period of time prior to the later of:

(a) The date of the most recent application for service from the Child Support Program administered under Title IV-D of the Social Security Act; or

(b) In the case of a mandatory referral based on the receipt of public assistance, the date of the last referral to the Child Support Program administered under Title IV-D of the Social Security Act.

(2) If the administrator has issued a notice and finding of financial responsibility under ORS 416.415 that includes a statement of past support but the administrator or [*hearing officer*] **an administrative law judge** has not issued an order, and a court proceeding that involves the same obligor and child support for the same child is pending or is commenced after the notice is issued, the administrator may certify all matters under the notice to the court for consolidation in the court proceeding. After the matter is certified to the court, the court may, in the same manner as the administrator, order a parent to pay an amount of past support.

(3) If the administrator does not certify the matter to the court under subsection (2) of this section and the court's judgment or order does not address past support, the administrator or [*a hearing officer*] **an administrative law judge** may thereafter issue an order directing a parent to pay an amount of past support.

NOTE: Corrects terminology in (2) and (3).

SECTION 107. ORS 416.483 is amended to read:

416.483. (1) After an opportunity for a hearing on the matter, the court or the administrator may enter an order in favor of the Oregon Youth Authority that requires a parent or other person to pay support toward the care and maintenance of a youth offender or other offender if:

(a) The parent or other person is legally responsible for the support of the youth offender or other offender; and

(b)(A) The youth offender is committed to the legal custody of the youth authority by order of the juvenile court; or

(B) The other offender is placed in the physical custody of the youth authority under ORS 137.124.

(2) The formula established under ORS [25.270 to 25.287] **25.275** applies to an order entered under this section.

(3) When the administrator makes an order under this section, the provisions of ORS 416.400 to 416.465 apply.

NOTE: Inserts more specific reference in (2).

SECTION 108. ORS 418.475 is amended to read:

418.475. (1) Within the limit of moneys appropriated therefor, the Department of Human Services may establish or certify independent residence facilities for minors who:

- (a) Are 16 years of age or older;
 - (b) Have been placed in at least one substitute care resource;
 - (c) Have been determined by the department to be unsuitable for placement in a substitute care resource;
 - (d) Have received permission from the appropriate juvenile court, if they are wards of the court; and
 - (e) Have been determined by the department to be suitable for an independent resident program.
- (2) Residence facilities shall provide independent housing arrangements with counseling services and minimal supervision available from at least one counselor. All residential facilities having six or more residents shall be licensed by the department under ORS 443.400 to 443.455 [and 443.991 (2)].

(3) Each resident shall be required to maintain a program of education or employment, or a combination thereof, amounting to full-time activity and shall be required to pay a portion or all of the resident's housing expenses and other support costs.

(4) The department may make payment grants directly to minors enrolled in an independent living program for food, shelter, clothing and incidental expenses. [Such] **The** payment grants shall be subject to an agreement between the minor and the department [which] **that** establishes a budget of expenses.

(5) The department may establish cooperative financial management agreements with a minor and for that purpose may enter into joint bank accounts requiring two signatures for withdrawals. [Such] **The** management agreements or joint accounts [shall] **may** not subject the department or any counselor involved to any liability for debts or other responsibilities of the minor.

(6) The department shall make periodic reports to the juvenile court as required by the court regarding any minor who is a ward of the court enrolled in an independent living program.

(7) The enrollment of a minor in an independent living program in accordance with the provisions of subsection (1) of this section [shall] **does** not remove or limit in any way the obligation of the parent of the minor to pay support as ordered by a court under the provisions of ORS 419B.400 or 419C.590.

NOTE: Deletes inappropriate reference to penalty section in (2); updates word choice in (4), (5) and (7); supplies missing word in (6).

SECTION 109. ORS 418.992 is amended to read:

418.992. (1) In addition to any other liability or penalty provided by law, the Director of Human Services may impose a civil penalty on a private child-caring agency for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS 418.205 to 418.310 [and 418.992 to 418.998].

(b) Violation of any rule or general order of the Department of Human Services that pertains to a private child-caring agency.

(c) Violation of any final order of the director that pertains specifically to the private child-caring agency.

(2) A civil penalty may not be imposed under this section [for violations other than]:

(a) **For violations other than** those involving direct care or feeding of children, staff to child ratio[,] **or** sanitation involving direct care; or

(b) Unless a violation is found on two consecutive surveys of the private child-caring agency.

(3) The director in every case shall prescribe a reasonable time for elimination of a violation:

(a) Not to exceed 30 days after first notice of a violation; or

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

(4) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the director considers proper and consistent with the public health and safety.

NOTE: Deletes inappropriate reference to penalty sections in (1)(a); restructures (2) to correct read-in problem.

SECTION 110. ORS 419A.047 is amended to read:

419A.047. (1) The state shall provide financial assistance to the counties for the implementation of local coordinated comprehensive plans from funds appropriated for that purpose for court services, as defined in ORS 3.250.

(2) The Oregon Youth Authority shall determine each county's estimated percentage share of the amount to be appropriated for the purposes of this section. Such determination must be based upon each county's respective share of residents under the age of 18.

(3) The numbers of residents under the age of 18 for each county must be certified to the Oregon Youth Authority by January 1 of each odd-numbered year by the [*Center for Population Research and Census*] **Portland State University Population Research Center**.

NOTE: Corrects name of center in (3).

SECTION 111. ORS 419A.250 is amended to read:

419A.250. (1) A child, ward, youth or youth offender may be photographed or fingerprinted by a law enforcement agency:

(a) Pursuant to a search warrant;

(b) According to laws concerning adults if the youth has been transferred to criminal court for prosecution;

(c) Upon consent of both the child or youth and the child or youth's parent after advice that they are not required to give such consent;

(d) Upon request or consent of the child's parent alone if the child is less than 10 years of age, and if the law enforcement agency delivers the original photographs or fingerprints to the parent and does not make or retain any copies thereof; or

(e) By order of the juvenile court.

(2) When a youth is taken into custody under ORS 419C.080, the law enforcement agency taking the youth into custody shall photograph and fingerprint the youth. When a youth is found within the jurisdiction of the juvenile court for the commission of an act that would constitute a crime if committed by an adult, the court shall ensure that the youth offender's fingerprints have been taken. The law enforcement agency attending upon the court is the agency responsible for obtaining the fingerprints. The law enforcement agency attending upon the court may, by agreement, arrange for another law enforcement agency to obtain the fingerprints on the attending agency's behalf.

(3) Fingerprint and photograph files or records of children, wards, youths and youth offenders must be kept separate from those of adults, and fingerprints and photographs known to be those of a child may be maintained on a local basis only and may not be sent to a central state or federal depository.

(4) Fingerprint and photograph files or records of a child, ward, youth or youth offender are open to inspection only by, or the contents disclosed only to, the following:

(a) Public agencies for use in investigation or prosecution of crimes and of conduct by a child, ward, youth or youth offender that if committed by an adult would be an offense, provided that a law enforcement agency may provide information to another agency only when the information is pertinent to a specific investigation by that agency;

(b) The juvenile department and the juvenile court having the child, ward, youth or youth offender before it in any proceeding;

(c) Caseworkers and counselors taking action or otherwise responsible for planning and care of the child, ward, youth or youth offender;

(d) The parties to the proceeding and their counsel; and

(e) The victim or a witness of an act or behavior described under ORS 419C.005 (1) or the victim's parent, guardian, personal representative or subrogee, when necessary to identify the youth or youth offender committing the act or behavior and identifying the apparent extent of the youth or youth offender's involvement in the act or behavior.

(5)(a) Fingerprint and photograph files or records of youths and youth offenders must be sent to a central state depository in the same manner as fingerprint and photograph files or records of adults. The fingerprint and photograph files or records of a youth or youth offender sent to a central depository under this subsection are open to inspection in the same manner and under the same circumstances as fingerprint and photograph files or records of adults.

(b) A party filing a petition alleging that a youth is within the jurisdiction of the court under ORS 419C.005 shall notify the central state depository of the following:

(A) The filing of a petition alleging that a youth committed an act that if committed by an adult would constitute a crime; or

(B) The dismissal of a petition alleging that a youth committed an act that if committed by an adult would constitute a crime.

(c) The juvenile court shall notify the central state depository of the disposition of a case in which jurisdiction is based on ORS 419C.005.

(d) The Department of State Police shall delete the fingerprint and photograph files or records of a youth or youth offender from the depository and destroy the files or records relating to the conduct that caused the files or records to be sent to the depository:

(A) One year after receiving the files, if the central state depository has not received notice under paragraph (b) of this subsection;

(B) No later than one year following receipt of a notice of dismissal of a petition under paragraph (b)(B) of this subsection; or

(C) In all other circumstances, no later than five years and 30 days after fingerprint and photograph files or records are sent to the central state depository.

(6) Fingerprint and photograph files and records of a child, ward, youth or youth offender must be expunged when the juvenile court orders expunction of a child, ward, youth or youth offender's record pursuant to ORS 419A.260 and 419A.262.

(7) The parent or guardian of a missing child may submit a fingerprint card and photograph of the child to a law enforcement agency at the time a missing person report is made. The law enforcement agency may submit the fingerprint file to the Department of State Police [*Bureau of Criminal Identification*] **bureau of criminal identification**. The information must be entered into the Law Enforcement Data System and the Western Identification Network Automated Fingerprint Identification System.

(8) When fingerprint files or records are submitted under subsection (7) of this section, the Department of State Police shall enter in a special index in the computerized criminal history files the name of the child and the name of the county or agency that submitted the fingerprint file or record.

(9) Fingerprints and other information entered in any data system pursuant to subsection (7) of this section must be deleted when the child is located.

NOTE: Corrects identification in (7) of bureau within Department of State Police with generic terminology used in 181.066 establishing bureau.

SECTION 112. ORS 419B.090 is amended to read:

419B.090. (1) The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile court is called "The _____ Court of _____ County, Juvenile Department."

(2)(a) It is the policy of the State of Oregon to recognize that children are individuals who have legal rights. Among those rights are the right to:

(A) Permanency with a safe family;

(B) Freedom from physical, sexual or emotional abuse or exploitation; and

(C) Freedom from substantial neglect of basic needs.

(b) Parents and guardians have a duty to afford their children the rights listed in paragraph (a) of this subsection. Parents and guardians have a duty to remove any impediment to their ability to perform parental duties that afford these rights to their children. When a parent or guardian fails to fulfill these duties, the juvenile court may determine that it is in the best interests of the child to remove the child from the parent or guardian either temporarily or permanently.

(c) The provisions of this chapter shall be liberally construed to the end that a child coming within the jurisdiction of the court may receive such care, guidance, treatment and control as will lead to the child's welfare and the protection of the community.

(3) It is the policy of the State of Oregon to guard the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution and to protect the rights and interests of children, as provided in subsection (2) of this section. The provisions of this chapter shall be construed and applied in compliance with federal constitutional limitations on state action established by the United States Supreme Court with respect to interference with the rights of parents to direct the upbringing of their children, including, but not limited to, **the right to:**

- (a) Guide the secular and religious education of their children;
- (b) Make health care decisions for their children; and
- (c) Discipline their children.

(4) It is the policy of the State of Oregon, in those cases not described as extreme conduct under ORS 419B.502, to offer appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time. Although there is a strong preference that children live in their own homes with their own families, the state recognizes that it is not always possible or in the best interests of the child or the public for children who have been abused or neglected to be reunited with their parents or guardians. In those cases, the State of Oregon has the obligation to create or provide an alternative, safe and permanent home for the child.

(5) The State of Oregon recognizes the value of the Indian Child Welfare Act[, 25 U.S.C. 1901 to 1923,] and hereby incorporates the policies of that Act.

NOTE: Corrects read-in problems in (3); conforms reference to federal Act in (5) to that used throughout juvenile code.

SECTION 113. ORS 420.040 is amended to read:

420.040. The youth correction facility, the superintendents [*thereof*] **of the youth correction facility**, the Director **of the Oregon Youth Authority** and personnel of the Oregon Youth Authority are not liable for any damages whatsoever that are sustained by any person on account of the actions or misconduct of a youth offender placed in a youth correction facility.

NOTE: Improves syntax.

SECTION 114. ORS 421.084 is amended to read:

421.084. (1) The Corrections Education Advisory Committee shall assist in the development **of**, 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.

(3) [For the purposes of] **As used in** 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.

NOTE: Corrects syntax in (1) lead-in and (1)(b); adjusts punctuation in (1) to account for intervening periods; corrects syntax and conforms word choice to legislative style in (3).

SECTION 114a. If Senate Bill 189 becomes law, section 114 of this 2007 Act (amending ORS 421.084) is repealed and ORS 421.084, as amended by section 3, chapter 15, Oregon Laws 2007 (Enrolled Senate Bill 189), is amended to read:

421.084. (1) The Administrator of Correctional Education shall administer an adult basic skills development program for all individuals in the custody of the Department of Corrections. The program shall:

(a) Test individuals for basic reading and mathematics skills or, for individuals with limited English language proficiency, English speaking skills. 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 8.0 grade equivalency on a standardized reading test approved by the National Reporting System for Adult Education of the United States Department of Education and by the Adult Basic Skills Program of the Department of Community Colleges and Workforce Development[;].

(c) Provide progress testing and certification[;].

(d) Provide strong incentives for entering the program and for achieving the minimum reading level and, for those individuals with demonstrated ability, provide incentives for making progress toward earning a General Educational Development (GED) certificate[; 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 basic skills and participation in the adult basic skills development program are not required for inmates:

(a) Sentenced to or otherwise confined by the department for less than one year;

(b) Sentenced to life imprisonment without parole;

(c) Sentenced to death;

(d) Who are developmentally disabled; or

(e) Who are specifically exempted by the Department of Corrections for security or health reasons.

NOTE: Resolves conflict with Senate Bill 189; adjusts punctuation in (1) to account for intervening periods.

SECTION 115. ORS 423.010 is amended to read:

423.010. As used in ORS 423.010 to 423.070, unless the context requires otherwise:

(1) “Department” means the Department of Corrections.

(2) “Department of Corrections institutions” has the meaning given that term in ORS 421.005.

(3) “Director” means the Director of the Department of Corrections.

[4] “Youth correction facility” has the meaning given that term in ORS 420.005.]

NOTE: Deletes unused definition.

SECTION 116. ORS 426.020 is amended to read:

426.020. The [superintendents of the hospitals mentioned] **superintendent of a hospital referred to** in ORS 426.010 shall be [persons] **a person** the Department of Human Services considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Board of Medical Examiners for the State of Oregon, the superintendent shall serve as chief medical officer. If the superintendent is not a physician, the Director of Human Services or the designee of the director shall appoint a physician to serve as chief medical officer who shall be in the unclassified service.

NOTE: Corrects syntax.

SECTION 117. ORS 430.405 is amended to read:

430.405. As used in ORS [161.125, 430.270, 430.405 and] 430.415,[:]

[1] “Department” means the Department of Human Services.]

[2] “Director of the treatment facility” means the person in charge of treatment and rehabilitation programs at the treatment facility.]

[3] “Drug abuse” means repetitive, excessive use of drugs or controlled substances short of dependence, without legal or medical supervision, that may have a detrimental effect on the individual or society.]

[4] “drug-dependent person” means one who has lost the ability to control the use of controlled substances or other substances with abuse potential, or who uses such substances or controlled substances to the extent that the health of the person or that of others is substantially impaired or endangered or the social or economic function of the person is substantially disrupted. A drug-dependent person may be physically dependent, a condition in which the body requires a continuing supply of a drug or controlled substance to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of a drug or controlled substance.

[5] “Treatment facility” means profit or nonprofit, public or private detoxification centers, outpatient clinics, residential facilities, hospitals and such other facilities as the Department of Human Services determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for drug-dependent persons.]

NOTE: Deletes unnecessary references and unused definitions.

SECTION 118. 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 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] **the** 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, day and residential treatment programs for mentally or emotionally disturbed children and adolescents 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] **the** funds shall be retained by the program and expended for any service [which] **that** meets the standards of the department.

NOTE: Updates word choice in (1) and (3); corrects punctuation in (1); removes obsolete provision in (3).

SECTION 119. ORS 431.045 is amended to read:

431.045. The Director of Human Services shall appoint a physician licensed by the Board of Medical Examiners for the State of Oregon and certified by the American Board of Preventive Medicine who shall serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the health programs within the Department **of Human Services.**

NOTE: Sets forth full title of agency.

SECTION 120. ORS 431.220 is amended to read:

431.220. The [division] **Department of Human Services** shall keep a record of all moneys deposited in the Public Health Account. This 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.

NOTE: Corrects and sets forth full title of agency.

SECTION 121. ORS 432.510 is amended to read:

432.510. (1) The Department of Human Services shall establish a uniform, statewide, population-based registry system for the collection of information determining the incidence of cancer and benign tumors of the brain and central nervous system and related data. The purpose of the registry shall be to provide information to design, target, monitor, facilitate and evaluate efforts to determine the causes or sources of cancer and benign tumors among the residents of Oregon and to reduce the burden of cancer and benign tumors in Oregon. Such efforts may include but are not limited to:

(a) Targeting populations in need of cancer screening services or evaluating screening or other cancer control services;

(b) Supporting the operation of hospital registries in monitoring and upgrading the care and the end results of treatment for cancer and benign tumors;

(c) Investigating suspected clusters or excesses of cancer and benign tumors both in occupational settings and in the state's environment generally;

(d) Conducting studies to identify cancer hazards to the public health and cancer hazard remedies; and

(e) Projecting the benefits or costs of alternative policies regarding the prevention or treatment of cancer and benign tumors.

(2) The department shall adopt rules necessary to carry out the purposes of ORS 432.510 to 432.550 and 432.900, including but not limited to designating which types of cancer and benign tumors of the brain and central nervous system are reportable to the statewide registry, the data to be reported, the data reporting standards and format and the effective date after which reporting by health care facilities, clinical laboratories and practitioners shall be required. When adopting rules under this subsection, the department shall, to the greatest extent practicable, conform the rules to the standards and procedures established by the American College of Surgeons Commission on Cancer, with the goal of achieving uniformity in the collection and reporting of data.

(3) The department shall:

(a) Conduct a program of epidemiologic analyses of registry data collected under subsection (1) of this section to assess control, prevention, treatment and causation of cancer and benign tumors in Oregon; and

(b) Utilize the data to promote, facilitate and evaluate programs designed to reduce the burden of cancer and benign tumors among the residents of Oregon.

(4) The department shall:

(a) Collaborate in studies of cancer and benign tumors with clinicians and epidemiologists and publish reports on the results of such studies; and

(b) Cooperate with the National Institutes of Health and the Centers for Disease Control **and Prevention** in providing incidence data for cancer and benign tumors.

(5) The department shall establish a training program for the personnel of participating health care facilities and a quality control program for data for cancer and benign tumors reported to the state registry.

NOTE: Corrects name of federal agency in (4)(b).

SECTION 122. ORS 438.150 is amended to read:

438.150. (1) In addition to the license of a clinical laboratory required by ORS 438.040, the Department of Human Services may issue a temporary permit valid for a period, to be determined by the department, from the date of issuance in any or all clinical laboratory specialties upon payment of the respective required fees as described in ORS 438.130 (2).

(2) In issuing the temporary permit, the department may require that:

(a) Plans for compliance with applicable laws and rules be submitted with the application for the temporary permit; *[and]*

(b) During the period in which the temporary permit is in effect periodic reports be submitted on the progress of the plans for compliance; and

(c) Special temporary provisions specified by the department upon application of the temporary permit be maintained for the protection of the public.

(3) If at any time the department determines that the clinical laboratory can no longer operate in a manner *[which]* **that** protects the public health and safety or that the requirements imposed under subsection (2) of this section are not being maintained, the department shall cancel the temporary permit.

(4) One renewal of the temporary permit may be granted if deemed to be in the best interest of public health by the department. The fee for renewal is the respective required fee as described in ORS 438.130 (2).

(5) The department may issue permits for health screen testing.

(6) The department by rule shall specify:

(a) Appropriate quality assurance procedures;

(b) Personnel qualifications;

(c) Standards for counseling and referral of persons being tested;

(d) Tests a health testing service may conduct;

(e) The procedure for applying for a permit; and

(f) The procedure for reporting to the department the location of all health screening facilities.

(7) The department by rule may specify the maximum length of time a health screen testing service may remain in one location.

NOTE: Removes superfluous conjunction in (2)(a); corrects word choice in (3).

SECTION 123. ORS 438.210 is amended to read:

438.210. A person is qualified to act as a laboratory director of a clinical laboratory if:

(1) The person is a pathologist certified in clinical or anatomical pathology by a national organization or organizations recognized by the Department of Human Services, or is a physician who possesses qualifications equivalent to those required for such certification;

(2) The person is a physician who possesses special qualifications that enable the person to perform as a laboratory director, or is directing a laboratory on January 1, 1970;

(3) The person has an earned degree of Doctor of Science or Doctor of Philosophy, or an acceptable degree as determined by the department, from an accredited college or university, with a major in the chemical, physical, or biological sciences and possesses special qualifications as described in the administrative rules of the department that enable the person to perform as a laboratory director;

(4) The person is *[the]* a member of a group of five or more physicians who operate on November 4, 1993, a laboratory performing work only on their patients and *[who]* is **the member** designated by the group to be the director; or

(5) The person was responsible for the direction of a clinical laboratory for at least 12 months within the five years preceding January 1, 1970, and has had at least two years of pertinent clinical laboratory experience, as determined by the department.

NOTE: Corrects syntax in (4).

SECTION 124. ORS 440.335 is amended to read:

440.335. (1) The directors **of a health district** shall, at the time of their organization, choose from their number a chairperson, a secretary and a treasurer, who shall hold their offices until their successors are elected and qualified.

(2) These officers shall have, respectively, the powers and shall perform the duties usual in such cases *[and shall be known as the president, secretary and treasurer of the health district]*.

(3) A majority shall constitute a quorum to do business and, in the absence of the chairperson, any other member may preside at any meeting.

NOTE: Specifies directors in (1); eliminates unnecessary verbiage in (2).

SECTION 125. ORS 441.030 is amended to read:

441.030. (1) The Department of Human Services, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or the representative of the State

Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The department may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085[,] **or** 441.087[, 441.990 (3)] or the rules or minimum standards adopted under *[those statutes]* **ORS 441.015 to 441.063, 441.085 or 441.087.**

(3) The department may suspend or revoke a license issued under ORS 441.025 for failure to comply with a department order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087, *[and 441.990 (3) or ORS]* 441.162 or 441.166[,] or the rules adopted *[thereunder]* **under ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166,** or for failure to pay a civil penalty imposed under ORS 441.170 or 441.710.

(4) The department may order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063[,] **or** 441.084 to 441.087 and the rules adopted *[pursuant thereto]* **under ORS 441.015 to 441.063 or 441.084 to 441.087.**

(5) Any long term care facility *[which]* **that** has been ordered to restrict the admission of patients pursuant to subsection (4) of this section shall post a notice of *[such]* **the** restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

NOTE: Deletes inappropriate references to penalty subsection in (2) and (3); sets out statute numbers in (2), (3) and (4); updates word choice in (5).

SECTION 126. ORS 441.063 is amended to read:

441.063. The rules of the hospital shall include provisions for the use of the hospital facilities by duly licensed podiatric physicians and surgeons subject to rules and regulations governing *[such]* **the** use established by the medical staff and the podiatric staff of the hospital. *[Such]* **The** staff comprised of physicians and *[or]* podiatric physicians and surgeons[,] shall regulate the admission and the conduct of the podiatric physicians and surgeons while using the facilities of the hospital and shall prescribe procedures whereby *[the]* **a** podiatric physician and surgeon's use of the facilities may be suspended or terminated.

NOTE: Corrects syntax and punctuation.

