

House Bill 2012

Sponsored by Representative KOTEK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes one percent tax on specified providers of residential care and services. Appropriates moneys from tax to Department of Human Services to fund medical assistance expenditures for providers of residential care and services.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to transient lodging tax on providers of residential care services; creating new provisions;
3 amending ORS 284.131, 320.300, 320.305, 320.308, 320.310, 320.315, 320.320, 320.325, 320.330 and
4 320.335; appropriating money; prescribing an effective date; and providing for revenue raising
5 that requires approval by a three-fifths majority.

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

7 **SECTION 1. (1) Moneys appropriated to the Department of Human Services under ORS**
8 **320.335 (3) and any federal financial participation made available by the expenditure of the**
9 **moneys appropriated to the department under ORS 320.335 (3) shall be used by the depart-**
10 **ment to reimburse licensed or certified providers of residential care and services for the cost**
11 **of residential care and services furnished to medical assistance recipients.**

12 **(2) As used in this section:**

13 **(a) "Behavioral rehabilitation services" means services provided by a child-caring agency**
14 **in a professional shelter, residential or therapeutic foster care placement setting to remedi-**
15 **ate psychosocial, emotional and behavioral disorders.**

16 **(b) "Child-caring agency" has the meaning given that term in ORS 418.205.**

17 **(c) "Employment services" means services prescribed by the department by rule pursu-**
18 **ant to ORS 430.630 for which the primary goal is the employment of individuals with devel-**
19 **opmental disabilities.**

20 **(d) "Proctor care services" means a comprehensive residential program certified by the**
21 **department to provide intensive individually focused contracted foster care, training and**
22 **support to children with developmental disabilities.**

23 **(e) "Residential care" means:**

24 **(A) A residential training facility as defined in ORS 443.400 except for a facility operated**
25 **by the department.**

26 **(B) A residential training home as defined in ORS 443.400 except for a home operated by**
27 **the department.**

28 **(f) "Residential care and services" means:**

29 **(A) Behavioral rehabilitation services;**

30 **(B) Employment services;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (C) Proctor care services;

2 (D) Residential care;

3 (E) Supported living; or

4 (F) Services administered or provided by a support service brokerage.

5 (g) "Supported living" means services prescribed by the department pursuant to ORS
6 430.630 that allow an individual with a developmental disability to live in the residence of the
7 individual's choice in the community.

8 (h) "Support service brokerage" means an entity that uses principles of self-
9 determination to perform functions prescribed by the department pursuant to ORS 430.630
10 that are associated with planning, arranging and monitoring the implementation of support
11 services for individuals with developmental disabilities.

12 **SECTION 2.** ORS 284.131 is amended to read:

13 284.131. (1) All moneys collected, received by or appropriated to the Oregon Tourism Commis-
14 sion must be deposited into an account established by the commission in a depository bank insured
15 by the Federal Deposit Insurance Corporation. In a manner consistent with the requirements of ORS
16 chapter 295, the chair of the commission shall ensure that sufficient collateral secures any amount
17 of funds on deposit that exceeds the limits of the Federal Deposit Insurance Corporation's coverage.

18 (2) Subject to the approval of the chair, the commission may invest moneys collected or received
19 by the commission. Investments made by the commission must be limited to investments described
20 in ORS 294.035 (3)(a) to (i).

21 (3) Interest earned on any moneys invested under subsection (2) of this section must be made
22 available to the commission in a manner consistent with the biennial budget of the commission.

23 (4) The commission shall spend state transient lodging tax moneys appropriated to the commis-
24 sion under ORS 320.335 (2) as follows:

25 (a) At least 80 percent must be used to fund state tourism marketing programs.

26 (b) As much as 15 percent must be used to implement a regional cooperative tourism marketing
27 program that:

28 (A) Requires fund allocations to focus on creating new business from out-of-state and interna-
29 tional markets;

30 (B) Utilizes a regional allocation formula that distributes revenue to regions, the boundaries of
31 which are established by the commission, in proportion to the amount of transient lodging tax re-
32 venues collected in each region;

33 (C) Distributes revenue to recipients that are selected by the commission as organizations able
34 to conduct tourism-related marketing for each region;

35 (D) Requires advertising, publications, CD-ROMs, websites, videos and other tourism promotion
36 materials funded through the regional cooperative tourism marketing program to carry the Oregon
37 Tourism Commission logo and marketing tag line; and

38 (E) Encourages funding recipients to incorporate design elements from commission advertising
39 and promotional campaigns, such as fonts, images and other design elements.

40 (5) All moneys in the account that are not state transient lodging tax revenues are continuously
41 appropriated to the commission for the purposes of carrying out the functions of the commission.

42 (6) All expenditures from the account are exempt from any state expenditure limitation.

43 **SECTION 3.** ORS 320.300 is amended to read:

44 320.300. As used in ORS 320.300 to 320.350:

45 (1) "Collection reimbursement charge" means the amount a transient lodging provider or a

1 **provider of residential care and services** may retain as reimbursement for the costs incurred by
 2 the provider in collecting and reporting a transient lodging tax and in maintaining transient lodging
 3 tax records.

4 (2) "Conference center" means a facility that:

5 (a) Is owned or partially owned by a unit of local government, a governmental agency or a
 6 nonprofit organization; and

7 (b) Meets the current membership criteria of the International Association of Conference Cen-
 8 ters.

9 (3) "Convention center" means a new or improved facility that:

10 (a) Is capable of attracting and accommodating conventions and trade shows from international,
 11 national and regional markets requiring exhibition space, ballroom space, meeting rooms and any
 12 other associated space, including but not limited to banquet facilities, loading areas and lobby and
 13 registration areas;

14 (b) Has a total meeting room and ballroom space between one-third and one-half of the total size
 15 of the center's exhibition space;

16 (c) Generates a majority of its business income from tourists;

17 (d) Has a room-block relationship with the local lodging industry; and

18 (e) Is owned by a unit of local government, a governmental agency or a nonprofit organization.

19 (4) "Local transient lodging tax" means a tax imposed by a unit of local government on the sale,
 20 service or furnishing of transient lodging.

21 **(5) "Provider" means a person that furnishes transient lodging or that furnishes resi-**
 22 **dential care and services.**

23 **(6) "Residential care and services" has the meaning given that term in section 1 of this**
 24 **2011 Act.**

25 [(5)] (7) "State transient lodging tax" means the tax imposed under ORS 320.305.

26 [(6)] (8) "Tourism" means economic activity resulting from tourists.

27 [(7)] (9) "Tourism promotion" means any of the following activities:

28 (a) Advertising, publicizing or distributing information for the purpose of attracting and wel-
 29 coming tourists;

30 (b) Conducting strategic planning and research necessary to stimulate future tourism develop-
 31 ment;

32 (c) Operating tourism promotion agencies; and

33 (d) Marketing special events and festivals designed to attract tourists.

34 [(8)] (10) "Tourism promotion agency" includes:

35 (a) An incorporated nonprofit organization or governmental unit that is responsible for the
 36 tourism promotion of a destination on a year-round basis.

37 (b) A nonprofit entity that manages tourism-related economic development plans, programs and
 38 projects.

39 (c) A regional or statewide association that represents entities that rely on tourism-related
 40 business for more than 50 percent of their total