SECTION 127. ORS 441.084 is amended to read:

441.084. (1) **As used in this section, "supplier" includes an authorized representative of the patient who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.**

[(1)] (2) A patient in a long term care facility or an intermediate care facility required to be licensed under ORS 441.015 must have a choice:

(a) From among prescription drug delivery systems *[so]* **as** long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy;

(b) From among suppliers of nonprescriptive medication, **although** *[but]* no facility is required to accept any opened container of such medication; **and**

(c) From among suppliers of nonprescriptive sickroom supplies *[so]* **as** long as any items supplied can be maintained in a clean manner with equipment available at the facility; *and*].

[(d) For purposes of paragraphs (b) and (c) of this subsection, "supplier" includes an authorized representative of the patient who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.]

[2)] (3) If the established system of the facility, whether that system is provided by a facility pharmacy or a pharmacy under contract, provides patient profile information, the pharmacy chosen by the patient under subsection [(1)(a)] (2)(a) of this section must also provide that information for any patient it serves at the facility.

NOTE: Restructures section to correct read-in problem in (2); corrects syntax in (2)(a), (b) and (c); corrects internal reference in (3).

SECTION 128. ORS 442.120 is amended to read:

442.120. In order to provide data essential for health planning programs:

(1) The Office for Oregon Health Policy and Research may request, by July 1 of each year, each general hospital to file with the office ambulatory surgery and inpatient discharge abstract records covering all patients discharged during the preceding calendar year. The ambulatory surgery and inpatient discharge abstract record for each patient must include the following information, and may include other information deemed necessary by the office for developing or evaluating statewide health policy:

- (a) Date of birth;
- (b) Sex;
- (c) Zip code;
- (d) Inpatient admission date or outpatient service date;
- (e) Inpatient discharge date;
- (f) Type of discharge;
- (g) Diagnostic related group or diagnosis;
- (h) Type of procedure performed;
- (i) Expected source of payment, if available;
- (j) Hospital identification number; and
- (k) Total hospital charges.

(2) By July 1 of each year, the office may request from ambulatory [surgery] **surgical** centers licensed under ORS 441.015 ambulatory surgery discharge abstract records covering all patients admitted during the preceding year. Ambulatory surgery discharge abstract records must include information similar to that requested from general hospitals under subsection (1) of this section.

(3) In lieu of abstracting and compiling the records itself, the office may solicit the voluntary submission of such data from Oregon hospitals or other sources to enable it to carry out its responsibilities under this section. If such data [is] **are** not available to the office on an annual and timely basis, the office may establish by rule a fee to be charged **to** each hospital.

(4) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board, if the Legislative Assembly is not in session, prior to adopting the fee, and within the budget authorized by the Legislative Assembly as the budget may be modified by the Emergency Board, the fee established under subsection (3) of this section [shall] **may** not exceed the cost of abstracting and compiling the records.

(5) The office may specify by rule the form in which the records are to be submitted. If the form adopted by rule requires conversion from the form regularly used by a hospital, reasonable costs of such conversion shall be paid by the office.

(6) Abstract records must include a patient identifier that allows for the statistical matching of records over time to permit public studies of issues related to clinical practices, health service utilization and health outcomes. Provision of such a patient identifier must not allow for identification of the individual patient.

(7) In addition to the records required in subsection (1) of this section, the office may obtain abstract records for each patient that identify specific services, classified by International Classification of Disease Code, for special studies on the incidence of specific health problems or diagnostic practices. However, nothing in this subsection shall authorize the publication of specific data in a form that allows identification of individual patients or licensed health care professionals.

(8) The office may provide by rule for the submission of records for enrollees in a health maintenance organization from a hospital associated with such an organization in a form the office de-

termines appropriate to the office's needs for such data and the organization's record keeping and reporting systems for charges and services.

NOTE: Standardizes terminology in (2) to correspond with definition in 442.015; corrects grammar and supplies missing word in (3); updates word choice in (4).

SECTION 129. ORS 442.495 is amended to read:

442.495. The responsibilities of the Rural Health Coordinating Council shall be to:

(1) Advise the Office of Rural Health on matters related to the health care services and needs of rural communities;

(2) Develop general recommendations to meet the identified needs of rural communities; and

(3) [To] View applications and recommend to the office which communities should receive assistance, how much money should be granted or loaned and the ability of the community to repay a loan.

NOTE: Corrects read-in problem in (3).

SECTION 130. ORS 442.830 is amended to read:

442.830. (1) There is established the Oregon Patient Safety Commission Board of Directors consisting of 17 members, including the Public Health Officer and 16 directors who shall be appointed by the Governor and who shall be confirmed by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) Membership on the board shall reflect the diversity of facilities, providers, insurers, purchasers and consumers that are involved in patient safety. Directors shall demonstrate interest, knowledge or experience in the area of patient safety.

(3) The membership of the board shall be as follows:

(a) The Public Health Officer;

(b) One faculty member, who is not involved in the direct delivery of health care, of the Oregon University System or a private Oregon university;

(c) Two representatives of group purchasers of health care, one of whom shall be employed by a state or other governmental entity and neither of whom may provide direct health care services or have an immediate family member who is involved in the delivery of health care;

(d) Two representatives of health care consumers, neither of whom may provide direct health care services or have an immediate family member who is involved in the delivery of health care;

(e) Two representatives of health insurers, including a representative of a domestic not-for-profit health care [services] **service** contractor, a representative of a domestic insurance company licensed to transact health insurance or a representative of a health maintenance organization;

(f) One representative of a statewide or national labor organization;

(g) Two physicians licensed under ORS chapter 677 who are in active practice;

(h) Two hospital administrators or their designees;

(i) One pharmacist licensed under ORS chapter 689;

(j) One representative of an ambulatory surgical center or an outpatient renal dialysis facility;

(k) One nurse licensed under ORS chapter 678 who is in active clinical practice; and

(L) One nursing home administrator licensed under ORS chapter 678 or one nursing home director of nursing services.

(4) The term of office of each director appointed by the Governor is four years. Before the expiration of the term of a director, the Governor shall appoint a successor whose term begins on October 1 next following. A director is eligible for reappointment for an additional term. If there is a vacancy for any cause, the Governor shall make an appointment to become effective immediately for the unexpired term. The board shall nominate a slate of candidates whenever a vacancy occurs or is announced and shall forward the recommended candidates to the Governor for consideration.

(5) The board shall select one of its members as chairperson and another as vice chairperson for the terms and with the duties and powers as the board considers necessary for performance of the functions of those offices. The board shall adopt bylaws as necessary for the efficient and effective operation of the commission.

(6) The Governor may remove any member of the board at any time at the pleasure of the Governor, but not more than eight directors shall be removed within a period of four years, unless it is for corrupt conduct in office. The board may remove a director as specified in the commission bylaws.

(7) The board may appoint subcommittees and advisory groups as needed to assist the board, including but not limited to one or more consumer advisory groups and technical advisory groups. The technical advisory groups shall include physicians, nurses and other licensed or certified [professional] **professionals** with specialty knowledge and experience as necessary to assist the board.

(8) No voting member of the board may be an employee of the commission.

NOTE: Standardizes terminology in (3)(e); corrects syntax in (7).

SECTION 131. ORS 443.035 is amended to read:

443.035. (1) [A license may be granted, or may be renewed annually, for a calendar year] **The Department of Human Services may grant a license to a home health agency for a calendar year, may annually renew a license and may allow for a change of ownership,** upon payment of a fee as follows:

(a) For a new home health agency:

(A) \$1,000; and

(B) An additional \$1,000 for each subunit of a parent home health agency.

(b) For renewal of a license:

(A) \$600; and

(B) An additional \$600 for each subunit of a parent home health agency.

(c) For a change of ownership at a time other than the annual renewal date:

(A) \$500; and

(B) An additional \$500 for each subunit of a parent home health agency.

(2) Notwithstanding subsection (1)(c) of this section, the fee for a change in ownership shall be \$100 if a change in ownership does not involve:

(a) The majority owner or partner; or

(b) The administrator operating the agency.

(3) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously to the Department of Human Services for the administration of ORS 443.005 to 443.095.

NOTE: Recasts (1) lead-in to improve syntax and correct (1)(c) read-in.

SECTION 132. ORS 443.225 is amended to read:

443.225. (1) Except as otherwise provided by subsections (3) and (4) of this section, the capacity of all domiciliary care facilities must be located throughout the state based on the relationship of [(a)] the population of the county in which the additional capacity is proposed to be located to [(b)] the number of persons originating from the county determined to be in need of domiciliary care by the Department of Human Services. However, nothing in this subsection is intended to prevent the placement of a person who is or was not a resident of the county in a domiciliary care facility in the county.

(2) [Where] **When** a county is too sparsely populated to produce a meaningful ratio of county population to population in need, or a county is lacking necessary support services, the population of two or more counties may be combined. The area of the combined counties may be considered a county for purposes of subsection (1) of this section.

(3) The computation required by subsection (1) of this section [shall] **does** not require reduction in any domiciliary care facility capacity existing on October 4, 1977.

(4) Subject to the appropriate licensing requirements, the governing body of a county may authorize a domiciliary care facility located in the county to exceed the capacity limit imposed by subsection (1) of this section upon:

(a) Request of an individual or organization operating or proposing to operate a domiciliary care facility;

- (b) Consultation with an advisory committee appointed by the governing body and consisting of persons who are particularly interested in the type of domiciliary care facility contemplated; and
- (c) Finding of good cause following notice and public hearing.

NOTE: Conforms (1) to legislative style; updates word choice in (2) and (3).

SECTION 133. ORS 443.437 is amended to read:

443.437. (1) **As used in this section, “supplier” includes an authorized representative of the patient who purchases nonprescription medication or nonprescription sickroom supplies at retail.**

[(1)] (2) A resident in a residential facility must have a choice:

(a) From among prescription drug delivery systems [so] **as** long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy;

(b) From among suppliers of nonprescription medication, **although** [but] no facility is required to accept any opened container of such medication; **and**

(c) From among suppliers of nonprescription sickroom supplies [so] **as** long as any items supplied can be maintained in a clean manner with equipment available at the facility; *and*].

[(d)] *For purposes of paragraphs (b) and (c) of this subsection, “supplier” includes an authorized representative of the patient who purchases nonprescription medication or nonprescription sickroom supplies at retail.*

[(2)] (3) If the established system of the facility, whether that system is provided by a facility pharmacy or a pharmacy under contract, provides patient profile information, the pharmacy chosen by the resident under subsection [(1)(a)] (2)(a) of this section must also provide that information for any resident it serves at the facility.

NOTE: Reorganizes section to correct read-in problem in (2); corrects syntax in (2)(a), (b) and (c); corrects internal reference in (3).

SECTION 134. ORS 446.525 is amended to read:

446.525. (1) A special assessment is levied annually upon each manufactured dwelling that is assessed for ad valorem property tax purposes as personal property. The amount of the assessment is \$6.

(2) [On or before July 15, 1990, and] On or before July 15 of each year [thereafter], the county assessor shall determine and list the manufactured dwellings in the county that are assessed for the current assessment year as personal property. Upon making a determination and list, the county assessor shall cause the special assessment levied under subsection (1) of this section to be entered on the general assessment and tax roll prepared for the current assessment year as a charge against each manufactured dwelling so listed. Upon entry, the special assessment shall become a lien, be assessed and be collected in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state.

(3) Any amounts of special assessment collected pursuant to subsection (2) of this section shall be deposited in the county treasury, shall be paid over by the county treasurer to the State Treasury and shall be credited to the Mobile Home Parks Account to be used exclusively for implementing the policies described in ORS 446.515.

(4) In lieu of the procedures under subsection (2) of this section, the Director of the Housing and Community Services Department may make a direct billing of the special assessment to the owners of manufactured dwellings and receive payment of the special assessment from those owners. In the event that under the billing procedures any owner fails to make payment, the unpaid special assessment shall become a lien against the manufactured dwelling and may be collected under contract or other agreement by a collection agency[,] **or** may be collected under ORS 293.250, or the

lien may be foreclosed by suit as provided under ORS chapter 88 or as provided under ORS 87.272 to 87.306. Upon collection under this subsection, the amounts of special assessment shall be deposited in the State Treasury and shall be credited to the Mobile Home Parks Account to be used exclusively for implementing the policies described in ORS 446.515.

NOTE: Removes obsolete provision in (2); corrects syntax in (4).

SECTION 135. ORS 446.721 is amended to read:

446.721. (1) The fee for issuance or renewal of a manufactured structure dealer license under ORS 446.691 is \$542.

(2) The fee for issuance or renewal of a supplemental license under ORS 446.716 is \$90 for each additional place of business.

(3) The fee for issuance or renewal of a corrected dealer license under ORS 446.716 or corrected limited manufactured structure dealer license under ORS 446.706 is \$30.

(4) The fee for issuance of a temporary manufactured structure dealer license under ORS 446.701 is \$100.

(5) The fee for issuance or renewal of a limited manufactured structure dealer license under ORS 446.706 is \$150.

(6) Fees adopted pursuant to this section are not subject to proration or refund.

(7) Fees collected by the Department of Consumer and Business Services under this section must be deposited in the Consumer and Business Services Fund. Moneys deposited into the fund pursuant to this section are continuously appropriated to the department for use as provided in ORS 446.423.

NOTE: Sets forth department name in full in (7).

SECTION 136. ORS 448.123 is amended to read:

448.123. (1) It is the purpose of ORS 448.119 to 448.285, 454.235 and 454.255 to:

(a) [Assure] **Ensure that** all Oregonians **have** safe drinking water.

(b) Provide a simple and effective regulatory program for drinking water systems.

(c) Provide a means to improve inadequate drinking water systems.

(2) In carrying out the purpose set forth in subsection (1) of this section, the Department of Human Services shall act in accordance with the goal set forth in ORS 468B.155.

(3) If, in carrying out any duty prescribed by law, the department acquires information related to ground water quality in Oregon, the department shall forward a copy of the information to the centralized repository established pursuant to ORS 468B.167.

NOTE: Corrects syntax in (1)(a).

SECTION 137. ORS 448.279 is amended to read:

448.279. (1) The Department of Human Services by rule shall establish a certification program for persons who inspect cross connections or test backflow assemblies. The program shall include minimum qualifications necessary for a person to be certified to:

(a) Conduct a cross connection inspection; and

(b) Test a backflow assembly.

(2) Except for an employee of a water supplier as defined in ORS 448.115, a person certified under this section must:

(a) Become licensed as a construction contractor with the Construction Contractors Board as provided under ORS chapter 701; or

(b) Become licensed as a landscape contractor as provided under ORS 671.510 to 671.710.

(3) In conjunction with the certification program established under subsection (1) of this section, the department may establish and collect a fee from an individual requesting certification under the program. A fee imposed under this subsection [may]:

(a) **Is** not [be] refundable; and

(b) **May** not exceed the cost of administering the certification program of the department for which purpose the fee is established, as authorized by the Legislative Assembly within the budget of the department and as the budget may be modified by the Emergency Board.

(4) The department may not require a journeyman plumber [*who holds a certificate of competency issued*] **licensed** under ORS chapter 693 or an apprentice plumber, as defined in ORS 693.010, to obtain a certification for testing backflow [*prevention device*] assemblies under the program established under this section.

(5) All moneys collected by the department under this section shall be deposited in the General Fund to the credit of an account of the department. Such moneys are continuously appropriated to the department to pay the cost of administering the certification program established pursuant to this section and the cost of administering water system cross connection and backflow assembly programs.

NOTE: Corrects grammar in (3); standardizes terminology in (4).

SECTION 138. ORS 452.240 is amended to read:

452.240. Any county court may:

(1) Take all necessary or proper steps and measures for the control or extermination of public health vectors.

(2) Abate as nuisances all places where public health vectors within the county may breed.

(3) Purchase such supplies and materials and employ or contract for such labor as may be necessary or proper in furtherance of control or extermination.

(4) Fix the compensation and prescribe the duties of all employees, agents and servants.

(5) Enter upon all places within the county and adjacent thereto for the purpose of carrying out this section.

(6) Cut or remove such shrubbery or undergrowth as is necessary or proper in order to carry out this section.

(7) Treat with proper chemicals places where public health vectors are found or are likely to exist.

(8) Generally do any and all things necessary or incident to the powers granted in ORS 452.230 to 452.250 and to carry out the [*objects*] **objectives** specified in this section.

NOTE: Corrects word choice in (8).

SECTION 139. ORS 453.520 is amended to read:

453.520. (1) The Governor shall designate the office of the State Fire Marshal as the state emergency response commission as required by the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 et seq.).

(2) The office shall:

(a) Provide, in a timely manner, advice to a state agency that is required to consult with the office about programs that involve hazardous materials or hazardous substances; and

(b) Undertake all duties of a state emergency response commission required by the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 et seq.) including but not limited to:

(A) Designating emergency planning districts;

(B) Establishing local emergency planning committees within emergency planning districts and [*appoint*] **appointing** members to the local emergency planning committees; and

(C) Providing comments on local emergency plans.

NOTE: Corrects grammar in (2)(b)(B).

SECTION 140. ORS 455.110 is amended to read:

455.110. Except as otherwise provided by ORS chapters 446, 447, 460, 476, ORS 479.015 to 479.220, 479.510 to 479.945, 479.990 and 479.995 and ORS chapter 480:

(1) The Director of the Department of Consumer and Business Services shall coordinate, interpret and generally supervise the adoption, administration and enforcement of the state building code.

(2) The director, with the approval of the appropriate advisory boards, shall adopt codes and standards, including regulations as authorized by ORS 455.020 governing the construction, reconstruction, alteration and repair of buildings and other structures and the installation of mechanical devices and equipment therein. The regulations may include rules for the administration and

enforcement of a certification system for persons performing work under the codes and standards adopted under this subsection. However, this subsection does not authorize the establishment of a separate certification for performing work on low-rise residential dwellings.

(3) The director, with the approval of the appropriate advisory boards, may amend such codes from time to time. The codes of regulations and any amendment thereof shall conform insofar as practicable to model building codes generally accepted and in use throughout the United States. If there is no nationally recognized model code, consideration shall be given to the existing specialty codes presently in use in this state. Such model codes with modifications considered necessary and specialty codes may be adopted by reference. The codes so promulgated and any amendments thereof shall be based on the application of scientific principles, approved tests and professional judgment and, to the extent that it is practical to do so, the codes shall be promulgated in terms of desired results instead of the means of achieving such results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the codes shall encourage the use of new methods, new materials and maximum energy conservation.

(4) The director shall adopt rules requiring a journeyman plumber [*who holds a certificate of competency issued*] **licensed** under ORS chapter 693 or an apprentice plumber, as defined in ORS 693.010, who tests backflow [*prevention device*] assemblies to complete a state-approved training program for the testing of those assemblies.

NOTE: Standardizes terminology in (4).

SECTION 141. ORS 456.585 is amended to read:

456.585. The Housing and Community Services Department shall serve as the primary state agency for farmworker housing information. The department shall perform the following duties related to farmworker housing information:

(1) Develop an information center for farmworker housing financing information. The department shall consult with private organizations and the Farmworker Housing Facilitation Team established pursuant to subsection (3) of this section in developing and operating the information center. The information center shall include provision for access by the Internet.

(2) To the extent practicable, simplify the application process for funding farmworker housing projects.

(3) Establish a Farmworker Housing Facilitation Team to provide an ongoing discussion forum for state and local government agencies that are involved with farmworker housing. Team members shall include the Housing and Community Services Department, the Occupational Safety and Health Division, the State Department of Agriculture, the Department of Land Conservation and Development, the Employment Department and the Oregon State University Extension Service. The Housing and Community Services Department shall also invite **Rural Development and the Farm Service Agency** of the United States Department of Agriculture [*Rural Housing Service*], the United States Department of Labor, local planning agencies and other interested persons to be members of the team.

(4) Ensure that homeowner assistance programs engage in outreach efforts to contact farmworkers.

(5) Promote the establishment and use of individual development accounts by farmworkers and others.

(6) Use a statewide map of crop diversity to determine housing needs, and facilitate the development of farmworker housing in appropriate locations.

(7) Look at creative ways to provide housing, including but not limited to time-share housing, cooperative housing, mobile and portable housing and modular housing.

(8) Work with private businesses, state agencies and nonprofit organizations to maximize the development of farmworker housing.

(9) To the extent practicable, refer housing-based conflicts to dispute resolution processes.

NOTE: Updates obsolete federal agency reference and improves grammar in (3).

SECTION 142. ORS 459.311 is amended to read:

459.311. A local government unit responsible for conducting a remedial action or removal or related activities under ORS 465.260 at a solid waste disposal site, or a local government unit that contributed solid waste to a solid waste disposal site for which the local government is liable under ORS 465.255 or other applicable law, shall impose a charge to be added to all billings for collection services rendered within the boundaries of that local government unit unless the local government unit provides an equivalent amount of funding through another source. A charge imposed under this section shall be subject to the following requirements:

(1) The charge shall be:

(a) An amount equal to a maximum amount of \$12 per capita per year and \$60 per capita per local government unit;

(b) Collected for each volumetric or weight unit of solid waste collected;

(c) Imposed equitably on all persons who dispose of solid waste; and

(d) For a local government unit imposing and collecting a charge on behalf of another local government unit responsible for remedial action or related activities at a disposal site, an amount that, as a proportion of the total cost, equals the proportion of solid waste the local government unit contributed to such disposal site.

(2) The charge shall be collected on behalf of the local government unit by solid waste collectors who are subject to franchising, licensing or permitting requirements adopted by the local government unit. Notwithstanding any restriction on rates contained in a franchise or other local regulations, a solid waste collector may add the charge to bills for solid waste collection. The local government unit may enter into an intergovernmental agreement with any other local government unit to provide for imposition and collection of the charge on behalf of the local government unit.

(3) The solid waste collector shall remit the proceeds of the charge to the local government unit according to procedures adopted by the local government unit by ordinance. However, solid waste collectors shall not be responsible for covering any shortage caused by failure of a customer to pay charges for solid waste collection.

(4) A local government unit imposing a charge under this subsection may require solid waste collectors to submit reports or other documentation necessary to establish compliance with the requirements of this section or the ordinance adopted by the local government unit. All information contained in such reports relating to the number of accounts served by the solid waste collector or the revenue produced from such accounts shall be exempt from public disclosure.

(5) A solid waste collector required to collect charges under this section may retain five percent of the charge in order to defray the costs of collecting and accounting for the proceeds of the charge.

(6) If a person disposes of solid waste at a disposal site within the boundaries of a local government unit imposing a *[fee]* **charge** under this section without using the services of a solid waste collector, the person shall pay the *[fee]* **charge** established by this section at the time the person disposes of solid waste at the disposal site. That portion of the charge attributable to administrative costs as provided in subsection (5) of this section shall be retained by the operator of the solid waste disposal site. The operator of the solid waste disposal site shall remit the balance of the charge according to procedures established by ordinance by the local government unit imposing the charge.

(7) Except for the amount allocated to defray the administrative expenses of a solid waste collector or disposal site operator under subsections (5) and (6) of this section, proceeds of the charge shall be placed into a dedicated local government remedial action fund established by the local government unit and may be used only to pay for remedial action costs. As used in this subsection, "remedial action costs" also includes the cost of retiring debt incurred in connection with a remedial action.

(8) The amount collected by imposing a charge under this section shall be the amount necessary to fund the local government unit's remedial action costs at one or more solid waste disposal sites for which the local government unit is responsible for conducting a remedial action or removal or related activities under ORS 465.260, or is liable under ORS 465.255 or other applicable law and necessary administrative expenses incurred under this section, and may include an increment to

cover any delinquencies in collections. The amount of the charge may be adjusted from time to time as necessary to maintain the remedial action fund at the level necessary to accommodate the local government unit's remedial action responsibilities, but [*shall*] **may** not exceed the maximum amounts provided in subsection (1)(a) of this section.

(9) Any local government unit located within the boundaries of a metropolitan service district may enter into an intergovernmental agreement with the district to transfer to the district the funding authority granted under this section and the responsibility for performing all remedial action obligations for which the local government unit may be responsible.

(10) As used in this section, "remedial action," "remedial action costs" and "removal" have the meaning given those terms in ORS 465.200.

NOTE: Makes terminology consistent in (6); updates word choice in (8).

SECTION 143. ORS 460.165 is amended to read:

460.165. (1) Subject to ORS 460.035 (1) and 460.085 (1), the Department of Consumer and Business Services may adopt fees that do not exceed the maximum fees described in this subsection for examining plans, for the inspection of elevators, for issuing or renewing an elevator contractor's license and for processing reports and issuing the permit for the operation of an elevator. Fees adopted by the department are subject to approval of the Oregon Department of Administrative Services. The maximum fees are:

(a) For each year of an elevator contractor's license for each place of business operated by the applicant, \$195.

(b) For the submission of plans and other pertinent data, for each elevator, \$78.

(c) For each year of an inspection period for [*a*]:

(A) A dumbwaiter, sidewalk elevator, residential elevator, residential inclinor or subveyor, \$52.

(B) An escalator, lowerator, manlift, stagelift, inclined elevator, platform hoist or moving walk, \$78.

(C) A power-driven elevator with a four floor rise or under, \$78.

(D) A power-driven elevator with over a four floor rise, but under a 10-floor rise, \$98.

(E) A power-driven elevator with over 10-floor rise, but under 20-floor rise, \$124.

(F) A power-driven elevator with a 20-floor rise or over, \$147.

(d) For a callback made on a mechanism listed in subsection (c) of this section and made by request or in the continued existence of a defect, \$52.

(e) For special inspections of hoisting or lowering mechanisms other than elevators or under special agreement between the department and a person requesting a special inspection, \$55 per hour for travel and inspection time.

(f) For the processing of each report of an inspection required under the provisions of ORS 460.005 to 460.175, \$20.

(g) For the inspection of an installation or alteration of an elevator, if the total cost of the installation or alteration is:

(A) \$1,000 or under, \$98.

(B) Over \$1,000 but under \$15,000, \$98 plus \$13 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$1,000.

(C) \$15,000 or over but under \$50,000, \$280 plus \$8 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$15,000.

(D) \$50,000 or over, \$553 plus \$3 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$50,000.

(2) Whenever an owner or user of any elevator equipment fails to pay a fee required under this section within 90 days after the date of depositing written notification in the United States mail, postage prepaid, and addressed to the last-known address of said owner or user, the fee shall be considered delinquent and the fee shall be doubled unless the owner or user of the elevator equipment establishes to the satisfaction of the department justification for failure to pay. The court may award reasonable attorney fees to the department if the department prevails in an action for the

collection of a fee required by this section. The court may award reasonable attorney fees to a defendant who prevails in an action for the collection of a fee required by this section if the court determines that the department had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

NOTE: Corrects lead-in grammar in (1)(c).

SECTION 144. ORS 461.110 is amended to read:

461.110. (1) Upon the request of the Oregon State Lottery Commission or the Director of the Oregon State Lottery, the office of the Attorney General and the Oregon State Police shall furnish to the director and to the Assistant Director for Security such information as may tend to [assure] **ensure** security, integrity, honesty and fairness in the operation and administration of the Oregon State Lottery as the office of the Attorney General and the Oregon State Police may have in their possession, including, but not limited to, manual or computerized information and data.

(2) In order to determine an applicant's suitability to enter into a contract with or to be employed by the Oregon State Lottery, each applicant identified in this subsection shall be fingerprinted. The Assistant Director for Security may submit to the Department of State Police [Bureau of Criminal Identification] **bureau of criminal identification** and to the Federal Bureau of Investigation, for the purpose of verifying the identity of the following persons and obtaining records of their arrests and criminal convictions, fingerprints of:

(a) With respect to video game retailers, each person for whom ORS 461.300 or an administrative rule of the Oregon State Lottery Commission requires disclosure of the person's name and address;

(b) With respect to lottery vendors and lottery contractors, each person for whom ORS 461.410 or an administrative rule of the Oregon State Lottery Commission requires disclosure of the person's name and address;

(c) Applicants for employment with the Oregon State Lottery; and

(d) With respect to other persons and entities that apply for contracts or have contracts with the Oregon State Lottery, each person for whom ORS 461.300 requires disclosure of the person's name and address and for whom the Assistant Director for Security has prepared written reasons, approved in writing by the director, for requiring the confirmation of the person's identity and records.

(3) For the purpose of requesting and receiving the information described in subsections (1) and (2) of this section, the Oregon State Lottery Commission is a state agency and a criminal justice agency and its enforcement agents are peace officers pursuant to ORS 181.010 to 181.712 and rules adopted thereunder.

(4) Enforcement agents, designated as such by the commission, shall have the same authority with respect to service and execution of warrants of arrest and search warrants as is conferred upon peace officers of this state.

NOTE: Improves word choice in (1); corrects title of bureau in (2).

SECTION 145. ORS 462.150 is amended to read:

462.150. (1) If during any race meet conducted under this chapter, there is an underpayment of the amount actually due to any wagerer, the amount of such underpayment shall revert and belong to the state and be paid to the Oregon Racing Commission and become a part of its fund and shall not be retained by the licensee under whose license such race is held.

(2) However, if any government or governmental agency imposes a levy on the licensee, by a tax on the money so wagered and upon or against its receipts, the licensee may collect in addition to the [percent] **percentage** and the breaks allowed under ORS 462.140 [(2)], the amount of the tax so levied.

NOTE: Corrects word choice and ORS citation in (2).

SECTION 146. ORS 465.386 is amended to read:

465.386. (1) Notwithstanding the totals established in ORS 459.236, [after July 1, 1993,] the Environmental Quality Commission by rule may increase the total amount to be collected annually as

a fee and deposited into the Orphan Site Account under ORS 459.236. The commission shall approve an increase if the commission determines:

(a) Existing fees being deposited into the Orphan Site Account are not sufficient to pay debt service on bonds sold to pay for removal or remedial actions at sites where the Department of Environmental Quality determines the responsible party is unknown or is unwilling or unable to undertake all required removal or remedial action; or

(b) Revenues from the sale of bonds cannot be used to pay for activities related to removal or remedial action, and existing fees being deposited into the Orphan Site Account are not sufficient to pay for these activities.

(2) The increased amount approved by the commission under subsection (1) of this section:

(a) Shall be no greater than the amount needed to pay anticipated costs specifically identified by the Department of Environmental Quality at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(b) Shall be subject to prior approval by 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 during the interim period between sessions.

NOTE: Removes obsolete provision from (1).

SECTION 147. ORS 466.510 is amended to read:

466.510. (1) Except as provided in ORS 466.515, [beginning January 1, 1980,] a person shall not sell, manufacture for sale, or use in this state an item, product or material if the item, product or material contains a concentration of PCB equal to or greater than 100 ppm.

(2) The commission by rule may prescribe a lower maximum concentration of PCB for specific items, products or materials if it finds the 100 ppm concentration specified in subsection (1) of this section to be inadequate to protect the public health from the toxic dangers of the PCB contained in that item, product or material. However, an item, product or material for which a lower maximum concentration of PCB is prescribed by federal law, rule or regulation shall not be allowed a concentration of PCB higher than that federal maximum.

NOTE: Deletes obsolete provision in (1).

SECTION 148. ORS 468.110 is amended to read:

468.110. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS [183.480 (3)] **183.482 (3)**, relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon.

NOTE: Corrects ORS reference.

SECTION 149. ORS 468A.160 is amended to read:

468A.160. (1) The territory of a regional authority may be expanded in the manner provided for forming regions by inclusion of an additional contiguous county or city if:

(a) All of the governing bodies of the participating counties and cities adopt ordinances or resolutions authorizing the inclusion of the additional territory; [and]

(b) The governing body of the proposed county or city adopts such ordinance or resolution as would be required to form a regional authority; and

(c) The Environmental Quality Commission approves the expansion.

(2) Any regional authority may be dissolved by written consent of the governing bodies of all participating counties and cities. Upon dissolution, any assets remaining after payment of all debts shall be divided among the participating counties and cities in direct proportion to the total amount contributed by each. However, all rules, standards and orders of the regional authority shall continue in effect until superseded by action of the commission.

NOTE: Strikes superfluous conjunction in (1)(a).

SECTION 150. ORS 468B.555 is amended to read:

468B.555. (1) The Department of Environmental Quality shall develop and implement a pollutant reduction trading program as a means of achieving water quality objectives and standards in this state. The department shall develop the program in a manner that complies with state and federal water quality regulations and promotes economic efficiency.

(2) In developing the program, the department shall place a priority on trades that improve the water quality of the Willamette River and on the following pollutants or conditions:

- (a) Nitrogenous and phosphorous compounds commonly referred to as nutrients;
 - (b) Sediment;
 - (c) Temperature;
 - (d) Biological oxygen demand; and
 - (e) Chemical oxygen demand.
- (3) The department shall:

(a) Develop a procedure to assist persons entering into an agreement to offset or trade quantities of pollutants under this section in a manner that results in a net reduction of pollutants, assists in meeting water quality standards and implements total maximum daily load allocations;

(b) Provide oversight and administration of agreements entered into under this section;

(c) Minimize administrative and technical requirements in order to encourage and facilitate pollutant trading under this section; and

(d) Emphasize practical procedures for pollutant trading that can be implemented using reasonable estimations and engineering judgment.

(4)(a) The department may assess reasonable fees to a party engaging in pollutant reduction trading under this section to offset its administrative costs associated with the pollutant reduction trading program.

(b) The department shall make every effort to minimize fees to facilitate and encourage pollutant trading.

(c) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department and are continuously appropriated to the department.

(5) The department shall seek any approvals, waivers or authorizations from the United States Environmental Protection Agency necessary to implement the program.

(6) The department shall seek a minimum of \$200,000 in federal funding to support the program.

[(7) The department shall report to the Seventy-second and Seventy-third Legislative Assemblies regarding the progress of the program.]

[(8)] (7) This section may not be construed to allow any activity expressly prohibited by federal law or regulation.

NOTE: Deletes temporary provision in (7).

SECTION 151. ORS 469.611 is amended to read:

469.611. Notwithstanding ORS chapter 401:

(1) The Director of the State Department of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to ensure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Department of Human Services shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the *[department]* **team** at the scene of a radiological accident, the Director of the State Department of Energy may designate other technical advisors to work with the local response agencies.

(4) The Department of Human Services shall assist the Director of the State Department of Energy to ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Department of Human Services shall report annually to the Director of the State Department of Energy on training of emergency response personnel.

NOTE: Clarifies reference in (3).

SECTION 152. ORS 470.065 is amended to read:

470.065. (1) The following records, communications and information furnished by or on behalf of the applicant under this chapter shall be confidential and maintained as such, if so requested in writing by the person providing the information:

- (a) Personal financial statements;
- (b) Financial statements of applicants;
- (c) Customer lists;

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur;

(e) Production, sales and cost data;

(f) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both; and

(g) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to[,] any description, analysis, evaluation or projection regarding the project or a component of the project.

(2) The confidentiality provided by subsection (1)(d) of this section does not apply to concluded litigation. Nothing in subsection (1)(d) of this section limits any right granted by discovery statutes to a party to litigation or potential litigation.

NOTE: Corrects punctuation in (1)(g).

SECTION 153. ORS 471.810 is amended to read:

471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account[,] and, after withholding such moneys as it may deem necessary to pay its outstanding obligations, shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by the State Board of Higher Education last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by the State Board of Higher Education; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030, 473.035 and 473.040 to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month [were] **was** reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or transferred under

subsections (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section.

NOTE: Improves punctuation in (1); corrects grammar in (3).

SECTION 154. ORS 475A.005 is amended to read:

475A.005. As used in this chapter, unless the context requires otherwise:

(1) "All persons known to have an interest" means:

(a) Any person who has, prior to the time the property is seized for forfeiture, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property which has been seized for forfeiture;

(b) Any person from whose custody the property was seized; or

(c) Any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.

(2) "Attorney fees" has the meaning given that term in ORCP 68 A.

(3) "Costs and disbursements" are those expenditures set forth in ORCP 68 A.

(4) "Financial institution" means any person lawfully conducting business as:

(a) A financial institution or trust company, as those terms are defined in ORS 706.008;

(b) A consumer finance company subject to the provisions of ORS chapter 725;

(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage servicing company or other mortgage company;

(d) An officer, agency, department or instrumentality of the federal government, including but not limited to:

(A) The Secretary of Housing and Urban Development;

(B) The Federal Housing Administration;

(C) The United States Department of Veterans Affairs;

[*(D) The Farmers Home Administration;*]

(D) Rural Development and the Farm Service Agency of the United States Department of Agriculture;

(E) The Federal National Mortgage Association;

(F) The Government National Mortgage Administration;

(G) The Federal Home Loan Mortgage [*Association*] **Corporation;**

(H) The Federal Agricultural Mortgage Corporation; and

(I) The Small Business Administration;

(e) An agency, department or instrumentality of the state, including but not limited to:

(A) The Housing Agency;

(B) The Department of Veterans' Affairs; and

(C) The Public Employees Retirement System;

(f) An agency, department or instrumentality of any municipality in the state, including but not limited to such agencies as the Portland Development Commission;

(g) An insurer as defined in ORS 731.106;

(h) A private mortgage insurance company;

(i) A pension plan or fund or other retirement plan; and

(j) A broker-dealer or investment adviser as defined in ORS 59.015.

(5) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that has accepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.

(6) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency in forfeiture actions or proceedings.

(7) "Law enforcement agency" means any agency [*which*] **that** employs police officers or prosecutes criminal cases.

(8) "Official law enforcement use" or "official law enforcement activity" means uses or activities [*which*] **that** may reasonably be expected to result in the identification, apprehension or conviction of criminal offenders.

(9) "Police officer" has the meaning given that term in ORS 133.525.

(10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, maintained by or realized through an act or omission, and includes any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

(11) "Prohibited conduct" includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.980 when the conduct constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and 161.545.

(12) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.

(13) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.

(14) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person.

NOTE: Updates reference in (4)(d)(D); corrects reference in (4)(d)(G); corrects word choice in (7) and (8).

SECTION 155. ORS 479.210 is amended to read:

479.210. As used in ORS 479.215 to 479.220, unless the context requires otherwise, "institution" means:

(1) A child-caring facility [*which*] **that** provides residential care and [*which*] **that** receives state aid under ORS 418.005 to 418.025, 418.035 to 418.185, 418.205 to 418.315 and 418.625 to 418.685;

(2) An inpatient care facility required to be licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463; or

(3) A residential facility subject to licensure under ORS 443.400 to 443.455 [*and 443.991 (2)*].

NOTE: Corrects word choice in (1); deletes inappropriate reference to penalty provision in (3).

SECTION 156. 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)] (1) "Door knock alerting device" or "door knock device" means an approved electronic unit that alerts a hearing impaired occupant of a knock on the door of the sleeping room that the hearing impaired person is occupying.

[(4)] (2) "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)] (3) "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)] (4) "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)] (5) "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.

(6) **"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 and 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.**

[(8)] (7) "Smoke alarm for hearing impaired persons" 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 of the presence of fire or smoke.

(8) **"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).**

(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.

NOTE: Alphabetizes definitions; corrects grammar in (6).

SECTION 157. ORS 479.630 is amended to read:

479.630. If the person pays the applicable examination and license fees required under ORS 479.840 and complies with ORS 479.510 to 479.945 and the rules adopted under ORS 455.117 and 479.510 to 479.945, the Department of Consumer and Business Services shall issue:

(1) An electrical contractor's license to a person engaging in or carrying on a business of making electrical installations.

(2) A general supervising electrician's license to a person who:

(a) Passes a written examination prepared by the Electrical and Elevator Board and administered by the department; and

(b) Submits proof satisfactory to the board that the person has had at least four years of experience as a general journeyman electrician or its equivalent, as determined by the board by rule, in installing, maintaining and repairing electrical wires and equipment.

(3) A limited supervising electrician's license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to supervise the class of electrical work included in the branch of the electrical trade and for which the person has passed the examination administered by the department. A person qualifies under this subsection if the person:

(a) Passes a written examination prepared by the board and administered by the department; and

(b) Submits proof satisfactory to the board that the person has had at least four years of specialized experience in a recognized branch of the electrical trade on the journeyman level.

(4) A general journeyman electrician's license to a person who:

(a) Passes a written examination prepared by the board and administered by the department; and

(b) Submits proof satisfactory to the board that:

(A) The person has had at least four years of general experience as an apprentice or its equivalent, as determined by the board by rule, in installing, maintaining and repairing electrical wires and equipment, including not fewer than 1,000 hours in wiring on single or multifamily dwelling units; or

(B) If the person is licensed as a limited residential electrician under subsection (14) of this section, subsequent to receiving that license, the person has worked for at least two years as a limited residential electrician and subsequent to those two years has completed an additional two years' experience as an apprentice or its equivalent, as determined by the board by rule, for that period of apprenticeship time worked exclusively in installing, maintaining and repairing electrical wires and equipment in the commercial and industrial branches of the electrical trade under the supervision of a licensed electrical contractor.

(5) A limited journeyman electrician's license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to perform the class of electrical work included in the branch of the electrical trade for which the person has passed the examination administered by the department. A person qualifies under this subsection if the person:

(a) Passes a written examination prepared by the board and administered by the department; and

(b) Submits proof satisfactory to the board that the person has had at least four years of specialized experience as an apprentice or its equivalent, as determined by the board by rule, in a recognized branch of the electrical trade.

(6) A limited elevator journeyman license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to install, maintain and repair elevators, including all electrical and mechanical systems. A person qualifies under this subsection if the person has completed an elevator apprenticeship program, including both electrical and mechanical training components, approved by the board by rule and the person submits an application for licensure to the board in writing. A person issued a license under this subsection is exempt from continuing education requirements established under ORS 455.117 and 479.680.

(7) An electrical apprentice's license to a person who has complied with ORS 660.002 to 660.210 as an electrical apprentice.

(8) An electrical apprentice's license to a trainee toward a limited residential electrician's license who has complied with ORS 660.002 to 660.210 as an electrical apprentice.

(9) An electrical apprentice's license to a trainee toward a limited journeyman's license in a recognized branch of the electrical trade who is employed by an employer who also:

(a) Employs a holder of either a general journeyman electrician's license or a limited journeyman electrician's license; and

(b) Conducts an electrical training program in a recognized branch of the electrical trade approved by the board as being a training program that will adequately prepare the trainee for the limited journeyman's license.

(10) A limited maintenance electrician's license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to maintain, repair and replace electrical installations, including electrical components, required on the premises of industrial plants, commercial office buildings, buildings occupied by the state or a local government entity or facilities designated by the board. The following apply to this subsection:

(a) A person qualifies under this subsection if the person:

(A) Passes a written examination prepared by the board and administered by the department on repair, replacement and maintenance of equipment of the type and nature normally used in an industrial plant, commercial office building or government building and on the use of testing equipment; and

(B)(i) Completes a two-year training program approved by the board that provides for training and supervision of the trainee or apprentice; or

(ii) Submits proof satisfactory to the board that the person has had sufficient experience and related educational training in the repair, replacement and maintenance of electrical wiring and equipment of the type and nature used in an industrial plant, commercial office building or govern-

ment building, as determined by the board or by an appropriate local apprenticeship committee recognized by the State Apprenticeship and Training Council.

(b) An annual inspection of the premises upon which electrical work is performed by persons licensed under this subsection shall be made by the electrical inspector for an annual fee determined by the board by rule, based upon the time required for the inspection, payable to the department.

(c) A person licensed under this subsection may be employed directly by the owner, or owner's agent, of any government building or commercial office building. A building owner or owner's agent need not be licensed under this section to supervise a limited maintenance electrician.

(d) The department, in consultation with the board, shall adopt rules defining government buildings and commercial office buildings subject to this subsection.

(11) A limited building maintenance electrician's license to a person who qualifies under this subsection. The following apply to this subsection:

(a) A person licensed under this subsection is authorized to maintain, repair and replace the following electrical installations required on the premises of commercial office buildings, buildings occupied by the state or a local government entity or facilities designated by the board in electrical systems not exceeding 300 volts to ground:

- (A) Electrical appliances;
- (B) Light switches;
- (C) Light fixtures;
- (D) Fans;
- (E) Receptacles; and
- (F) Fluorescent ballasts.

(b) A person qualifies under this subsection if the person:

(A) Passes a written examination prepared by the board and administered by the department on maintenance, repair and replacement of equipment of the type and nature normally used in a commercial office building or government building and on the use of testing equipment; and

(B) Submits proof satisfactory to the board that the person has:

(i) Had sufficient experience in the maintenance, repair and replacement of electrical wiring and equipment of the type and nature normally used in a commercial office building or government building; or

(ii) Completed a one-year training course, with classroom and on-the-job training components approved by the board, on the maintenance, repair and replacement of electrical wiring and equipment of the type and nature normally used in a commercial office building or government building.

(c) An annual inspection of the premises upon which electrical work is performed by persons licensed under this subsection shall be made by the electrical inspector for an annual fee determined by the board by rule, based upon the time required for the inspection, payable to the department, or the inspection shall be performed under an electrical master permit program.

(d) Building owners may perform work regulated by this subsection and for which a license is required under this subsection without obtaining a license.

(e) A person who owns more than 50 percent of a corporation that controls a building is a building owner.

(f) A person licensed under this subsection may be employed by the owner of a commercial office building or the owner's agent. A building owner or owner's agent need not be licensed under this section to supervise a limited building maintenance electrician.

(12) A limited maintenance specialty contractor license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to engage in the electrical work related to the repair, service, maintenance, installation or replacement of existing, built-in or permanently connected appliances, fluorescent ballasts or similar equipment and to employ individuals to engage in that work. This subsection does not authorize the installation of appliances, ballasts or other equipment if there is no existing installation of similar equipment. A person qualifies under this subsection if the person *[submits]*:

(a) **Submits** proof satisfactory to the board that the person has had sufficient experience in the type of work permitted under the license issued under this subsection; and

(b) Maintains with the board a current list of all individuals employed by the person to engage in work permitted under this subsection.

(13) A limited pump installation specialty contractor license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to engage in electrical work related to the testing, repair, service, maintenance, installation or replacement of new or existing pump equipment for potable or irrigation water systems, sump pumps, effluent pumps and ground water pumps on residential and agricultural property[,] **and** to employ individuals to engage in such work. A person qualifies under this subsection if the person:

(a) Submits proof satisfactory to the board that the person has had sufficient experience in the type of work permitted under the license issued under this subsection; and

(b) Maintains with the board a current list of all individuals employed by the person to engage in work permitted under this subsection.

(14) A limited residential electrician's license to a person who qualifies under this subsection. A person licensed under this subsection is authorized to perform the class of electrical work included in the branch of the electrical trade for which the person has passed the examination administered by the department and approved by the board. However, a person licensed under this subsection shall perform the electrical work allowed by the license only on single and multifamily dwelling units not exceeding three floors above grade. For purposes of this subsection, the first floor of a building is the floor that is designed for human habitation and that has 50 percent or more of its perimeter level with or above finished grade of the exterior wall line. A person qualifies under this subsection if the person:

(a) Has received the same number of hours of electrical safety training as required by rule for an electrical apprentice or its equivalent and [who] has received training in electrical theory;

(b) Submits documented proof to the board of at least two years of apprenticeship or trainee experience in residential wiring of single and multifamily dwelling units or its equivalent, as determined by the board by rule; and

(c) Passes a written examination prepared by the board and administered by the department.

(15) A Class I or Class II oil module electrician's license to a person who passes a written examination prepared by the board and administered by the department.

(16) A limited renewable energy contractor license to a person who:

(a) Employs at least one full-time renewable energy technician; and

(b) Does not engage in electrical work other than work that may be performed by a limited renewable energy technician. A limited renewable energy contractor may not make, direct, supervise or control the making of an electrical installation unless the contractor is licensed for that activity.

(17) A limited renewable energy technician license to a person who qualifies under this subsection. A person qualifies for licensing as a limited renewable energy technician if the person completes a two-year apprenticeship program and passes an examination approved by the board. A person licensed under this subsection may, while in the employ of a licensed electrical contractor or a limited renewable energy contractor:

(a) Install, maintain, replace or repair electrical wiring and electrical products that convey or operate on renewable electrical energy not exceeding 25 kilowatts AC; and

(b) Make electrical installations not exceeding 25 kilowatts AC:

(A) On devices using renewable energy involving wind, solar energy systems, microhydroelectricity, photovoltaic systems or fuel cells.

(B) Up to the load side of an inverter.

(C) To connect generators that are sized to facilitate the inverter in an off-grid system.

NOTE: Fixes read-in in (12) and (14)(a); corrects syntax in (13).

SECTION 158. ORS 480.095 is amended to read:

480.095. Persons violating ORS 480.085 [*shall be liable*] **are subject** to the penalty provided in ORS 480.990 (4) and [*shall also be*] **are** liable in civil action for damages to any person suffering

injury from handling or otherwise coming in contact with unused explosives [*which*] **that** are left in an area of use in violation of ORS 480.085, regardless of any negligence or lack of negligence on the part of the defendant.

NOTE: Corrects word choice.

SECTION 159. ORS 480.210 is amended to read:

480.210. (1) A person may not possess an explosive unless:

(a) The person has in immediate possession at all times during the possession of the explosive a valid certificate of possession issued to the person under ORS 480.235; or

(b) The person is licensed by the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives** to be a manufacturer of explosives, a dealer in explosives or the authorized agent of such a manufacturer or dealer.

(2) A person in possession of an explosive shall display a certificate of possession upon the demand of the issuing authority, a magistrate or a law enforcement agency, public fire department or fire protection agency of this state.

(3) It is a defense to a charge under subsection (1) of this section that the person so charged produce in court:

(a) A certificate described in subsection (1)(a) of this section that was valid at the time of the arrest of the person; or

(b) Proof that the person is licensed by the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives** to be a manufacturer of explosives, a dealer in explosives, or the authorized agent of such a manufacturer or dealer.

NOTE: Corrects references in (1)(b) and (3)(b).

SECTION 160. ORS 480.215 is amended to read:

480.215. Possession of an explosive shall not be transferred unless:

(1) The transferee holds a certificate of possession under ORS 480.235 and the certificate is valid at the time of the transfer;

(2) The transferee is licensed by the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives** as a manufacturer of explosives or a dealer in explosives; or

(3) The transferee is a consignee of explosives that have been transported under the jurisdiction of or in conformity with regulations adopted by the United States Department of Transportation.

NOTE: Corrects reference in (2).

SECTION 161. ORS 480.244 is amended to read:

480.244. (1) A person may store explosives only in an explosives magazine that has been issued a certificate of registration by the State Fire Marshal.

(2) An application for a certificate of registration shall be submitted on a form approved by the State Fire Marshal and shall contain all information required by rule of the State Fire Marshal, including but not limited to the magazine location and structural information.

(3) The State Fire Marshal may establish by rule and collect application and registration fees in an amount necessary to cover the cost of administering the magazine registration program.

(4) Except as provided in subsection (5) of this section, prior to issuing a certificate of registration, the State Fire Marshal shall inspect the magazine to ensure that the magazine complies with the rules established by the State Fire Marshal under ORS 480.280. The State Fire Marshal shall issue a certificate of registration for the magazine unless the State Fire Marshal finds that the magazine does not comply with the rules and regulations adopted by the State Fire Marshal. Denial of a certificate of registration shall be in accordance with subsection (9) of this section.

(5) The State Fire Marshal may substitute for its own inspection of the magazine as required under subsection (4) of this section an inspection completed by the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives**. The State Fire Marshal shall establish criteria for when the Bureau of Alcohol, Tobacco, [*and*] Firearms **and Explosives** inspection may substitute for the State Fire Marshal inspection.

(6) A certificate of registration shall be valid for two years unless suspended or revoked as provided under subsection (9) of this section.

(7) An application for the renewal of a certificate of registration shall be accompanied by any application fee established by the State Fire Marshal. A person who applies to renew a certificate before the person's current certificate expires does not need to retake the safety examination described under ORS 480.225 (1)(j). Each magazine shall be reinspected prior to renewal of the certificate of registration.

(8) If a magazine required to be registered under this section is relocated, the person responsible for the magazine shall notify the State Fire Marshal within 24 hours of the relocation. Upon receiving notification under this subsection, the State Fire Marshal shall notify the fire department or fire protection agency having jurisdiction over the new location.

(9) The State Fire Marshal may deny, suspend or revoke a certificate of registration if the State Fire Marshal finds that the magazine is ineligible for a certificate of registration. If the State Fire Marshal denies, suspends or revokes the certificate of registration, the issuing authority shall issue a notification of denial, suspension or revocation, subject to ORS 480.275.

(10) The issuing authority may revoke the certificate of registration for failure to comply with any provision of ORS 480.200 to 480.290.

NOTE: Corrects references in (5).

SECTION 162. ORS 480.530 is amended to read:

480.530. The Department of Consumer and Business Services may:

(1) Where it appears that a person is engaging in or is about to engage in an act or practice in violation of any provision of ORS 480.510 to 480.670, obtain without furnishing a bond, a restraining order and injunction from the circuit court in the county where the act or practice is occurring, or is threatened, enjoining the act or practice. However, before obtaining a restraining order and injunction, unless the act or practice constitutes an immediate threat to health and safety, the department shall first notify the person concerned of *[its]* **the department's** intentions. The notice shall be in writing, *[and]* shall advise the person concerned of *[its]* **the department's** intentions and shall advise the person concerned of the right to appeal in writing within 10 days and that the appeal will be heard by the Board of Boiler Rules. In case there is a timely request for an appeal, proceedings will be stayed pending the appeal, unless the act or practice constitutes an immediate menace to health or safety or the person concerned fails to prosecute the appeal with diligence.

(2) Keep a complete record of the types, dimensions, maximum allowable working pressures, age, location and date of the last recorded inspection of all boilers and pressure vessels to which ORS 480.510 to 480.670 apply.

(3) Publish and distribute copies of the rules and regulations.

(4) Check or cause to be checked the authenticity, appropriateness and expiration dates of licenses and certificates issued under ORS 480.510 to 480.670.

(5) Administer written, oral or practical examinations to all applicants for certification as chief **boiler** inspector, deputy inspector or special inspector under ORS 480.565.

NOTE: Clarifies pronouns and improves syntax in (1); clarifies title in (5).

SECTION 163. ORS 480.540 is amended to read:

480.540. (1) The term of office of a member **of the Board of Boiler Rules** is four years and no member shall be eligible for appointment to more than two full terms of office. A member shall continue to serve until a successor has been appointed and qualified. Vacancies shall be filled by appointment for the unexpired term.

(2) In addition to ORS 480.545 and 480.615, the Board of Boiler Rules shall be governed by the following *[rules]*:

(a) The board shall meet not less than four times a year.

(b) The chief **boiler** inspector shall serve without a vote as secretary of the board.

(c) The Governor may remove any member of the board for cause.

(3) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

NOTE: Clarifies reference in (1); removes unnecessary word in (2) lead-in; clarifies title in (2)(b).

SECTION 164. ORS 480.555 is amended to read:

480.555. (1) Except as provided in ORS 480.525 (1), [no] a person [shall] **may not**:

(a) Make or direct the construction, installation, repair or alteration of a boiler or pressure vessel [which] **that** does not meet minimum safety standards.

(b) Lend, rent out, or offer to lend or to rent out, sell, offer for sale, or dispose of by gift or otherwise, for operation, a boiler or pressure vessel that does not meet the minimum safety standards.

(c) Use, or attempt to use, a boiler or pressure vessel that fails to meet the minimum safety standards.

(d) Make any installation of a boiler or pressure vessel or repair thereon affecting the strength or safety thereof without notifying the chief **boiler** inspector as prescribed by rules promulgated under ORS 480.545.

(2) Nothing in this section [shall restrict] **restricts** the construction of boilers or pressure vessels in Oregon [which] **that** are installed outside Oregon [which] **and that** do not conform to the provisions of ORS 480.510 to 480.670.

NOTE: Improves word choice in (1) lead-in, (1)(a) and (2); clarifies title in (1)(d).

SECTION 165. ORS 480.565 is amended to read:

480.565. The Director of **the** Department of Consumer and Business Services shall:

(1) Appoint a chief **boiler** inspector who has had practical experience in the construction, maintenance, repair or operation of high pressure boilers and pressure vessels as a mechanical engineer, practical steam operating engineer, boilermaker or boiler inspector and who:

(a) Has passed a written examination, which shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant to inspect boilers and pressure vessels; or

(b) Holds a certificate of competency as an inspector of boilers and pressure vessels [which is] issued by a state [which] **that** has standards of examination equal to those of the State of Oregon and [which] **that** recognizes certificates of competency issued by the State of Oregon, and has passed an examination that assesses the applicant's knowledge of ORS 480.510 to 480.670 and the rules adopted thereunder.

(2) Appoint deputy inspectors who shall be responsible to the chief **boiler** inspector and who shall have qualified as provided in subsection (1) of this section, except that less practical experience shall be required.

(3) Issue a certificate of competency as a special inspector to any individual who [shall have qualified] **qualifies** as provided in subsection (1) of this section, except that no more practical experience shall be required than is required of a deputy inspector, and who is continuously employed by:

(a) An insurer who may and does write policies of boiler and pressure vessel insurance in Oregon; or

(b) Any person operating pressure vessels in this state whose service, personnel, equipment and supervision meet the requirements prescribed by the Board of Boiler Rules.

NOTE: Corrects title in lead-in; clarifies title in (1) and (2); improves punctuation in (1)(a) and (b); improves word choice in (1)(b) and (3).

SECTION 166. ORS 480.580 is amended to read:

480.580. (1) The chief **boiler** inspector or any deputy inspector may, at all reasonable hours, in performance of the duties imposed by the provisions of ORS 480.510 to 480.670, enter into all buildings and upon all premises, except private residences, for the purpose of inspecting any boiler or pressure vessel [which] **that** is covered by ORS 480.510 to 480.670 and [which] **that** the chief **boiler** inspector or the deputy inspector has reasonable cause to believe is located therein.

(2) No person shall interfere with or prevent any such inspection by [such inspectors] **the chief boiler inspector** or a deputy [inspectors] **inspector**.

NOTE: Clarifies title and improves word choice.

SECTION 167. ORS 480.615 is amended to read:

480.615. (1) The Board of Boiler Rules shall hear the appeal of an appellant who:

(a) Has filed a timely written request and: [who]
[(a)] (A) Has received notice that a restraining order or injunction will be sought[, or];
[(b)] (B) Has received notice that a permit will be suspended or revoked[,]; or
[(c)] (C) Is affected by either of such notices[. *The board shall likewise hear the appeal of an appellant who*]; or

(b) Has filed a written request and who has reason to desire a change in the minimum safety standards or the rules.

(2) The board shall set the time and place for hearing and give the appellant 10 days' written notice.

(3) All appeals shall be heard within three months of receipt of the request[. *Provided, if*] **unless an immediate menace to health or safety is involved, in which case** the appeal shall be heard within 20 days of receipt of the request.

(4)(a) Two or more appeals may be consolidated for hearing, if based upon substantially the same facts.

(b) The board and the appellant may subpoena witnesses, who shall receive the same compensation and mileage pay as circuit court witnesses.

(c) A written or recorded record shall be kept.

NOTE: Restructures (1) to conform to legislative style; updates word choice in (3); corrects punctuation in (4)(b).

SECTION 168. ORS 480.630 is amended to read:

480.630. (1) A person engaging in the business of installing, repairing or altering boilers or pressure vessels must possess a boiler contractor license issued by the Department of Consumer and Business Services.

(2) A person who installs, repairs or alters boilers or pressure vessels as the employee or agent of a business engaged in the installation, repair or alteration of boilers or pressure vessels must possess an employee or agent license issued by the department.

(3) The chief **boiler** inspector may conduct examinations for licensing an employee or agent of a business to establish the competency of the applicant.

(4) Licenses shall be issued and renewed by the department as provided by rules adopted under ORS 455.117 by the Board of Boiler Rules upon payment of a fee of \$25 for each application for an employee or agent license and \$150 for each application for a boiler contractor license.

(5) A person required to be licensed under this section may not install, alter or repair a boiler or pressure vessel unless an appropriate permit is first secured from the department. Permits shall be issued only to persons possessing a valid boiler contractor license or as provided by the department by rule. A permit fee of \$15 shall be paid directly to the department.

(6) In the case of an emergency, a permit under subsection (5) of this section is not required in advance for boiler or pressure vessel installations or repair, if an application accompanied by the appropriate fee for a permit is submitted to the department within five days after the commencing of the boiler or pressure vessel work.

(7) The license and examination requirements of this section do not apply when a person is brought in from out of state to repair or alter a boiler or pressure vessel utilizing special tools or a special process for which that person is uniquely qualified. The activity shall be limited solely to the special process and the person performing the work shall have qualifications that meet or exceed license standards as determined by the chief boiler inspector. The chief boiler inspector shall be notified prior to performance of any work under this subsection.

(8) If a license issued under subsection (4) of this section is of a class that authorizes a person to perform work equivalent to that performed by pressure vessel installers, building service mechanics, boilermakers or pressure piping mechanics, the person must complete eight hours of board-approved continuing education every year.

NOTE: Clarifies title in (3).

SECTION 169. ORS 496.275 is amended to read:

496.275. (1) The Legislative Assembly hereby declares the necessity to review all options and means for the protection and restoration of Oregon's salmon resource that promote local economic development and enjoyment by all the citizens of Oregon. Options and means shall include operation of salmon production facilities, in cooperation with the State Department of Fish and Wildlife, by both public and private nonprofit agencies as well as by public local partnerships, to meet local production and harvest needs as well as to help restore and maintain natural salmon spawning populations. Such cooperative production projects shall be operated using scientifically sound hatchery practices and shall be consistent with objectives to protect and restore natural fish production.

(2) The State Department of Fish and Wildlife shall:

(a) Review and revise existing state administrative rules so that the different forms of hatchery production are recognized as a necessary and critical element in the state's salmon production system in order to provide harvest opportunities for Oregon's citizens. In so doing, the department shall identify low natural production areas and, using genetically compatible stocks approved by the department, encourage volunteer efforts such as the salmon and trout enhancement program to maintain and to enhance production.

(b) Identify existing private and public salmon production facilities that are currently either underutilized or subject to decommissioning and that may be appropriate for other forms of operation.

(c) Inventory other appropriate local sites, identify possible types of production facilities, recommend stock selection and release size, and assist in securing the acquisition of brood stock approved by the department that maximizes local production.

(d) Investigate and implement ways to improve hatchery smolt survival and reduce predation by such means as night releases, net pen acclimation, alternate release sites, volitional and other release strategies, transport and other means that may be effective and consistent with the conservation of native salmon and genetic resources.

(e) Make recommendations on methods by which operations of facilities referred to in [subsections (2) to (4)] **this subsection and subsection (3)** of this section can generate revenue for sustainable production, including but not limited to state bonding, license surcharges, ad valorem taxes, local economic development funds, service districts, sale of excess eggs and salmon, and gifts, grants and donations.

(f) Identify needed monitoring and evaluation activities to ensure protection of natural spawning fish populations and to assess the contribution of such cooperative projects to public fisheries.

(g) Assist in developing, for department approval, plans of operation for such cooperative hatchery projects consistent with applicable rules and standards of sound, scientific fish management practice.

(3) The department shall encourage and assist in planning hatchery facilities that seek to implement innovative plans or programs designed to meet production for harvest needs consistent with conservation objectives.

[(4) The department shall make a report on its activities under subsections (2) to (4) of this section to an appropriate interim committee of the Legislative Assembly by September 1, 1996.]

[(5)] (4) The State Fish and Wildlife Commission shall approve, prior to implementation, operational plans for any fish propagation facilities operated by contractor agreement with other state or federal agencies, local governments, special districts and nonprofit organizations.

NOTE: Updates internal reference in (2)(e); removes obsolete provision in (4).

SECTION 170. ORS 507.050 is amended to read:

507.050. The State Fish and Wildlife Director, one legislator appointed as provided in this section and one public member appointed by the Governor[,] shall act as [*the representative*] **representatives** of the State of Oregon on the Pacific Marine Fisheries Commission in accordance with the provisions of and with the powers and duties in the compact set forth in ORS 507.040. The legislative member shall be appointed by the President of the Senate or the Speaker of the House of Representatives from among those legislators who, at the time of appointment, are serving on the

Pacific [States] **Fisheries** Legislative [Fishery] Task Force. The legislative member shall serve for a term of four years. [For calendar year 1987, the Speaker of the House of Representatives shall appoint the legislative member, and thereafter] The Speaker of the House of Representatives and the President of the Senate shall alternate in making the appointment of the legislative member.

NOTE: Corrects syntax and title of task force; removes obsolete provision.

SECTION 171. ORS 530.030 is amended to read:

530.030. (1) The county court or board of county commissioners of any county may convey to the state for state forests any lands heretofore or hereafter acquired by such county through foreclosure of tax liens, or otherwise, [which] **that** are within the classification of lands authorized to be acquired under ORS 530.010, if the **State Board of Forestry** deems such lands necessary or desirable for acquisition, in consideration of the payment to such county of the percentage of revenue derived from such lands as provided in ORS 530.110. In connection with any such conveyance, the **State Board of Forestry** shall have authority to make equitable adjustments with any county of accrued delinquent fire patrol liens on lands heretofore or hereafter acquired by such county by foreclosure of tax liens.

(2) As to such lands acquired by the **State Board of Forestry** with title to the timber remaining in the county for a designated period of time, the State Forester may enter into contracts with the county to supervise the removal and sale of such timber, and under such contracts the gross proceeds of the sale thereof shall be disposed of as follows:

(a) Ten percent of such gross proceeds shall be paid into the State Treasury and credited to the State Forestry Department Account and shall be used exclusively for the purposes and under the limitations set out in ORS 530.110 (1)(a).

(b) A percentage of such gross proceeds shall be accepted by the State Forester, pursuant to written contract with the county authority, as compensation for the supervision and management of county-owned timber[;]. The moneys so derived shall be paid into the State Treasury and credited to the State Forestry Department Account and shall be used exclusively for the supervision and management of state forests acquired pursuant to ORS 530.010.

NOTE: Clarifies references in (1) and (2); improves word choice in (1); improves punctuation in (1), (2) and (2)(b).

SECTION 172. ORS 530.040 is amended to read:

530.040. (1) It is desirable that lands acquired under the provisions of ORS 530.010 shall be consolidated in areas wherever possible through exchanges of land. It is recognized that the management of state forests will be more economically feasible through such consolidation.

(2) In order to accomplish the objectives of subsection (1) of this section, the **State Board of Forestry** may exchange any land acquired under the provisions of ORS 530.010, or may exchange the timber on such land, for land of approximately equal aggregate value, situated in the same county, when such exchange is in furtherance of the purposes of ORS 530.010[; provided,]. However, the **State Board of Forestry** may exchange land or timber situated in one county or counties for land situated in another county or counties if such exchange is first approved by the county court or board of county commissioners of each county involved[; and provided further, that]. Either party to any such exchange may make reservations of easements, rights of use and other interests and rights. Under the authority granted in this section, the **State Board of Forestry** may provide or receive, in addition to land to be exchanged, a monetary consideration where necessary to make the values comply with this subsection.

(3) Before making any such exchange, the **State Board of Forestry** shall hold a hearing thereon at the courthouse of the county in which such lands are situated and shall give notice of the time and place thereof by publication in two successive issues of a newspaper of general circulation published in such county. The notice shall contain a description of the lands to be given and to be received in the proposed exchange. However, no such exchange shall be made until the title to the lands to be received has been approved by the Attorney General.

(4) All lands received in exchange shall have the same status and be subject to the same provisions of law as the lands given in exchange therefor.

NOTE: Clarifies references and improves punctuation in (2) and (3).

SECTION 173. ORS 530.170 is amended to read:

530.170. Revenues from lands acquired by the state pursuant to section 5, chapter 478, Oregon Laws 1939, shall be disposed of as provided by law at the time of such acquisition[; *provided that*]. **However**, the county court or board of county commissioners of any county from which such lands were acquired may, by resolution duly made and entered, and delivery of a certified copy thereof to the **State Board of Forestry**, elect to have such revenues disposed of as provided in ORS 530.110 (1).

NOTE: Remedies run-on sentence; clarifies reference.

SECTION 174. ORS 530.490 is amended to read:

530.490. (1) Notwithstanding the provisions of any other law, or authority granted thereunder, after the [*board*] **State Board of Forestry and State Land Board** resolutions and legal descriptions are filed with the Secretary of State as required by ORS 530.480, the State Forester hereby shall be authorized, under the supervision of the State Board of Forestry and the regulations of [*said*] **that** board, to manage, control and protect the Common School Forest Lands. Also, notwithstanding the provisions of any other law, or authority granted thereunder, the State Forester hereby is authorized, under the supervision of the State Board of Forestry and the regulations of [*said*] **that** board, to manage, control and protect the Elliott State Forest Lands. In each instance the State Forester shall manage, control and protect such forests and forestlands so as to secure the greatest permanent value of the lands to the whole people of the State of Oregon, particularly for the dedicated purposes of the lands and the common schools to which the resources of the lands are devoted.

(2) Easements on, over and across the Common School Forest Lands and the Elliott State Forest Lands may be granted as follows:

(a) Permanent easements determined by the State Forester and State Board of Forestry as necessary to accomplish the dedicated purposes of such lands may be granted by the Department of State Lands.

(b) Easements other than permanent may be granted by the State Forester under joint rules of the State Board of Forestry and Department of State Lands.

(3) The authority granted the State Forester in this section shall not supersede the authority of the Department of State Lands to grant easements on or leases for the Common School Forest Lands and Elliott State Forest Lands for grazing purposes or for the exploration and development of minerals, oil or gas, and any consideration received by the Department of State Lands therefor shall be excepted from the provisions of ORS 530.520[; *provided,*]. However, the Department of State Lands shall cooperate with the forestry program of the State Forester in granting such easements and leases and make provisions therein for continuing the primary purposes for which such land has been dedicated.

NOTE: Sets out full titles and improves word choice in (1); cures run-on sentence in (3).

SECTION 175. ORS 530.628 is amended to read:

530.628. (1) ORS 530.600 to 530.628 contain complete authority for the organization of a community forest authority and for the issuance and sale of revenue bonds, including refunding revenue bonds, and other revenue obligations.

(2) [*ORS 288.320 and*] ORS chapters 198, 279A, 279B and 294 do not apply to the organization of an authority and the issuance and sale of revenue bonds pursuant to ORS 530.600 to 530.628.

(3) Nothing in ORS 530.600 to 530.628 restricts or limits a power that an authority has under a law of this state or the charter of the municipality creating the authority except as explicitly provided in ORS 530.600 to 530.628.

NOTE: Deletes reference to repealed statute in (2).

SECTION 176. ORS 543.017 is amended to read:

543.017. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation [*which*] **that** may result in a wild game fish population, or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities [*which*] **that**, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity, including water quality, wildlife, scenic and aesthetic values, **and** historic, cultural and archaeological sites, shall be maintained or enhanced. No activity may be approved [*which*] **that**, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable, the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project.

[(4) The Water Resources Department and other state agencies shall not apply subsections (1) and (2) of this section to existing water rights or state licenses for existing hydroelectric facilities until January 1, 1998.]

NOTE: Improves grammar and punctuation in (1)(c) and (d); removes obsolete provision in (4).

SECTION 177. ORS 561.144 is amended to read:

561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund, which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund, which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

(2) Interest received on deposits credited to the Department of Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Service Fund.

(3) The license and service fees subject to this section are those described in ORS 561.400, 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580, 586.650, 596.030, **596.100**, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030.

NOTE: Improves punctuation in (1); adds relevant section to (3) (see 596.100).

SECTION 178. ORS 571.057 is amended to read:

571.057. (1) Each person required to be licensed by ORS 571.055 shall make application for such license, or for renewal thereof, on a form furnished by the State Department of Agriculture, which shall contain:

(a) The name and address of the applicant[;], the number of locations to be operated by the applicant and the addresses thereof[;], and the assumed business name of the applicant;

(b) If other than an individual, a statement whether such person is a partnership, corporation or other organization;

(c) The gross dollar volume of sales or purchases of nursery stock by the applicant within Oregon during the prior calendar year[,] or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year; and

(d) The type of business to be operated and, if applicant is an agent, the principals the applicant represents.

(2) Each application for license shall be accompanied by a license fee as provided for by this section and any amounts required by ORS 571.075 (3). Such application shall not be a public record but shall be subject to audit and review by the department. An applicant for an original license or for a renewal license, without a full calendar year of prior nursery stock sales or purchase experience upon which to base the fees, shall base such fees on an estimated annual gross dollar volume of sales or purchases of nursery stock by the applicant. Notwithstanding the provisions of ORS 571.075, upon application by such person for a renewal of license for a subsequent year, the fees for the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales or purchases of nursery stock by such applicant. Any additional fees found to be due shall be paid to the department at the time of application for renewal of license, or the department shall refund any overpayment found to be due the applicant.

(3)(a) *[For license years beginning on and after July 1, 1995,]* The license fees for growers and dealers shall be established by the department after consulting with the State Nursery Research and Regulatory Committee and after public hearing in accordance with ORS chapter 183. Such fees shall be established on the basis of annual gross dollar volume of sales or purchases of nursery stock within Oregon for the calendar year immediately preceding the license period.

(b) The license fees shall not be less than \$65 nor more than \$20,000. The millage rate shall be not less than one-tenth mill nor more than 5 mills. The fees shall be established in such amount as shall be sufficient to allow the department to administer and enforce the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(c) [For license years beginning July 1, 1994, and thereafter,] In addition to and at the time of payment of the annual license fee, growers and dealers shall pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers shall pay 0.0002 times the gross dollar purchases in the previous license year. Growers shall pay 0.0002 times the gross dollar sales in the previous license year. In no event shall the assessment be less than \$10.

(4) For florists and landscape contractors, dealer and agent fees will be computed on the basis of gross purchases of plants. For greenhouse operators and growers, including persons collecting native plants, fees will be computed on the basis of gross sales of plants or sales value of plants produced in Oregon.

(5) Each grower or dealer shall be entitled to one sales location under the license of the grower or dealer. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by such person shall require the payment of the full license fee for each of such additional sales outlets. A grower who is also a dealer shall be licensed only as a grower.

NOTE: Fixes punctuation in (1), (1)(a) and (c); removes obsolete provisions in (3)(a) and (c).

SECTION 179. ORS 578.090 is amended to read:

578.090. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission shall establish the policies to be followed in [*the accomplishments of such*] **accomplishing those** purposes.

(2) In the administration of this chapter, the commission has the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To find new markets for wheat and wheat products.

(c) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any purpose for which it is found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from the special varieties of wheat grown in Oregon.

(e) To investigate and participate in studies of the problems peculiar to the producers of wheat in Oregon.

(f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the wheat industry of the state and the health and welfare of the public.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(h) To establish a reasonable per diem allowance, in addition to expenses under ORS 578.060, to members of the commission while actually engaged in the performance of their official duties, including necessary travel time.

(3) In addition to exercising the powers listed in subsection (2) of this section, the commission may exercise the same powers that a commodity commission may exercise under ORS 576.304.

NOTE: Corrects grammar in (1); properly punctuates (2).

SECTION 180. ORS 583.425 is amended to read:

583.425. (1) Except as provided by subsection (2) of this section, the provisions of ORS chapter 183 apply to ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, **to** rules promulgated thereunder and to the appeal of any person aggrieved thereby. Before any order is promulgated, the State Department of Agriculture shall hold at least one public hearing. All hearings shall be public hearings, and testimony shall be given under oath.

(2) Notwithstanding ORS chapter 183, and except as otherwise provided in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, a public hearing may be instituted only by:

(a) The department on its own motion[, or];

(b) A petition filed with the department and signed by at least 10 percent of the producers qualified to sign petitions as provided by ORS 583.480 to 583.490[,]; or

(c) A petition filed with the department and signed by at least 50 percent of the handlers in the applicable market area.

(3) All guideposts[,] **and** standards and the provisions of this chapter may be taken into consideration in the promulgation of any order.

NOTE: Improves grammar in (1) and (3); corrects punctuation in (1), (2)(a) and (b).

SECTION 181. ORS 583.518 is amended to read:

583.518. In addition to other actions it may take, or penalties it may apply, the State Department of Agriculture after public hearing under ORS chapter 183 may establish a plan or system of assessing a penalty amount against a handler who fails or refuses to move or transport pool milk for the Class 1 or Class 2 needs of another handler, when ordered so to do by the department as authorized in ORS 583.517. This penalty, which shall be established in an amount not to exceed \$1 per hundredweight of milk and paid to the department, shall be computed on the basis of the number of pounds of milk [*which*] **that** was not moved or transported as ordered by the department. If the handler in violation of such an order does not pay the amount of penalty within 30 days after the date of the written notice by the department, the department in addition to other actions available to it under this chapter may:

(1) File suit against the handler for recovery of the penalty amount[.]; or

(2) Deduct the amount of the penalty from any amount or equalization [*which*] **that** may be later due and payable by the department to such handler. Any such withholding by the department shall not be passed on to[,] or be withheld by the handler from the price paid to producers for milk.

NOTE: Corrects punctuation in lead-in, (1) and (2); improves word choice in lead-in and (2).

SECTION 182. ORS 607.328 is amended to read:

607.328. (1) The State Department of Agriculture shall cause livestock to be sold at public sale:

(a) In the event the department does not determine the owner of an estray pursuant to ORS 607.321; [*or*]

(b) In the event livestock of a known owner is delivered to it pursuant to ORS 607.304 (1) or (8);
or

(c) In the event livestock of a known owner is delivered to it pursuant to ORS 607.308, and sale thereof is required because of the owner's failure to appear and claim the [*same*] **livestock** as provided in ORS 607.332.

(2) Prior to the holding of any public sale, as provided in subsection (1) of this section, the department shall:

(a) Designate a time and place of public sale, which shall be held not less than five days after receiving the notice of taking up.

(b) Cause a notice of such public sale to be given by posting a written or printed notice of the time and place of sale, a description of the livestock and that such sale shall take place if the livestock is not claimed by the owner thereof prior to the sale. Said posting shall be in two public places of the county where the livestock was taken up for not less than 48 hours prior to the date of sale. If the department is satisfied that adequate notice has been given an owner pursuant to ORS 607.303 (2), notice need not be posted.

NOTE: Deletes superfluous conjunction in (1)(a); improves word choice in (1)(c).

SECTION 183. ORS 616.345 is amended to read:

616.345. (1) The State Department of Agriculture shall promulgate [*regulations*] **rules** establishing tolerances for pesticide chemicals or exempting them from the necessity of a tolerance as provided by ORS 616.341 with respect to the presence in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals [*which*] **that** are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In promulgating such [*regulations*] **rules**, or [*regulations*] **rules** authorized by ORS 616.355, the department shall give appropriate consideration to but not be limited by:

(a) The necessity for the production of an adequate wholesome and economic food supply.

(b) The other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious.

(c) The laws and regulations of the United States and other states.

(d) The opinions of recognized experts and governmental agencies in the field of pesticide chemicals.

(2) The department shall promulgate [*regulations*] **rules** exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on all raw agricultural commodities when such tolerance is not necessary to protect the public health.

(3) Any person who has registered, or who has submitted an application for the registration of, an economic poison or pesticide with the department as required by law, may file with the department a petition as authorized by ORS chapter 183, proposing the promulgation of a [*regulation*] **rule** establishing a tolerance for a pesticide chemical [*which*] **that** constitutes, or is an ingredient of, such economic poison or pesticide, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing:

- (a) The name, chemical identity[,] and composition of the pesticide chemical;
- (b) The amount, frequency[,] and time of application of the pesticide chemical;
- (c) Full reports of investigations made with respect to the safety of the pesticide chemical;
- (d) The results of tests on the amount of residue remaining, including a description of the analytical method used;
- (e) Practicable methods of removing residue [*which*] **that** exceeds any proposed tolerance;
- (f) Proposed tolerances for the pesticide chemical if tolerances are proposed; and
- (g) Reasonable grounds in support of the petition. Samples of the pesticide chemical shall be furnished to the department upon request.

NOTE: Standardizes terminology in (1), (2) and (3); improves word choice in (1), (3) and (3)(e); fixes punctuation in (3) and (3)(a) and (b).

SECTION 184. ORS 616.385 is amended to read:

616.385. All [*regulations*] **rules** promulgated under ORS 616.335 to 616.385 shall only be promulgated after public hearing and shall be in accordance with the applicable provisions of ORS chapter 183.

NOTE: Standardizes terminology.

SECTION 185. ORS 616.850 is amended to read:

616.850. As used in ORS 616.850 to 616.890 [*and 616.996*], unless the context requires otherwise:

- (1) "Consumer commodity" means any of the following items:
 - (a) Food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients to be added thereto for any purposes;
 - (b) Paper products, including napkins, towels, facial tissues, toilet tissues, disposable plates and cups;
 - (c) Wrapping products, including those made of paper, plastic and aluminum; and
 - (d) Soaps, detergents, cleaning aids, deodorizing aids, waxes and wax removers, disinfectants, polishes and polish removers, bleaches, scouring pads and all other laundry and household cleaning products.
- (2) "Grocery store or food market" means any retail establishment or department thereof:
 - (a) That sells consumer commodities, the gross annual receipts from the sale of which is \$1.5 million or more; and
 - (b) That is part of a chain system or contracts with a supplier or cooperative [*which*] **that** utilizes common purchasing, warehousing or distribution facilities, **if** [*and*] the chain, cooperative or supplier has computer hardware for inventory control, ordering or pricing labels.
- (3) "Package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.
- (4) "Unit retail price" means the retail price of the contents of a package of any consumer commodity, expressed in terms of the retail price of such contents per single whole unit of weight, volume, measure or count, computed to the nearest 10th of a cent when less than \$1 and to the nearest cent when \$1 or more.

NOTE: Deletes inappropriate reference to penalty section in lead-in; improves word choice in (2)(b).

SECTION 186. ORS 618.010 is amended to read:

618.010. As used in this chapter, unless the context requires otherwise:

(1) "Advertising" or "advertisement" means any public notice or announcement of commodities for sale, services to be performed, equipment or facilities for hire, or any other thing offered to the public, via publishing or broadcasting media or by signs, banners, posters, handbills, labels or similar devices, for the purpose of inducing, directly or indirectly, the purchase or use of such commodities, services, equipment or facilities.

(2) "Commercial" or "commercially used" means any application or use in connection with or related to transactions in which, in exchange for commodities received or services rendered, consideration is given in terms of currency, negotiable instruments, credit, merchandise or any other thing of value.

(3) "Commodity" means any merchandise, product or substance produced or distributed for sale to, or use by, others.

(4) "Commodity in bulk form" means any quantity of a commodity that is not a commodity in package form.

(5) "Commodity in package form" means any quantity of a commodity put up or packaged in any manner in advance of sale, in units suitable for either wholesale or retail sale by weight, volume, measure or count, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of ORS 618.010 to 618.246. An individual item or lot of any commodity not in package form as defined in this subsection, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(6) "Department" means the State Department of Agriculture.

(7) "Director" means the Director of Agriculture.

(8) "Inspector" means any state officer or employee designated by the director as a supervisor of, or an inspector of, weights and measures.

(9) "Intrastate commerce" means any and all commerce or trade begun, carried on and completed wholly within the limits of this state.

(10) "Introduced into intrastate commerce" means the time and place at which the first sale and delivery of a commodity is made within this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(11) "Liquid-fuel measuring device" means any meter, pump, tank, gage or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low-viscosity heating oil.

(12) "National Institute of Standards and Technology" means the National Institute of Standards and Technology of the Department of Commerce of the United States.

(13) "Sale" and "sell" include barter and exchange.

(14) "Security seal" means a lead-and-wire seal, or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.

(15) "Vehicle" means any wheeled conveyance in, upon or by which any property, livestock or commodity is or may be transported or drawn, but does not include railroad rolling stock.

(16) "Weighing device" means any scale, balance or apparatus used for gravimetrically determining the quantity of any commodity on a discrete or continuous basis.

(17) "Weights and measures" means all weights and measures, instruments and devices of every kind for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices. However, "weights and measures" does not include meters for the measurement of electricity, gas or water when operated in a system of a public utility, as that term is defined in ORS 757.005. *[None of the provisions of ORS 618.010 to 618.246 apply to such public utility meters or to any associated appliances or accessories.]*

NOTE: Moves substantive provision out of definition in (17). See section 187 (amending 618.066).

SECTION 187. ORS 618.066 is amended to read:

618.066. (1) The State Department of Agriculture shall investigate complaints made to it concerning violations of ORS 618.010 to 618.246 and, upon its own initiative, shall conduct such investigations as it considers appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of ORS 618.010 to 618.246, and in order to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

(2) ORS 618.010 to 618.246 do not apply to meters for the measurement of electricity, gas or water when operated in a system of a public utility, as defined in ORS 757.005, or to any associated appliances or accessories.

NOTE: Adds relocated provision to appropriate section. See section 186 (amending 618.010).

SECTION 188. ORS 622.080 is amended to read:

622.080. (1)(a) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations not more than \$60,000 in annual gross income shall pay the following annual fees to the State Department of Agriculture:

(A) [*One hundred fifty dollars*] **\$150** for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish.

(B) [*One hundred dollars*] **\$100** for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(C) [*One hundred dollars*] **\$100** for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(D) [*Seventy-five dollars*] **\$75** for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(b) Notwithstanding the fees established in paragraph (a) of this subsection, no commercial facility operating in one location shall pay more than \$250 in total annual fees to the department for any combination of certificates issued under paragraph (a) of this subsection.

(2)(a) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations more than \$60,000 in annual gross income shall pay the following annual fees to the department:

(A) [*Three hundred dollars*] **\$300** for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish.

(B) [*Two hundred dollars*] **\$200** for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(C) [*Two hundred twenty-five dollars*] **\$225** for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(D) [*Seventy-five dollars*] **\$75** for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(b) Notwithstanding the fees established in paragraph (a) of this subsection, no commercial facility operating in one location shall pay more than \$500 in total annual fees to the department for any combination of certificates issued under paragraph (a) of this subsection.

NOTE: Conforms dollar amounts to legislative style in (1)(a)(A) to (D) and (2)(a)(A) to (D).

SECTION 189. ORS 632.405 is repealed.

NOTE: Repeals unnecessary definition of "department."

SECTION 190. ORS 632.505 is repealed.

NOTE: Repeals unnecessary definition of "department."

SECTION 191. ORS 632.595 is amended to read:

632.595. All containers of unshelled walnuts or unshelled filberts of the two highest grades established by the **State Department of Agriculture**, sold or offered for sale or shipment in this state, shall be uniform, new, sound and clean and otherwise conform to the standards approved by the

[State] department [of Agriculture]. Containers for lower grades shall be clean, fairly bright and sound.

NOTE: Spells out first reference to agency instead of second reference.

SECTION 192. ORS 633.015 is amended to read:

633.015. (1) A person may not distribute a nonregistered commercial feed. Every brand, and each formula or formulation thereof, of commercial feeds manufactured, compounded, delivered or distributed in this state must be registered with the State Department of Agriculture. The distributor must submit an application for registration on forms furnished by the department. If the department so requests, the distributor must submit the label or a facsimile of the label and other printed matter describing the product. Upon approval by the department, a certificate of registration shall be furnished to the distributor. All registrations expire on December 31 of each year. The application must include the information required by ORS 633.026 (1)(a) to (f) and such other information as the department may require.

(2) A distributor is not required to register any brand of commercial feed that has been registered under ORS 633.006 to 633.089 [and 633.992] by another person.

(3) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted, if there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(4) The department may refuse registration of any commercial feed if the application is not in compliance with the provisions of ORS 633.006 to 633.089 [and 633.992]. The department may cancel any registration subsequently found not to be in compliance with any provision of ORS 633.006 to 633.089 [and 633.992]. The department shall give the registrant reasonable opportunity to be heard before the department and to amend the application in order to comply with the requirements of ORS 633.006 to 633.089 [and 633.992].

(5) Custom mixed feeds are exempt from registration.

(6) Each application for registration must be accompanied by a fee to be established by the department not to exceed \$20 for each formula or formulation of commercial feed under each brand.

NOTE: Deletes inappropriate references to penalty section in (2) and (4).

SECTION 193. ORS 633.055 is amended to read:

633.055. A person may not distribute misbranded commercial feed. A commercial feed is misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is distributed under the name of another feed.

(3) If it is not labeled as required by ORS 633.026 and by rules adopted pursuant to ORS 633.006 to 633.089 [and 633.992].

(4) If it purports to be or is represented as a feed ingredient or as containing a feed ingredient, unless that feed ingredient conforms to the definition of identity, if any, prescribed by rule of the State Department of Agriculture. In adopting rules under this subsection, the department may take into consideration the commonly accepted definitions approved or authorized by:

(a) The United States and other states.

(b) Other recognized agencies or organizations experienced in such matters, such as the Association of American Feed Control Officials.

(5) If any word, statement or other information required by ORS 633.006 to 633.089 [and 633.992] or by rule of the department to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

NOTE: Deletes inappropriate references to penalty section in (3) and (5).

SECTION 194. ORS 633.065 is amended to read:

633.065. (1) It shall be the duty of the State Department of Agriculture to sample, inspect, make analyses of, and test commercial feeds distributed within this state, at such times and places and to such an extent as may be necessary to determine whether or not such feeds are in compliance with

the provisions of ORS 633.006 to 633.089 [and 633.992]. The department is authorized to enter upon any public or private premises, including any vehicle of transport, during regular business hours, in order to have access to commercial feeds and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department. In adopting such methods, the department may take into consideration:

(a) The methods scientifically developed and described in recognized official publications such as the Journal of the Association of Official Agricultural Chemists.

(b) The methods approved by the United States, other states and other recognized agencies or organizations experienced in such matters.

(3) In determining for administrative purposes whether or not a commercial feed is deficient in any component, the department shall be guided solely by the official sample as defined in ORS 633.006 and obtained and analyzed as provided by subsection (2) of this section.

(4) When inspection and analysis of an official sample indicate that a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the department to the registrant. Upon request, within 30 days, the department shall furnish to the registrant a portion of the sample analyzed.

(5) The department may take investigational samples that may be examined otherwise than by the official method required by this section. For administrative purposes, only samples taken as directed by subsection (3) of this section may be used.

NOTE: Deletes inappropriate reference to penalty section in (1).

SECTION 195. ORS 633.077 is amended to read:

633.077. (1) The State Department of Agriculture shall establish and maintain a procedure, plan and system whereby a farmer, contract feeder or other person actually feeding bulk commercial feed or custom mixed feed to animals may request the department to sample and provide special official testing and analysis of such feeds. It is the purpose and intent of this section that the department desires to make its personnel, facilities and laboratories available to such persons and to determine if such feeds are in compliance with the provisions of ORS 633.006 to 633.089 [and 633.992] or for any other purpose [which] **that** the department may determine is reasonable and necessary.

(2) The department may provide for the obtaining, handling and testing of samples of bulk commercial feed and custom mixed feed as provided in subsection (1) of this section, including split sampling thereof with portions of each sample being made available to the seller and to the contract feeder or person feeding the feed to animals. Copies of the final results of the tests or analysis, which shall not be a public record, shall be made available only to the seller and to the contract feeder or person feeding the feed to animals.

NOTE: Deletes inappropriate reference to penalty section and improves word choice in (1).

SECTION 196. ORS 633.088 is amended to read:

633.088. (1) When the State Department of Agriculture has reasonable cause to believe any quantity or lot of commercial feed is being sold or distributed in violation of ORS 633.006 to 633.089 [and 633.992] or [regulations] **rules** promulgated thereunder, it may, in accordance with ORS 561.605 and 561.620, issue and enforce a written ["withdrawal from distribution"] order, directing the distributor thereof not to dispose of the quantity or lot of commercial feed in any manner until written permission is first given by the department. The department shall release the quantity or lot of commercial feed so withdrawn when said law and [regulations] **rules** have been complied with.

(2) Any quantity or lot of commercial feed found by the department not to be in compliance with ORS 633.006 to 633.089 [and 633.992] or [regulations] **rules** promulgated thereunder, may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620.

NOTE: Deletes inappropriate references to penalty section and improves word choice in (1) and (2); conforms punctuation to legislative style in (1).

SECTION 197. ORS 634.212 is amended to read:

634.212. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a protected area, in accordance with the provisions of ORS

561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor is not required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.
(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. [Should] **If** the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making a determination pursuant to the authority granted under ORS 561.520 (3), the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest [*industry*] **industries** to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

NOTE: Improves word choice in (4) and (5)(a).

SECTION 198. ORS 646.605 is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material shall include inspection, study[,] or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations[,] and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6) "Real estate, goods or services" means those [which] **that** are or may be obtained primarily for personal, family or household purposes, or [which] **that** are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Except as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered by ORS chapter 90.

(7) "Telephone solicitation" means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055[;].

(b) A person who is licensed or is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity[;].

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure[;].

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance[;].

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club[;].

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser[;].

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States[;].

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans[;].

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services[;].

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon[;].

(k) A person who sells farm products as defined by ORS [chapter 576] **576.006** if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100[;].

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section[;].

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer when the solicitation involves answering services[; or].

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and [includes] **include** any trade or commerce directly or indirectly affecting the people of this state.

(9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit; or

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

NOTE: Conforms punctuation in (3), (4) and (7) to legislative style; improves word choice in (6); hones citation in (7)(k); corrects grammar in (8).

SECTION 199. ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material shall include inspection, study[,] or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations[,] and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6) "Real estate, goods or services" means those [which] **that** are or may be obtained primarily for personal, family or household purposes, or [which] **that** are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Real estate does not cover conduct covered by ORS chapter 90.

(7) “Telephone solicitation” means a solicitation where a person, in the course of the person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055[;].

(b) A person who is licensed or is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity[;].

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure[;].

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance[;].

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club[;].

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser[;].

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, “supervised financial institution” means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States[;].

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans[;].

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services[;].

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon[;].

(k) A person who sells farm products as defined by ORS [chapter 576] **576.006** if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100[;].

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section[;].

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer when the solicitation involves answering services[; or].

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) “Trade” and “commerce” mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and [includes] **include** any trade or commerce directly or indirectly affecting the people of this state.

(9) “Unconscionable tactics” include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer’s physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit; or

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made “in close connection with the sale of a manufactured dwelling” if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

NOTE: Conforms punctuation in (3), (4) and (7) to legislative style; improves word choice in (6); hones citation in (7)(k); corrects grammar in (8).

SECTION 200. ORS 646.661 is amended to read:

646.661. As used in ORS [646.608 and] 646.661 to 646.691, unless the context requires otherwise:

(1) “Business day” means any day except a Sunday or a legal holiday.

(2) “Buyer” means a person who purchases health spa services.

(3) “Conspicuous” has the meaning given that term in ORS 71.2010 (10).

(4) “Health spa” means any person engaged, as a primary purpose, in the sale of instruction, training, assistance or use of facilities [which] **that** are purported to assist patrons in physical exercise, weight control or figure development. The term also includes any person engaged primarily in the sale of the right or privilege to use tanning booths, exercise equipment or facilities, such as a sauna, whirlpool bath, weight-lifting room, massage, steam room, or other exercising machine or device. “Health spa” does not include any facility owned and operated by the State of Oregon or any of its political subdivisions.

(5) “Health spa services” means services, privileges or rights offered for sale by a health spa.

(6) “Person” has the meaning given that term in ORS 646.605 (4).

NOTE: Expunges errant reference in lead-in; improves word choice in (4).

SECTION 201. ORS 646.686 is amended to read:

646.686. A health spa shall not request a buyer to waive any provision of ORS [646.608 and] 646.661 to 646.691. Any waiver by a buyer of any provision of ORS [646.608 and] 646.661 to 646.691 is contrary to public policy and is void and unenforceable.

NOTE: Expunges errant references.

SECTION 202. ORS 646.691 is amended to read:

646.691. The remedies and obligations provided in ORS [646.608 and] 646.661 to 646.691 are in addition to any other remedies and obligations, civil or criminal, existing at common law or under the laws of this state.

NOTE: Expunges errant reference.

SECTION 203. ORS 650.145 is amended to read:

650.145. (1) **As used in subsection (2) of this section, “fair and reasonable compensation” means the amount originally paid by the dealer minus any incentive payments, model close-out allowances or any other programs applicable to the vehicles.**

[(1)] (2) Upon the termination, cancellation, nonrenewal or discontinuance of any franchise, the dealer shall be allowed fair and reasonable compensation by the manufacturer, distributor or importer for the following:

(a) All new current model year motor vehicle inventory with a gross vehicle weight rating of less than 8,500 pounds purchased from the manufacturer, distributor or importer[, which] **that** has not been materially altered, substantially damaged or driven for more than 300 miles;

(b) All new motor vehicle inventory that has not been materially altered or substantially damaged, provided that the vehicles:

(A) If motor vehicles with a gross vehicle weight rating of less than 8,500 pounds, were not driven for more than 300 miles, were purchased directly from the manufacturer, distributor or importer within 120 days of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source; or

(B) If motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, were not driven more than 4,000 miles, were purchased directly from the manufacturer, distributor or importer within one year of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source;

(c) Supplies and parts inventory purchased from the manufacturer, distributor or importer and listed in the manufacturer's, distributor's or importer's current parts catalog;

(d) Equipment, furnishings and signs purchased from the manufacturer, distributor or importer and required by the manufacturer, distributor or importer *[which]* **that** have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value; and

(e) Special tools purchased from the manufacturer, distributor or importer within three years of the date of termination, cancellation, nonrenewal or discontinuance and required by the manufacturer *[which]* **that** have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value.

[(2) "Fair and reasonable compensation" shall be the amount originally paid by the dealer minus any incentive payments, model close-out allowances or any other programs applicable to the vehicles.]

(3) Nothing in this section is intended to modify the manufacturer's, distributor's or importer's contractual right of setoff.

(4) Upon the termination, cancellation, nonrenewal or discontinuance of a franchise, the manufacturer, distributor or importer shall also pay to the dealer a sum equal to the current, fair rental value of the dealer's established place of business for a period of one year from the effective date of termination, cancellation, nonrenewal or discontinuance or the remaining period of any lease, whichever is less.

(5) Subsection (4) of this section shall apply only to the extent that the dealer's established place of business is used for performance of sales and service obligations under the manufacturer's, distributor's or importer's franchise agreement.

(6) In the event that termination is by the dealer, the payment required by subsection (4) of this section is not required.

(7) This section shall not relieve a new motor vehicle dealer, lessor or other owner of an established place of business from the obligation of mitigating damages.

NOTE: Adds context to and improves word choice in definition in former (2) and moves it to beginning of section; improves word choice in (2)(a), (d) and (e).

SECTION 204. ORS 650.165 is amended to read:

650.165. It shall be a violation of ORS 650.120 to 650.170 for a franchisor to require a franchisee to agree to the inclusion of a term or condition in a franchise, or in any lease or agreement ancillary or collateral to a franchise, as a condition to the offer, grant or renewal of such franchise, lease or agreement, that:

(1) Requires the franchisee to waive trial by jury in actions involving the franchisor[;].

(2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prevents a franchisee from bringing an action in a particular forum otherwise available under the law[;].

(3) Requires that disputes between the franchisor and franchisee be submitted to arbitration or to any other binding *[alternate]* **alternative** dispute resolution procedure. However, any such franchise, lease or agreement may authorize the submission of a dispute to arbitration or to binding *[alternate]* **alternative** dispute resolution if the franchisor and franchisee voluntarily agree to submit such dispute to arbitration or binding *[alternate]* **alternative** dispute resolution at the time the dispute arises[; or].

(4) Adversely alters to a substantial degree the rights and obligations of a franchisee under any existing franchise contract.

NOTE: Conforms punctuation to legislative style; standardizes terminology in (3).

SECTION 205. ORS 652.420 is amended to read:

652.420. (1) As used in ORS 652.420 to 652.445:

(a) **“Commissioner” means the Commissioner of the Bureau of Labor and Industries.**

[(a)] (b) “Labor bureau” includes any agency, bureau, commission, board or officer in another state [which] **that** performs functions substantially corresponding to those of the Commissioner of the Bureau of Labor and Industries.

[(b) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.]

(2) The definitions of ORS 652.310 and 652.320 shall apply to ORS 652.420 to 652.445, but nothing contained in those sections shall be construed to preclude reciprocal enforcement of wage claims under ORS 652.420 to 652.445, [where] **when** the services of the employee were rendered in another state.

NOTE: Alphabetizes definitions in (1); improves word choice in (1)(b) and (2).

SECTION 206. ORS 653.280 is amended to read:

653.280. (1) An employer shall take all reasonable precautions to safeguard all trade equipment [which] **that** is owned by an employee and is located on premises under the employer’s control.

(2) As used in ORS 653.285 and this section, unless the context requires otherwise:

(a) [“Employer” and] “Employee” **and “employer”** have the meaning provided for those terms in ORS 652.310.

[(b) “Trade equipment” is limited to musical instruments and sound equipment.]

[(c)] (b) “Premises” means the place where the employer and the employee of the employer are engaged in the furtherance of a common enterprise or the accomplishment of the same or related purposes in operation.

(c) **“Trade equipment” is limited to musical instruments and sound equipment.**

NOTE: Improves word choice in (1); alphabetizes definitions in (2).

SECTION 207. ORS 656.172 is amended to read:

656.172. (1) ORS 656.170 applies only to:

(a) An employer incurring or projecting an annual workers’ compensation insurance premium in Oregon of at least \$250,000 or an employer that paid an annual workers’ compensation insurance premium in Oregon of at least \$250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect.

(b) An employer who qualifies as a self-insured employer under ORS 656.407 and 656.430 that is incurring or projecting annual workers’ compensation costs of at least \$250,000 or who has had annual workers’ compensation costs of at least \$250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect.

(c) A group of employers who combine for the purpose of obtaining workers’ compensation insurance as provided by ORS 737.316 and incur or project annual workers’ compensation premiums of at least \$1 million.

(d) A group of employers who qualify as a self-insured employer group under ORS 656.430 and incur or project annual workers’ compensation costs of at least \$1 million.

(e) Employers covered by a wrap-up insurance policy provided by an owner or general contractor and authorized by ORS 737.602 and 737.604 [or chapter 548, Oregon Laws 1991, or chapter 7, Oregon Laws 1993], and that requires payment of annual workers’ compensation premiums of \$1 million or more for coverage of those employees covered by the wrap-up insurance policy.

(2) An employer or group of employers may not establish or continue a program established under ORS 656.170 until:

(a) The employer has provided the Director of the Department of Consumer and Business Services with the following:

(A) Upon original application and whenever the collective bargaining agreement is renegotiated, a copy of the collective bargaining agreement and an estimate of the number of employees covered by the collective bargaining agreement;

(B) Upon original application and annually thereafter, a valid license when that license is required as a condition of doing business in Oregon;

(C) Upon original application and annually thereafter, a signed, sworn statement that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement;

(D) Upon original application and annually thereafter, the name, address and telephone number of the contact person of the employer or group of employers; and

(E) A statement from the insurer or self-insured employer that the insurer or self-insured employer is willing to insure the risk under the terms of the collective bargaining agreement; and

(b) The director has approved the proposed program.

(3) A collective bargaining representative may not establish or continue to participate in a program established under ORS 656.170 until:

(a) The collective bargaining representative has provided the following to the director:

(A) Upon original application and annually thereafter, a copy of the most recent LM-2 or LM-3 filing with the United States Department of Labor, and a signed, sworn statement that the document is a true and correct copy; and

(B) Upon original application and annually thereafter, the name, address and telephone number of the contact person for the collective bargaining representative; and

(b) The director has approved the proposed program.

(4) When an employer, a group of employers or a collective bargaining representative has met the eligibility requirements of this section, the director shall issue a letter to the employer, group of employers or collective bargaining representative indicating that such eligibility has been established.

NOTE: Deletes reference to repealed laws in (1)(e); improves syntax in (4).

SECTION 208. ORS 657.078 is amended to read:

657.078. "Employment" does not include services performed by an individual as a stringer, correspondent or photographer, for print or broadcast media, who submits information, stories or pictures by the piece or at a flat rate to newspapers, special publications, television or radio if the individual is free from direction and control over the means and manner of providing the services. However, this section does not apply to services performed for a nonprofit employing unit[, *as defined in ORS 657.072,*] for this state, for a political subdivision of this state or for an Indian tribe.

NOTE: Removes obsolete reference.

SECTION 209. ORS 657.092 is amended to read:

657.092. (1) "Employment" does not include service performed by an individual as a director, designer, performer, musician, technical crew member, house or business person, contestant, beauty queen or member of a court for or on behalf of a nonprofit organization in connection with a symphony, opera, play, pageant, festival, rodeo or similar event operated by such organization when the remuneration for such service consists solely of a gratuity, prize, scholarship or reimbursement of expenses.

(2) As used in this section:

(a) **"Contestant" means a person competing in a competition in a pageant, festival, rodeo or similar event.**

(b) **"Gratuity" means a voluntary return for a service and does not include commissions or other amounts paid pursuant to an agreement reached at the time the individual agrees to perform a service for the organization.**

[(a)] (c) "Nonprofit organization" means an organization or group of organizations described in sections 501(c)(3) to 501(c)(10) of the Internal Revenue Code which is exempt from income tax under section 501(a) of the Internal Revenue Code.

[(b)] *"Gratuity" means a voluntary return for a service and does not include commissions or other amounts paid pursuant to an agreement reached at the time the individual agrees to perform a service for the organization.]*

[(c)] (d) "Prize" means a reward received for winning a competition in a pageant, festival, rodeo or similar event.

(e) **"Reimbursement for expenses" means a payment made in lieu of salary to compensate an individual for transportation costs to the location of the service and return, and ordinary living expenses while in the vicinity of the event in which the individual is participating.**

[(d)] (f) "Scholarship" means a grant provided for the purpose of paying part of the tuition or other costs of attending an educational institution or institution of higher education and payable to the institution of the individual's choice.

[(e)] *"Reimbursement for expenses" means a payment made in lieu of salary to compensate an individual for transportation costs to the location of the service and return, and ordinary living expenses while in the vicinity of the event in which the individual is participating.*

[(f)] *"Contestant" means a person competing in a competition in a pageant, festival, rodeo or similar event.*

NOTE: Alphabetizes definitions in (2).

SECTION 210. ORS 657.321 is amended to read:

657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

(1) **"Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year that begin in an extended benefit period and, if the benefit year ends within such extended benefit period, any weeks thereafter that begin in such period.**

(2) **"Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:**

(a) **Has received prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in the current benefit year, the individual may subsequently be determined to be entitled to added regular benefits); or**

(b)(A) **The individual's benefit year having expired prior to such week, has no, or insufficient, wages and employment to establish a new benefit year that would include such week;**

(B) **Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and**

(C) **Has not received and is not seeking, or the appropriate agency has finally determined that the individual is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.**

[(1)] (3)(a) "Extended benefit period" means a period that:

[(a)] (A) Begins with the third week after a week for which there is a state "on" indicator; and

[(b)] (B) Ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period, whichever occurs later.

[(2)] (b) Notwithstanding the provisions of [subsection (1) of this section] **paragraph (a) of this subsection**, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period [which] **that** was in effect with respect to this state.

[(3)] (c) There is a state "on" indicator for any week for which the Director of the Employment Department determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

[(a)] (A) **Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years;**

[(b)] (B) Equalled or exceeded six percent; or

[(c)] (C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

[(A)] (i) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

[(B)] (ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in [subparagraph (A) of this paragraph] **sub-subparagraph (i) of this subparagraph**, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

[(4)] (d) There is a state “off” indicator for any week for which the director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, none of the options specified in subsection [(3)] (3)(c) of this section results in an “on” indicator.

(4) **“Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in the individual’s eligibility period.**

(5) **“High unemployment period” means any period during which an extended benefit period would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting “eight percent” for “6.5 percent.”**

[(5)] (6) “Rate of insured unemployment,” for the purpose of [subsections (3) and (4)] **subsection (3)(c) and (d)** of this section, means the percentage derived by dividing:

(a) The average weekly number of regular continued weeks of unemployment claimed by individuals in this state with respect to the most recent 13-consecutive-week period, as determined by the director on the basis of reports to the United States Secretary of Labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

[(6)] (7) “Regular benefits” means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

[(7)] *“Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in the individual’s eligibility period.*

[(8)] *“Eligibility period” of an individual means the period consisting of the weeks in the individual’s benefit year which begin in an extended benefit period and, if the benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.*

[(9)] *“Exhaustee” means an individual who, with respect to any week of unemployment in the individual’s eligibility period:*

[(a) Has received prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in the current benefit year, the individual may subsequently be determined to be entitled to added regular benefits); or]

[(b) The individual’s benefit year having expired prior to such week, has no, or insufficient wages and employment to establish a new benefit year that would include such week; and]

[(c) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and]

[(d) Has not received and is not seeking, or the appropriate agency has finally determined that the individual is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.]

[(10)] (8) “State law” means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954, as amended.

[(11) “High unemployment period” means any period during which an extended benefit period would be in effect if subsection (3)(c)(A) of this section were applied by substituting “eight percent” for “6.5 percent.”]

NOTE: Alphabetizes definitions; retabulates (2) to clarify meaning; retabulates former (1) to (4) to improve read-in; updates internal references.

SECTION 211. ORS 657.331 is amended to read:

657.331. (1) As used in ORS 657.331 to 657.334:

(a) “Additional benefits” means benefits totally financed by the state and payable under this chapter to exhaustees by reason of conditions of high unemployment.

(b) “Additional benefit period” means a period not within an extended benefit period that:

(A) Begins with the third week after a week for which there is a state additional benefits “on” indicator; and

(B)(i) Ends with the second week after the first week for which there is a state “on” indicator as defined in ORS 657.321 *[(3)] (3)(c)*; or

(ii) If there is no “on” indicator, ends with the third week after the first week for which there is a state additional benefits “off” indicator or the seventh consecutive week of such period, whichever occurs later.

(2) Notwithstanding the provisions of subsection (1)(b) of this section, no additional benefit period may begin by reason of a state additional benefit “on” indicator before the eighth week following the end of a prior additional benefit period which was in effect with respect to this state.

(3) There is a state additional benefit “on” indicator for any week for which the Director of the Employment Department determines that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) equaled or exceeded 4.5 percent.

(4) There is a state additional benefits “off” indicator for any week for which the director determines that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) was less than 4.5 percent.

(5) For purposes of this section, *[the]* “rate of insured unemployment” *[shall have]* **has** the same meaning as provided in ORS 657.321 *[(5)] (6)*.

NOTE: Updates citations in (1)(b)(B)(i) and (5). See section 210 (amending 657.321). Conforms language and punctuation to legislative style in (5).

SECTION 212. ORS 657.370 is amended to read:

657.370. As used in ORS 657.370 to 657.390, unless the context requires otherwise:

(1) “Affected employee” means an individual who was continuously employed as a member of the affected group, by the shared work employer, for six months on a full-time basis or for one year on a part-time basis, immediately preceding the submission by the employer of the shared work plan.

(2) “Affected group” means three or more employees designated by the employer to participate in a shared work plan.

[(3) “Shared work employer” means an employer with a shared work plan in effect.]

[(4) “Shared work plan” or “plan” means an employer’s voluntary, written plan for reducing unemployment, under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced.]

[5] (3) “Approved shared work plan” or “approved plan” means an employer’s shared work plan [which] that meets the requirements of ORS 657.375.

[6] (4) “Normal weekly hours of work” means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

(5) “Shared work employer” means an employer with a shared work plan in effect.

(6) “Shared work plan” or “plan” means an employer’s voluntary, written plan for reducing unemployment, under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced.

NOTE: Alphabetizes definitions; improves word choice in (3).

SECTION 213. ORS 657.458 is amended to read:

657.458. As used in this chapter unless the context requires otherwise:

(1) “Adjusted average weekly check amount” means the average weekly check amount in a calendar year plus one-half of the increase in the maximum weekly benefit amount plus one-half of the increase in the minimum weekly benefit amount from the week including July 4 immediately preceding such calendar year to the week including July 4 immediately following such calendar year.

[1] “High benefit cost period” means the 12 consecutive month period in the last 10 completed calendar years in which the benefit cost rate was the highest. The benefit cost rate is determined by dividing the amount of benefits paid attributable to employers subject to the tax, during any 12 consecutive months within the 10-year period by total wages, as defined in ORS 657.105, reported by all employers subject to the tax for the four consecutive calendar quarters which includes the quarter in which the 12 consecutive month period ended. All benefits paid from the Unemployment Compensation Trust Fund attributable to employers subject to the tax, including but not limited to the Oregon share of extended benefits and any special state additional benefits, shall be included in the amount of benefits under this subsection.]

(2) “Average monthly employment” means the total number of persons employed in each month for 12 consecutive months, as reported by employers subject to the tax under this chapter, divided by 12.

(3) “Average weekly check amount” means the gross amount of benefit payments, excluding extended benefits, made during a 12 consecutive month period, divided by the number of such weekly payments made to all individuals receiving benefits under this chapter during that period. The number and amount of payments made under section 11, chapter 2, Oregon Laws 1982 (first special session), shall be excluded from the computation under this subsection.

[4] “Adjusted average weekly check amount” means the average weekly check amount in a calendar year plus one-half of the increase in the maximum weekly benefit amount plus one-half of the increase in the minimum weekly benefit amount from the week including July 4 immediately preceding such calendar year to the week including July 4 immediately following such calendar year.]

(4) “High benefit cost period” means the 12 consecutive month period in the last 10 completed calendar years in which the benefit cost rate was the highest. The benefit cost rate is determined by dividing the amount of benefits paid attributable to employers subject to the tax, during any 12 consecutive months within the 10-year period by total wages, as defined in ORS 657.105, reported by all employers subject to the tax for the four consecutive calendar quarters that include the quarter in which the 12 consecutive month period ended. All benefits paid from the Unemployment Compensation Trust Fund attributable to employers subject to the tax, including but not limited to the Oregon share of extended benefits and any special state additional benefits, shall be included in the amount of benefits under this subsection.

NOTE: Alphabetizes definitions; corrects word choice in (4).

SECTION 214. ORS 659A.820 is amended to read:

659A.820. (1) Any person claiming to be aggrieved by an alleged unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint may

be signed by the complainant or the attorney for the complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

(2) A complaint may not be filed under this section if a civil action has been commenced in state or federal court alleging the same matters.

(3) *[Any employer whose employees, or any of them,]* **If an employer has one or more employees who** refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, **the employer** may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) The commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The notice shall include the date, place and circumstances of the alleged unlawful practice.

NOTE: Remedies awkward syntax in (3).

SECTION 215. ORS 660.010 is amended to read:

660.010. As used in ORS 660.002 to 660.210, unless the context requires otherwise:

(1) "Apprentice" means a worker at least 16 years of age, except where a higher minimum age is otherwise required by law, who is employed to learn an apprenticeable occupation under standards of apprenticeship approved by the State Apprenticeship and Training Council.

(2) "*Apprenticeship agreement*" means a written agreement between an apprentice and either the employer or the local joint committee which shall contain the minimum terms and conditions of the employment and training of the apprentice.]

[(3)] (2) "Apprenticeable occupation" means a skilled trade *[which]* **that**:

(a) Is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;

(b) Is clearly identified and commonly recognized throughout an industry;

(c) Involves manual, mechanical or technical skills and knowledge *[which]* **that** require a minimum of 2,000 hours of on-the-job supervised training; and

(d) Requires related instruction to supplement the on-the-job training.

(3) "Apprenticeship agreement" means a written agreement between an apprentice and either the employer or the local joint committee that contains the minimum terms and conditions of the employment and training of the apprentice.

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(5) "Council" means the State Apprenticeship and Training Council.

(6) "Course of study" means a course of study for the instruction of apprentices or trainees established in accordance with ORS 660.157.

(7) "Director" means the State Director of Apprenticeship and Training.

(8) "District school board" includes the boards of community college service districts, education service districts, common school districts and community college districts.

(9) "Employer" means any person employing the services of an apprentice, regardless of whether such person is a party to an apprenticeship agreement with that apprentice.

(10) "Local joint committee" includes local joint apprenticeship committees, local joint training committees and trade committees.

(11) "Program" means the total system of apprenticeship as operated by a particular local joint committee, including the committee's registered standards and all other terms and conditions for the qualification, recruitment, selection, employment and training of apprentices in that apprenticeable occupation.

(12) "Trainee" means a worker at least 16 years of age, except where a higher minimum age is otherwise required by law, who is to receive, in part consideration for services, complete instruction in an occupation *[which]* **that** meets all the requirements of an apprenticeable occupation, except

that such occupation requires, in the opinion of the council, less than 2,000 but not less than 1,000 hours of on-the-job supervised training.

NOTE: Alphabetizes definitions; improves word choice in (2), (2)(c), (3) and (12); adds missing comma in (12).

SECTION 216. ORS 660.155 is amended to read:

660.155. (1) State joint apprenticeship committees may be formed in each apprenticeable occupation for the purpose of promoting and coordinating the apprenticeship goals of that occupation and of developing statewide standards and related instructional material for a course of study in that occupation. If only one joint committee exists for a particular occupation, that local joint committee has the same duties and powers as a state joint committee formed pursuant to this section. This subsection does not apply to training programs.

(2) State joint committees shall be composed of one member representing employers and one member representing employees from each local joint committee for that occupation. Employer members of a local joint committee shall choose the employer representative to the state joint committee, and employee members shall choose the employee representative. The employer and employee members of trade committees shall be members of the state joint committee for their respective occupations, but shall be counted in [*determinating*] **determining** a quorum for the state joint committee only if present. An alternate member for each principal member from a local joint committee shall also be selected in the same manner as the principal members are selected. Each alternate member has full authority to exercise the powers of the principal member for whom the alternate was selected when that principal member is unable to perform as a committee member.

(3) Each state joint committee shall elect a chairperson and a vice chairperson, one of whom shall represent employers, the other of whom shall represent employees. The committee may also elect such other officers as it determines appropriate. All officers elected pursuant to this subsection shall serve such terms and have such duties and powers as the committee determines appropriate for the performance of their functions.

(4) Meetings may be called by the chairperson or at the request of the majority of the members of the committee. Each state joint committee may also formulate such rules as it deems necessary for the time, place and orderly conduct of its meetings. Each committee shall transmit to the State Apprenticeship and Training Council a written record of each such meeting.

NOTE: Corrects word choice in (2).

SECTION 217. ORS 662.805 is amended to read:

662.805. As used in ORS 662.805 to 662.825, unless the context requires otherwise:

[*(1) "Perishable agricultural crops" means those products of agriculture which because of their inherent qualities or dependence upon conditions of soil or weather, mature, decompose, decay or deteriorate and in so doing undergo material changes of form and quality which render them unsuitable for the use for which they were produced.*]

[*(2) (1) "Labor dispute" includes any controversy between an employer and a regular employee of that employer concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.*

(2) "Perishable agricultural crops" means those products of agriculture that, because of their inherent qualities or dependence upon conditions of soil or weather, mature, decompose, decay or deteriorate and in so doing undergo material changes of form and quality that render them unsuitable for the use for which they were produced.

(3) "Regular employee" means a person who has been employed by the employer for at least six calendar work days.

NOTE: Alphabetizes definitions; improves word choice and punctuation in (2).

SECTION 218. ORS 663.150 is amended to read:

663.150. (1) It is an unfair labor practice for a labor organization or its agents to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer when an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the repre-

sentative of the employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(a) Where the employer has lawfully recognized in accordance with this chapter any other labor organization and a petition for a representation election may not appropriately be filed; [or]

(b) Where, within the preceding 12 months, a valid election has been conducted; or

(c) Where the picketing has been conducted without a petition for an election and certification having been filed.

However:

(A) When such a petition has been filed the Employment Relations Board forthwith, without regard to the absence of a showing of a substantial interest on the part of the labor organization and without an investigation or hearing, shall conduct an election by secret ballot, marked at the place of election, in such unit as the board finds to be appropriate, and to certify the results thereof.

(B) Nothing in this section prohibits any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of the picketing is to induce an individual employed by any other person in the course of employment, not to pick up, deliver or transport any goods or not to perform any services.

(2) Nothing in this section permits any act that otherwise would be an unfair labor practice under ORS 663.130 to 663.150.

NOTE: Deletes superfluous conjunction in (1)(a).

SECTION 219. ORS 670.304 is amended to read:

670.304. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following professional licensing and advisory boards:

(1) Professional licensing and advisory boards established in the Office of the Secretary of State.

(2) The Oregon Board of Maritime Pilots, in the Department of Transportation.

(3) The Board of Cosmetology, in the Oregon Health Licensing Agency.

(4) The State Board of Architect Examiners.

(5) The State Landscape Contractors Board.

(6) The State Board of Examiners for Engineering and Land Surveying.

(7) **The** State Landscape Architect Board.

(8) **The** State Board of Geologist Examiners.

(9) **The** State Board of Tax Practitioners.

(10) **The** Oregon Board of Accountancy.

(11) The Construction Contractors Board.

NOTE: Adds missing articles in (7) to (10).

SECTION 220. ORS 677.785 is amended to read:

677.785. The Acupuncture Advisory Committee shall:

(1) Review and make recommendations concerning all applications to the Board of Medical Examiners for acupuncture licensing or acupuncture license renewal.

(2) Recommend to the board standards of professional responsibility and practice for licensed acupuncturists.

(3) Recommend to the board standards of didactic and clinical education and training for acupuncture license applicants.

(4) Recommend to the board a licensing examination that meets the standards of the National Commission for [Health] Certifying Agencies or an equivalent organization nationally recognized for testing acupuncturists.

NOTE: Corrects name of commission in (4).

SECTION 221. ORS 677.805 is amended to read:

677.805. As used in ORS 677.805 to 677.840:

(1) "Ankle" means the tibial plafond and its posterolateral border or posterior malleolus, the medial malleolus, the distal fibula or lateral malleolus, and the talus.

(2) "Board" means the Board of Medical Examiners for the State of Oregon.

(3) "Podiatric physician and surgeon" means a podiatric physician and surgeon whose practice is limited to treating ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

(4) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in ORS 441.055 (2) or in an ambulatory surgical center [*certified*] **licensed** by the Department of Human Services and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the entire foot.

NOTE: Corrects terminology in (4).

SECTION 222. ORS 677.812 is amended to read:

677.812. Surgery of the ankle as defined in ORS 677.805 must be conducted:

(1) In a hospital certified in the manner described in ORS 441.055 (2) or in an ambulatory surgical center [*certified*] **licensed** by the Department of Human Services; and

(2) By a podiatric physician and surgeon who meets the qualifications for ankle surgery established by rule of the Board of Medical Examiners.

NOTE: Corrects terminology in (1).

SECTION 223. ORS 688.135 is added to and made a part of ORS 688.010 to 688.201.

NOTE: Adds section to appropriate series.

SECTION 224. ORS 688.830 is amended to read:

688.830. (1) The Oregon Health Licensing Agency shall:

(a) Determine the qualifications and fitness of applicants for licensure, renewal of license and reciprocal licenses under ORS 688.800 to 688.840.

(b) Adopt rules that are necessary to conduct its business related to, carry out its duties under and administer ORS 688.800 to 688.840.

(c) Examine, approve, issue, deny, revoke, suspend and renew licenses to practice respiratory care under ORS 688.800 to 688.840.

(d) Maintain a public record of persons licensed by the agency to practice respiratory care.

(2) The Respiratory Therapist Licensing Board shall:

(a) Establish standards of practice and professional responsibility for persons licensed by the agency.

(b) Select a licensing examination that meets the standards of the National Commission for [*Health*] Certifying Agencies or an equivalent that is nationally recognized in testing respiratory care competencies.

(c) Establish continuing education requirements for renewal of a license.

(d) Provide for waivers of examinations, grandfathering requirements and temporary licenses as considered appropriate.

NOTE: Corrects name of commission in (2)(b).

SECTION 225. ORS 691.405 is amended to read:

691.405. As used in ORS 691.405 to 691.585:

(1) "American Dietetic Association" means the national professional organization of dietitians that provides direction and leadership for quality dietetic practice, education and research.

(2) "Board" means the Board of Examiners of Licensed Dietitians established under ORS 691.485.

(3) "Commission on Dietetic Registration" means the commission on dietetic registration that is a member of the National Commission for [*Health*] Certifying Agencies.

(4) "Department" means the Department of Human Services.

(5) "Dietetics practice" means the integration and application of principles derived from the sciences of nutrition, biochemistry, food, management, physiology and behavioral and social sciences to achieve and maintain the health of people through:

- (a) Assessing the nutritional needs of clients;
- (b) Establishing priorities, goals and objectives that meet nutritional needs of clients;
- (c) Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from a nutritional assessment with information on food and other sources of nutrients and meal preparation; and
- (d) Evaluating, making changes in and maintaining appropriate standards of quality in food and nutrition services.

(6) "Licensed dietitian" means a dietitian licensed as provided in ORS 691.435.

NOTE: Corrects name of commission in (3).

SECTION 226. ORS 701.055 is amended to read:

701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid license issued by the Construction Contractors Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

(3) A city, county or the State of Oregon may not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____.

(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" that shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(6) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(8) It is prima facie evidence of doing business as a contractor if a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month period that person offers for sale two or more newly built structures on which that work was performed.

(9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.

(10) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not limit or abridge the authority of any city or county to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city or county;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the service of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter.

(11)(a) A contractor shall maintain a list that includes the following information about all subcontractors or other contractors performing work on a project for that contractor:

(A) Names and addresses.

(B) License numbers.

(b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the board within 72 hours after a board request made during reasonable working hours.

(12) A contractor may not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS 701.010.

(13) **The board shall prepare and provide at no cost to all licensed contractors** a consumer notification form designed to specifically inform [a] property [owner] **owners** what the property [owner] **owners** should do to protect themselves in [a] residential repair, remodel or construction **projects** [project shall be prepared by the board and provided at no cost to all licensed contractors]. [The] **A** contractor shall deliver the form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The form shall include an explanation of the

meaning of licensure, including a statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.

(14) A contractor may not perform work subject to this section for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will not void the contract.

(15) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

NOTE: Recasts sentence to correct grammar and improves word choice in (13).

SECTION 226a. If House Bill 2109 becomes law, section 226 of this 2007 Act (amending ORS 701.055) is repealed.

NOTE: Resolves conflict with House Bill 2109.

SECTION 227. ORS 701.500 is amended to read:

701.500. The Legislative Assembly finds that:

(1) The federal government regulates lead poisoning and lead hazard reduction through:

(a)(A) The Lead-Based Paint Poisoning Prevention Act;

(B) The Lead Contamination Control Act of 1988;

(C) The Safe Drinking Water Act;

(D) The Resource Conservation and Recovery Act of 1976; and

(E) The Residential Lead-Based Paint Hazard Reduction Act of 1992; and

(b) Implementing regulations of:

(A) The Department of Housing and Urban Development;

(B) The Environmental Protection Agency;

(C) The Occupational Safety and Health Administration; and

(D) The Centers for Disease Control **and Prevention**.

(2) In 1992, Congress passed the federal Residential Lead-Based Paint Hazard Reduction Act, which requires that:

(a) States provide for the accreditation of lead-based paint activities training programs, the certification of persons completing such training programs and the licensing of lead-based paint activities contractors pursuant to standards to be developed by the Environmental Protection Agency.

(b) Effective October 28, 1995, sellers and landlords of residential housing constructed before 1978 notify buyers and tenants of known lead-based paint hazards.

(3) Lead affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses and women of childbearing age. Lead poisoning is one of the most common and preventable pediatric health problems today.

NOTE: Corrects title in (1)(b)(D).

SECTION 228. ORS 709.030 is amended to read:

709.030. (1) Except as provided in subsection (4) of this section, no person other than a trust company shall transact a trust business in this state. Except as provided in subsection (4) of this section, before a person transacts any trust business in this state, the person shall obtain the approval of the Director of the Department of Consumer and Business Services if required under ORS 709.005 and shall deposit with the director, as security and as a pledge for the faithful conduct of its trust business:

(a) Cash or interest-bearing securities[, *which securities shall*] **that** have a ready market value;

(b) A surety bond issued by a surety company authorized to transact business in this state and in a form approved by the director, under which the principal and surety indemnify the several owners of the fund held in trust against loss due to the failure of the trust company;

(c) An irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008;
or

(d) Any combination of cash, letters of credit, interest-bearing securities and surety bond.

(2) If the cash and securities held in trust amount to less than ~~[\$1,000,000]~~ **\$1 million**, the deposit, bond, letters of credit or combination thereof shall be \$50,000. If the cash and securities held in trust amount to ~~[\$1,000,000]~~ **at least \$1 million** but do not exceed ~~[\$1,500,000]~~ **\$1.5 million**, the deposit, bond, letters of credit or combination thereof shall be \$100,000. For each \$500,000 or fraction thereof in excess of ~~[\$1,500,000]~~ **\$1.5 million** held in trust, the deposit, bond, or letters of credit or combination thereof shall be increased an additional \$25,000[;], except a trust company shall not be required to increase the deposit, bond, letters of credit or combination thereof to an amount in excess of ~~[\$1,000,000]~~ **\$1 million**.

(3) The securities shall be deposited with the director and held by the director as trustee for the beneficiaries of the trust funds held by the trust company.

(4) A person shall not be required to be a trust company if the person:

(a) Does not and will not regularly transact trust business in the ordinary course of the person's business;

(b) Acts in a manner authorized by law and in the scope of authority as an agent of a trust company;

(c) Is an attorney rendering a service customarily performed by an attorney;

(d) Is acting as trustee under a deed of trust;

(e) Is a licensed real estate broker or principal real estate broker rendering a service customarily performed by a broker;

(f) Is a licensed escrow agent rendering a service customarily performed by an escrow agent;
or

(g) Is exempt from the provisions of subsection (1) of this section by rule of the director.

NOTE: Improves syntax in (1)(a) and (2); conforms numbers to legislative style in (2).

SECTION 229. ORS 709.535 is amended to read:

709.535. (1) Subject to the provisions of this section, and subject to the approval of the Director of the Department of Consumer and Business Services, an Oregon trust company may sell all or any portion of its assets or transfer all or any portion of its liabilities to another trust company outside the ordinary course of business. Any such sale or transfer shall be documented by an acquisition transaction agreement between or among the parties[, *which*]. **The** agreement [*shall*] **must** be approved by the board of directors of each party to the transaction.

(2) If an Oregon trust company proposes to transfer all or substantially all of its assets, liabilities or both outside the ordinary course of business, it shall send notice of the acquisition transaction to each of its stockholders within 30 days after its board approves the acquisition transaction[, *which*]. **The** notice shall set forth the substantive provisions of ORS 711.175, 711.180 and 711.185. To be effective, each Oregon trust company that is a party to the acquisition transaction shall have the acquisition transaction approved by a two-thirds vote of the outstanding stock of each class of voting shares at a meeting called to consider the acquisition transaction.

(3) The director shall approve an acquisition transaction that is subject to this section if the director finds that the acquisition transaction:

(a) Conforms with the provisions of the Bank Act;

(b) Will not be detrimental to the safety and soundness of an Oregon trust company that is a party to the acquisition transaction;

(c) Is not contrary to the public interest; and

(d) If the acquiring trust company is not an Oregon trust company, the director is satisfied that the acquisition transaction is permitted by the supervisory authority, if any, having jurisdiction over the acquiring trust company.

(4) If the director disapproves an acquisition transaction that is subject to this section, the director shall state any objections in writing and give the parties to the acquisition transaction an opportunity to take action to obviate the objections.

(5) Any party to an acquisition transaction agreement may appeal the decision of the director as provided in ORS 183.415 to 183.500.

NOTE: Improves grammar in (1) and (2).

SECTION 230. ORS 711.550 is amended to read:

711.550. (1) If the Director of the Department of Consumer and Business Services rejects any claim in whole or in part, written notice of the rejection shall be given to the claimant, either in person or by mail. If notice by mail is given, it is sufficient that the notice be sent to the address indicated by the claimant on the proof of claim filed with the director. If no address is given, then it is sufficient if the notice is mailed to the last address of the claimant as shown by the books and records of the closed institution. If notice of rejection is given by mail, the notice is considered to have been given by the director on the day when the notice of rejection is properly addressed and deposited in the [mails] **mail**, postage prepaid. Proof of giving of notice of rejection by the director shall be made by affidavit, and the affidavit shall be prima facie evidence of the giving of notice. The affidavit shall be filed in the office of the director.

(2) Within 30 days after the giving of the notice of rejection, the claimant[,] may appeal the rejection by serving the director with notice of appeal and by filing the notice with the clerk of the supervising court with proof of service of the notice upon the director and a copy, certified as correct by the director, of the rejected claim and the indorsement made thereon by the director.

NOTE: Corrects punctuation in (1) and (2); improves word choice in (1).

SECTION 231. ORS 713.045 is amended to read:

713.045. (1) If an extranational institution becomes insolvent or goes into voluntary or involuntary liquidation or cannot otherwise pay its deposit or other liabilities, the Director of the Department of Consumer and Business Services may take possession of the assets required to be deposited under ORS 713.025 directly or through the appointment of a receiver, free of any liens and other claims[, and those]. **The** assets shall be held by the director or receiver in trust.

(2) Unless the deposited assets are delivered to the Federal Deposit Insurance Corporation as receiver, the amount available for distribution to the depositors under subsection (1) of this section shall be allocated to the depositors of the office pro rata to the extent of their deposits.

(3) Any additional deposited assets remaining after the distributions to depositors provided for in subsection (2) of this section shall be available for distribution to the other creditors of the extranational institution in accordance with ORS 711.530 to 711.570.

(4) As used in this section, the term “depositor” has the meaning [ascribed to it] **given that term** in ORS 711.515.

NOTE: Truncates run-on sentence in (1); improves word choice in (4).

SECTION 232. ORS 716.592 is amended to read:

716.592. A savings bank may pledge its assets to secure public funds as provided under ORS chapter 295. For the purposes of this section, “public funds” has the meaning [ascribed to it by] **given that term** in ORS 295.005.

NOTE: Improves word choice.

SECTION 233. **ORS 722.002 is repealed.**

NOTE: Blends sections to improve statutory construction. See section 234 (amending 722.004).

SECTION 234. ORS 722.004 is amended to read:

722.004. **As used in this chapter, unless the context otherwise requires:**

(1) “Account holder” means a person who owns a savings account.

(2) “Borrower” means a person who is an obligor under a loan agreement entered into by a savings association as obligee.

(3) “Branch facility” or “branch” means an established place of business or a mobile or other facility of an association, other than the principal office, at which any savings and loan business activity is carried on.

(4) “Community” means a centralized area or locality in which a body of inhabitants is gathered in one group having common residential, social or business interests. The term does not necessarily mean a city, county or other political subdivision and need not but may be limited by lines and

boundaries, and a large, populous area under one or more forms of government may be composed of several communities.

(5) "Demand deposit" means a deposit in an account that is payable on demand upon the presentation of a negotiable check or draft.

(6) "Department" means the Department of Consumer and Business Services.

(7) "Depositor" means a person who deposits money in a savings account in an association.

(8) "Director" means the Director of the Department of Consumer and Business Services.

(9) "Domestic association" means a corporation that transacts savings and loan business under articles of incorporation issued by this state.

(10) "Federal association" means a corporation that transacts savings and loan business in this state under authority to do so issued under federal law.

(11) "Foreign association" means a corporation, other than a federal association, organized to transact savings and loan business under the laws of any other state or territory of the United States.

(12) "Independent auditor" means a public accountant or a certified public accountant authorized to practice as a public accountant or as a certified public accountant under the laws of this state, or a firm of such accountants.

(13) "Managing officer" means an officer of a savings association designated by the board of directors of the association as provided by ORS 722.102.

(14)(a) "Member," in a mutual association, means an account holder and any other person who is a member of a class of persons granted membership rights by the articles of incorporation or the bylaws.

(b) "Member," in a stock association, means a stockholder and any other person who is a member of a class of persons granted membership rights by the articles of incorporation or the bylaws.

(15) "Mutual association" means a savings association formed without authority to issue stock.

(16) "Principal office" means the office of the headquarters of a savings association in this state.

(17) "Savings account" means the interest of an account holder in the savings liability of a savings association.

(18) "Savings association" or "association" means a domestic association or a foreign association and includes a stock or a mutual association.

(19) "Savings Association Act" means this chapter.

(20) "Savings bank" has the meaning given that term by ORS 706.008, except as otherwise provided in ORS 722.014 relating to name.

(21) "Savings liability" means the total amount on deposit in all savings accounts of a savings association plus interest earned on such accounts.

(22) "Service corporation" means a corporation:

(a) That is engaged, or proposes to engage, in a business activity related to savings and loan business; and

(b) In which at least 80 percent of the shares of stock having voting rights are owned by one or more saving associations or federal associations.

(23) "Stock association" means a savings association formed with authority to issue stock.

(24) "Stockholder" means a person who appears on the records of a savings association as the owner of one or more shares of stock of the association.

(25) "To transact savings and loan business" means to engage in business activities to promote savings and home building and ownership, to acquire funds of the public to invest in loans and to make repayments to savers as provided in savings plans.

(26) "Withdrawal value" means the amount of a savings account, less lawful deductions.

NOTE: Blends sections to improve statutory construction. See section 233 (repealing 722.002). Adds comma in (4).

SECTION 235. ORS 735.430 is amended to read:

735.430. (1) The Surplus Line Association of Oregon shall be the advisory organization of surplus lines licensees to:

(a) Facilitate and encourage compliance by resident and nonresident surplus lines licensees with the laws of this state and the rules of the Director of the Department of Consumer and Business Services relative to surplus lines insurance;

(b) Provide means for the examination, which shall remain confidential as provided in ORS 705.137, of all surplus lines coverage written by resident and nonresident surplus lines licensees to determine whether the coverages comply with the Oregon Surplus Lines Law;

(c) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market;

(d) Receive and disseminate to resident and nonresident surplus lines licensees information relative to surplus lines coverages; and

(e) Receive and collect on behalf of the state and remit to the state premium receipts tax for surplus lines insurance.

(2) The Surplus Line Association of Oregon shall file with the director:

(a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of its bylaws and rules governing its activities;

(c) A current list of members;

(d) The name and address of a resident of this state upon whom notices or orders of the director or processes issued at the direction of the director may be served;

(e) An agreement that the director may examine the Surplus Line Association of Oregon in accordance with the provisions of this section; and

(f) A schedule of fees and charges.

(3) The director may make or cause to be made an examination of the [surplus lines advisory organization] **Surplus Line Association of Oregon**. The reasonable cost of any such examination shall be paid by the [surplus lines advisory organization] **association** upon presentation to it by the director of a detailed account of each cost. The officers, managers, agents and employees of the [surplus lines advisory organization] **association** may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The director shall furnish two copies of the examination report to the [surplus lines advisory organization examined] **association** and shall notify [such organization] **the association** that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations therein. If the director finds the [surplus lines advisory organization] **association** or any member thereof to be in violation of ORS 735.400 to 735.495, the director may issue an order requiring the discontinuance of such violation.

(4) The Surplus Line Association of Oregon may charge resident and nonresident surplus lines licensees and nonresident producing insurance producers a fee for reviewing surplus lines policies and for collecting, on behalf of the state, taxes imposed under ORS 735.470. The association shall adopt bylaws implementing this subsection.

NOTE: Eliminates generic titles in (3).

SECTION 236. ORS 735.465 is amended to read:

735.465. (1) On or before the end of each month, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services, as prescribed by the director, a verified report of all surplus lines insurance transacted on risks resident in this state during the preceding 90 days. The report need not show transacted surplus lines insurance that was reported in an earlier report. The report shall show:

(a) Aggregate gross premiums written;

(b) Aggregate return premiums; and

(c) Amount of aggregate tax.

(2) The director may direct that reports required under subsection (1) of this section be made to the Surplus [Lines] **Line** Association of Oregon and that the Surplus [Lines] **Line** Association of Oregon file a combined report thereof with the director. The director may also require that reports

required under subsection (1) of this section be made electronically but may exempt a licensee from the requirement for good cause shown.

(3) For the purpose of collecting taxes on insurance covering the Oregon portion of risks when the insurance is placed outside this state and covers a risk with exposures located both in this state and outside this state, the director may establish by rule requirements for filing reports on surplus lines insurance transacted outside this state on risks with exposures located both in this state and outside this state.

NOTE: Corrects title in (2).

SECTION 237. ORS 735.470 is amended to read:

735.470. (1) The surplus lines licensee shall pay the Director of the Department of Consumer and Business Services an amount equal to the tax [which] **that** would have been imposed under ORS 731.816 (1993 Edition) if that section were in effect and operative, and the tax [which] **that** is imposed by ORS 731.820, on authorized insurers for the premiums shown in the report required by ORS 735.465. The tax shall be collected by the surplus lines licensee as specified by the director, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing insurance producer, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax.

(2) The surplus lines tax is due quarterly on the 45th day following the calendar quarter in which the premium is collected. The tax shall be paid to and reported on forms prescribed by the director or upon the director's order paid to and reported on forms prescribed by the [surplus lines association] **Surplus Line Association of Oregon.**

(3) Notwithstanding subsection (2) of this section, if a surplus lines license is terminated or nonrenewed for any reason, the taxes described in this section are due on the 30th day after the termination or nonrenewal.

(4) In applying ORS 731.816 (1993 Edition) for purposes of this section, the rate shall be two percent rather than two and one-quarter percent.

(5) The director by rule shall establish procedures for payment of taxes on the Oregon portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state.

NOTE: Improves word choice in (1); replaces generic title in (2).

SECTION 238. ORS 735.740 is amended to read:

735.740. (1) The Office of Private Health Partnerships may impose sanctions against an individual who violates any provision of ORS 735.720 to 735.740 or rules adopted **pursuant** thereto, including but not limited to suspension or termination from the Family Health Insurance Assistance Program and repayment of any subsidy amounts paid due to the omission or misrepresentation of an applicant or enrolled individual. Sanctions allowed under this subsection shall be imposed in the manner prescribed in ORS chapter 183.

(2) In addition to the sanctions available pursuant to subsection (1) of this section, the office may impose a civil penalty not to exceed \$1,000 against any individual who violates any provision of ORS 735.720 to 735.740 or rules adopted pursuant thereto. Civil penalties imposed pursuant to this section shall be imposed pursuant to ORS 183.745.

NOTE: Supplies missing word in (1).

SECTION 239. ORS 742.560 is amended to read:

742.560. As used in ORS 742.560 to 742.572:

(1) **"Cancellation" means termination of coverage by an insurer, other than termination at the request of the insured, during a policy period.**

(2) **"Expiration" means termination of coverage by reason of the policy having reached the end of the term for which it was issued or the end of the period for which a premium has been paid.**

[(1) "Policy" means any insurance policy which provides automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on individually owned private passenger vehicles including pickup and panel trucks and station wagons, which are not used as a public or livery conveyance for passengers, nor rented to others; provided, however, that ORS 742.560 to 742.572 shall not apply to any policy:]

[(a) Issued under an automobile assigned risk plan;]

[(b) Insuring more than four automobiles;]

[(c) Covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards; or]

[(d) Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining such premises.]

[(2) "Renewal" or "to renew" means to continue coverage for an additional policy period upon expiration of the current policy period of a policy. Any policy with a policy period or term of less than six months shall for the purpose of ORS 742.560 to 742.572 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date shall for the purpose of ORS 742.560 to 742.572 be considered as if written for successive policy periods or terms of one year but not extending beyond the actual term for which the policy was written.]

[(3) "Nonpayment of premium" means failure of the named insured to discharge when due any of the insured's obligations in connection with the payment of premiums on the policy, or any installment of such premium, whether the premium is payable directly to the insurer or an insurance producer who is its agent or indirectly under any premium finance plan or extension of credit.]

[(4) "Cancellation" means termination of coverage by an insurer, other than termination at the request of the insured, during a policy period.]

[(5)] (4) "Nonrenewal" means a notice by an insurer to the named insured that the insurer is unwilling to renew a policy.

[(6) "Expiration" means termination of coverage by reason of the policy having reached the end of the term for which it was issued or the end of the period for which a premium has been paid.]

(5) "Policy" means any insurance policy that provides automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on individually owned private passenger vehicles, including pickup and panel trucks and station wagons, that are not used as a public or livery conveyance for passengers, nor rented to others. However, ORS 742.560 to 742.572 do not apply to any policy:

(a) Issued under an automobile assigned risk plan;

(b) Insuring more than four automobiles;

(c) Covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards; or

(d) Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining such premises.

(6) "Renewal" or "to renew" means to continue coverage for an additional policy period upon expiration of the current policy period of a policy. Any policy with a policy period or term of less than six months shall for the purpose of ORS 742.560 to 742.572 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date shall for the purpose of ORS 742.560 to 742.572 be considered as if written for successive policy periods or terms of one year but not extending beyond the actual term for which the policy was written.

NOTE: Alphabetizes definitions; improves word choice and punctuation in (5).

SECTION 240. ORS 743.556, as amended by section 1, chapter 705, Oregon Laws 2005, is amended to read:

743.556. A group health insurance policy providing coverage for hospital or medical expenses shall provide coverage for expenses arising from treatment for chemical dependency, including alcoholism, and for mental or nervous conditions at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions. The following apply to coverage for chemical dependency and for mental or nervous conditions:

(1) As used in this section:

(a) "Chemical dependency" means the addictive relationship with any drug or alcohol characterized by a physical or psychological relationship, or both, that interferes on a recurring basis with the individual's social, psychological or physical adjustment to common problems. For purposes of this section, "chemical dependency" does not include addiction to, or dependency on, tobacco, tobacco products or foods.

(b) "Facility" means a corporate or governmental entity or other provider of services for the treatment of chemical dependency or for the treatment of mental or nervous conditions.

(c) "Group health insurer" means an insurer, a health maintenance organization or a health care service contractor.

(d) "Program" means a particular type or level of service that is organizationally distinct within a facility.

(e) "Provider" means a person that has met the credentialing requirement of a group health insurer, is otherwise eligible to receive reimbursement for coverage under the policy and is:

(A) A health care facility;

(B) A residential program or facility;

(C) A day or partial hospitalization program;

(D) An outpatient service; or

(E) An individual behavioral health or medical professional authorized for reimbursement under Oregon law.

(2) The coverage may be made subject to provisions of the policy that apply to other benefits under the policy, including but not limited to provisions relating to deductibles and coinsurance. Deductibles and coinsurance for treatment in health care facilities or residential programs or facilities may not be greater than those under the policy for expenses of hospitalization in the treatment of other medical conditions. Deductibles and coinsurance for outpatient treatment may not be greater than those under the policy for expenses of outpatient treatment of other medical conditions.

(3) The coverage may not be made subject to treatment limitations, limits on total payments for treatment, limits on duration of treatment or financial requirements unless similar limitations or requirements are imposed on coverage of other medical conditions. The coverage of eligible expenses may be limited to treatment that is medically necessary as determined under the policy for other medical conditions.

(4)(a) Nothing in this section requires coverage for:

(A) Educational or correctional services or sheltered living provided by a school or halfway house;

(B) A long-term residential mental health program that lasts longer than 45 days;

(C) Psychoanalysis or psychotherapy received as part of an educational or training program, regardless of diagnosis or symptoms that may be present;

(D) A court-ordered sex offender treatment program; or

(E) A screening interview or treatment program under ORS 813.021.

(b) Notwithstanding paragraph (a)(A) of this subsection, an insured may receive covered outpatient services under the terms of the insured's policy while the insured is living temporarily in a sheltered living situation.

(5) A provider is eligible for reimbursement under this section if:

(a) The provider is approved by the Department of Human Services;

(b) The provider is accredited for the particular level of care for which reimbursement is being requested by the Joint Commission on Accreditation of Hospitals or the Commission on Accreditation of Rehabilitation Facilities;

(c) The patient is staying overnight at the facility and is involved in a structured program at least eight hours per day, five days per week; or

(d) The provider is providing a covered benefit under the policy.

(6) Payments may not be made under this section for support groups.

(7) If specified in the policy, outpatient coverage may include follow-up in-home service or outpatient services. The policy may limit coverage for in-home service to persons who are homebound under the care of a physician.

(8) Nothing in this section prohibits a group health insurer from managing the provision of benefits through common methods, including but not limited to selectively contracted panels, health plan benefit differential designs, preadmission screening, prior authorization of services, utilization review or other mechanisms designed to limit eligible expenses to those described in subsection (3) of this section.

(9) The Legislative Assembly has found that health care cost containment is necessary and intends to encourage insurance policies designed to achieve cost containment by ensuring that reimbursement is limited to appropriate utilization under criteria incorporated into such policies, either directly or by reference.

(10)(a) Subject to the patient or client confidentiality provisions of ORS 40.235 relating to physicians, ORS 40.240 relating to nurse practitioners, ORS 40.230 relating to psychologists and ORS 40.250 and 675.580 relating to licensed clinical social workers, a group health insurer may provide for review for level of treatment of admissions and continued stays for treatment in health care facilities, residential programs or facilities, day or partial hospitalization programs and outpatient services by either group health insurer staff or personnel under contract to the group health insurer, or by a utilization review contractor, who shall have the authority to certify for or deny level of payment.

(b) Review shall be made according to criteria made available to providers in advance upon request.

(c) Review shall be performed by or under the direction of a medical or osteopathic physician licensed by the Board of Medical Examiners for the State of Oregon, a psychologist licensed by the State Board of Psychologist Examiners or a clinical social worker licensed by the State Board of Clinical Social Workers, in accordance with standards of the National Committee for Quality Assurance or Medicare review standards of the Centers for Medicare and Medicaid Services.

(d) Review may involve prior approval, concurrent review of the continuation of treatment, post-treatment review or any combination of these. However, if prior approval is required, provision shall be made to allow for payment of urgent or emergency admissions, subject to subsequent review. If prior approval is not required, group health insurers shall permit providers, policyholders or persons acting on their behalf to make advance inquiries regarding the appropriateness of a particular admission to a treatment program. Group health insurers shall provide a timely response to such inquiries. Noncontracting providers must cooperate with these procedures to the same extent as contracting providers to be eligible for reimbursement.

(11) Health maintenance organizations may limit the receipt of covered services by enrollees to services provided by or upon referral by providers contracting with the health maintenance organization. Health maintenance organizations and health care service contractors may create substantive plan benefit and reimbursement differentials at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising out of other medical conditions and apply them to contracting and noncontracting providers.

(12) Nothing in this section prevents a group health insurer from contracting with providers of health care services to furnish services to policyholders or certificate holders according to ORS 743.531 or 750.005, subject to the following conditions:

(a) A group health insurer is not required to contract with all eligible providers.

(b) An insurer or health care [services] **service** contractor shall, subject to subsections (2) and (3) of this section, pay benefits toward the covered charges of noncontracting providers of services for the treatment of chemical dependency or mental or nervous conditions. The insured shall, subject to subsections (2) and (3) of this section, have the right to use the services of a noncontracting provider of services for the treatment of chemical dependency or mental or nervous conditions, whether or not the services for chemical dependency or mental or nervous conditions are provided by contracting or noncontracting providers.

(13) The intent of the Legislative Assembly in adopting this section is to reserve benefits for different types of care to encourage cost effective care and to ensure continuing access to levels of care most appropriate for the insured's condition and progress.

(14) The Director of the Department of Consumer and Business Services, after notice and hearing, may adopt reasonable rules not inconsistent with this section that are considered necessary for the proper administration of these provisions.

NOTE: Substitutes preferred term in (12)(b).

SECTION 241. ORS 744.001 is amended to read:

744.001. (1) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033 and 744.037 govern the licensing of adjusters and insurance consultants.

(2) An applicant for a license as an adjuster or an insurance consultant shall apply for the license to the Director of the Department of Consumer and Business Services. The applicant shall include the following information:

(a) The applicant's name, business address, residence address, present occupation, occupation for the last 12 months, the portion of time to be devoted to the insurance business, previous insurance experience and the names of employers during the preceding five years. The applicant shall include the business address of the principal place of business and the business address of each additional location at which the applicant will transact business under the license.

(b) All assumed business names and other names under which the applicant will engage in business under the license.

(c) Whether the applicant has ever been convicted of or is under indictment for a crime, whether the applicant has ever had a judgment entered against the applicant for fraud, whether any insurer or insurance producer claims the applicant is indebted to it and the details of any such indebtedness, and whether any license of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state.

(d) The applicant's fingerprints, if the applicant is applying for a resident license. An applicant applying for a nonresident license shall provide the applicant's fingerprints only if the director so requests.

(e) The class or classes of insurance to be transacted under the license.

(f) Any other information that the director requires by rule.

(3) If the applicant for a license under this section is a firm or corporation, the application shall show, in addition, the names of all members, officers and directors. If the [application] **applicant** is a corporation, the application shall state the names of all stockholders who own, directly or indirectly, more than 10 percent of any class of any equity security of the corporation, and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation.

(4) Each application shall be accompanied by the applicable fees established by the director.

NOTE: Corrects word choice in (3).

SECTION 242. ORS 744.056 is amended to read:

744.056. (1) ORS 744.052 to 744.089 do not require an insurer to obtain a license as an insurance producer as required by ORS 744.053. For purposes of this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(2) A license as an insurance producer is not [be] required of any of the following:

(a) An officer, director or employee of an insurer or an insurance producer, if the officer, director or employee does not receive any commission on or fee for policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer's, director's or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(B) The officer's, director's or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of an agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to insurance producers and do not include the sale, solicitation or negotiation of insurance.

(b) A person who does either of the following, when the person does not receive any commission or fee for the service:

(A) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities or group or blanket health insurance or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administrative plans; or

(B) Performs administrative services related to mass-marketed property and casualty insurance.

(c) An employer or an association of employers or its officers, directors or employees, or the trustees of an employee trust plan:

(A) To the extent that the employers, associations, directors, officers, employees or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates;

(B) To the extent that the program of employee benefits involves the use of insurance issued by an insurer; and

(C) As long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the insurer issuing the insurance.

(d) An employee of an insurer or an organization employed by insurers who is engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or electronic mass media, the distribution of which is not limited to residents of this state, but only if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits or negotiates a policy of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that policy, but only if the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises the employer of the employee relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, but only if the employee does not sell or solicit insurance or receive any commission.

(h) An attorney in fact of an authorized reciprocal insurer, or the salaried representative of the insurer or attorney who does not receive any commission.

(i) A person engaging in the lawful transaction of reinsurance.

(j) Salaried employees of title insurance producers or insurers, except for the individual or individuals designated as exercising the powers conferred by a title insurance producer's license.

(k) Any agent or representative of persons exempt from the Insurance Code under ORS 731.036 or holding a certificate of exemption under ORS 731.042, with respect to the exempted transactions.

(L) Any agent or representative of a fraternal benefit society who devotes, or intends to devote, less than 50 percent of the agent's or representative's time to the solicitation and procurement of insurance policies for that society. Any person who in the preceding calendar year has solicited and procured life insurance policies on behalf of any fraternal benefit society for an amount of insurance in excess of \$50,000 or, in the case of any other class or classes of insurance that the society might write, on the persons of more than 25 individuals, and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 50 percent or more of the person's time to the solicitation and procurement of insurance policies for that society.

(m) A person engaging in the lawful transaction of home protection insurance if the person is a real estate licensee as defined in ORS 696.010, and if the transaction of such insurance by the person is subject to a written contract, to which the insurer is a party, governing the person's activities in the transaction.

(n) Salaried employees of a financial institution or trust company, as those terms are defined in ORS 706.008, who, in the regular course of business with the customers of the financial institution or trust company, present the customers with written information about savings account annuities issued by an authorized insurer. Any person who purchases such an annuity may rescind the transaction within 10 days after the issuance of the contract. For purposes of this paragraph, "savings account annuities" means annuities purchased with the proceeds of a savings account, certificate or share in a financial institution or trust company.

(3) A person who provides general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning or investment advisory services is not considered to be soliciting the sale of insurance for the purpose of the definition of "insurance producer" in ORS 731.104.

NOTE: Corrects grammar in (2).

SECTION 243. ORS 748.603 is amended to read:

748.603. (1) Societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state unless expressly designated therein, or unless specifically made applicable by this chapter.

(2) ORS 705.137, 705.139, 731.004 to 731.026, 731.036 to 731.136, 731.146 to 731.156, 731.162, 731.166, 731.170, 731.216 to 731.268, 731.296, 731.324, 731.328, 731.354, 731.356, 731.358, 731.378, 731.380, 731.381, 731.382, 731.385, 731.386, 731.390, 731.394, 731.396, 731.398, 731.402, 731.406, 731.410, 731.422 to 731.434, 731.446 to 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.592, 731.594, 731.730, 731.731, 731.735, 731.737, 731.750, 731.804, 731.844 to 731.992, 732.245, 732.250, 732.320, 732.325, 733.010 to 733.050, 733.080, 733.140 to 733.210, 733.220, 733.510, 733.652 to 733.658, 733.730 to 733.750, 735.600 to 735.650, 742.001, 742.003, 742.005, 742.007, 742.009, 742.013 to 742.021, 742.028, 742.038, 742.041, 742.046, 742.051, 742.150 to 742.162 and 744.700 to 744.740 and ORS chapters 734 and 743 [shall] apply to fraternal benefit societies to the extent [so applicable and] not inconsistent with the express provisions of this chapter.

(3) For the purposes of this subsection and subsection (2) of this section, fraternal benefit societies shall be deemed insurers, and benefit certificates issued by fraternal benefit societies shall be deemed policies.

(4) Every society authorized to do business in this state shall be subject to the provisions of ORS chapter 746 relating to unfair trade practices. However, nothing in ORS chapter 746 shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

NOTE: Eliminates excess verbiage in (2).

SECTION 244. ORS 802.250 is amended to read:

802.250. (1) An eligible public employee may request that any driver or vehicle record kept by the Department of Transportation that contains or is required to contain the eligible employee's

residence address contain instead the address of the public agency employing the eligible employee. A request under this section shall:

(a) Be in a form specified by the department that provides for verification of the eligible employee's employment.

(b) Contain verification by the employing public agency of the eligible employee's employment with the public agency.

(2) Upon receipt of a request and verification under subsection (1) of this section, the department shall remove the eligible employee's residence address from its records, if necessary, and substitute therefor the address of the public agency employing the eligible employee. The department shall indicate on the records that the address shown is an employment address. While the request is in effect, the eligible employee may enter the address of the public agency employing the eligible employee on any driver or vehicle form issued by the department that requires an address.

(3) A public agency that verifies an eligible employee's employment under subsection (1) of this section shall notify the department within 30 days if the eligible employee ceases to be employed by the public agency. The eligible employee shall notify the department of a change of address as provided in ORS 803.220 or 807.560.

(4) As used in this section, "eligible employee" means:

(a) A member of the State Board of Parole and Post-Prison Supervision.

(b) The Director of the Department of Corrections and an employee of an institution defined in ORS 421.005 as Department of Corrections institutions, whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the institution.

(c) A parole and probation officer employed by the Department of Corrections and an employee of the Department of Corrections Release Center whose duties, as assigned by the Chief of the Release Center, include the custody of persons committed to the custody of or transferred to the Release Center.

(d) A police officer appointed under ORS 276.021 or 276.023.

(e) An employee of the State Department of Agriculture who is classified as a brand inspector by the Director of Agriculture.

(f) An investigator of the Criminal Justice Division of the Department of Justice.

(g) A corrections officer as defined in ORS 181.610.

(h) A federal officer. As used in this paragraph, "federal officer" means a special agent or law enforcement officer employed by:

(A) The Federal Bureau of Investigation;

(B) The United States Secret Service;

(C) The United States Citizenship and Immigration Services;

(D) The United States Marshals Service;

(E) The Drug Enforcement Administration;

(F) The United States Postal Service;

(G) The United States Customs and Border Protection;

(H) The United States General Services Administration;

(I) The United States Department of Agriculture;

(J) The Bureau of Alcohol, Tobacco, [and] Firearms **and Explosives**;

(K) The Internal Revenue Service;

(L) The United States Department of the Interior; or

(M) Any federal agency if the person is empowered to effect an arrest with or without warrant for violations of the United States Code and is authorized to carry firearms in the performance of duty.

(i) An employee of the Department of Human Services whose duties include personal contact with clients or patients of the department.

(j) Any judge of a court of this state.

(k) An employee of the Oregon Youth Authority whose duties include personal contact with persons committed to the legal or physical custody of the authority.

(L) A district attorney, as defined in ORS 131.005, or deputy district attorney.

(m) An employee who provides educational services to persons who are clients or patients of the Department of Human Services, who are under the jurisdiction of the Psychiatric Security Review Board or who are under the custody or supervision of the Department of Corrections, the State Board of Parole and Post-Prison Supervision, a community corrections agency, the Oregon Youth Authority or a juvenile department. As used in this paragraph, "employee who provides educational services" means a person who provides instruction, or services related to the instruction, of a subject usually taught in an elementary school, a secondary school or a community college or who provides special education and related services in other than a school setting and who works for:

(A) An education service district or a community college district; or

(B) A state officer, board, commission, bureau, department or division in the executive branch of state government that provides educational services.

(n) An employee of the Oregon Liquor Control Commission who is:

(A) An inspector;

(B) An investigator; or

(C) A regulatory manager.

NOTE: Corrects title in (4)(h)(J).

SECTION 245. ORS 810.540 is amended to read:

810.540. Game wardens and all other state law enforcement officers within their respective [*jurisdiction*] **jurisdictions** shall enforce the provisions relating to snowmobiles and all-terrain vehicles under ORS 821.190, 821.210, 821.220 and 821.240 to 821.290. The authority granted by this section to enforce laws relating to snowmobiles and all-terrain vehicles is in addition to any authority of police officers to enforce such laws.

NOTE: Corrects word choice.

SECTION 246. ORS 825.490 is amended to read:

825.490. (1) On or before the last day of each month, except for the time of payment provided in ORS 825.480 and 825.492, all persons shall report and pay to the Department of Transportation the amount of taxes and fees due from them for the preceding calendar month. However, taxes and fees incurred after the 15th day of any month may be reported and paid to the department on or before the last day of the second calendar month following the month in which the taxes or fees were incurred. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(2) The department may permit a person to report and pay motor carrier taxes and fees on a periodic basis other than the calendar-month basis prescribed in subsection (1) of this section, provided that the number of reporting periods in any 12-month period [*shall not be*] **is not** less than 12. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(3) Whenever practicable, and in no event later than three years after any report of taxes or fees is filed, the department shall audit [*it*] **the report** if the department deems such audit practicable. If the department is not satisfied with the report filed or amount of taxes or fees, including fees for temporary passes required under ORS 825.470 [(2)], paid to the state by any person, the department may, not later than three years after the report was filed or the taxes or fees were paid, make a proposed assessment of additional taxes or fees due from such person based upon any information available to the department. There shall be added to each such assessment, as a late payment charge, a sum equal to 10 percent of the amount of additional taxes or fees due.

(4) Every such additional assessment shall bear interest at the rate of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the additional assessment is imposed until paid.

(5) If the additional assessment imposed exceeds by at least five percent but not more than 15 percent the amount of taxes or fees reported or paid, a penalty of five percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

(6) If the additional assessment imposed exceeds by more than 15 percent the amount of taxes or fees reported or paid, a penalty of 20 percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

(7) The department shall give to the person concerned written notice of such additional assessment.

(8) Except as provided in ORS 825.484 (3), the department shall refund to any person the amount of any overpayment caused by any incorrect report.

(9) Whenever the department has made an assessment pursuant to this section [*which*] **that** has become final the department may not reopen or reassess such taxes, interest or penalties unless the department is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by the taxpayer pursuant to this chapter or the rules of the department.

NOTE: Improves syntax in (2) and (3); corrects citation in (3); adds comma in (5) for clarity; corrects word choice in (9).

SECTION 247. ORS 825.494 is amended to read:

825.494. (1) If any person neglects or refuses to make a fee or tax report as required by this chapter, the Department of Transportation shall make a proposed assessment, based upon any information available to the department, for the period for which such person failed to make a report, of the amount of taxes and fees, including fees for temporary passes required under ORS 825.470 [(2)], due for the period for which such proposed assessment is made.

(2) Each assessment shall bear interest at the rate of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the assessment is imposed until paid.

(3) There shall be added to every such assessment a penalty of 25 percent of the amount thereof.

(4) The department shall give to such person written notice of such assessment.

(5) Whenever the department has made an assessment pursuant to this section [*which*] **that** has become final the department may not reopen or reassess such taxes, fees, interest or penalties unless the department is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by a person subject to this chapter or the rules of the department.

NOTE: Corrects citation in (1); corrects word choice in (5).

SECTION 248. ORS 837.990 is amended to read:

837.990. (1) Except as otherwise provided in this section and subject to ORS 153.022, a person commits a Class A violation if the person violates any provision of this chapter or any rule adopted, or order issued, under this chapter.

(2) The offense described in ORS 837.080, prohibited [*aircraft*] operation **of an aircraft**, is a Class B misdemeanor.

NOTE: Corrects name of offense in (2).

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Secretary of Senate

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President of Senate

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Speaker of House

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Governor

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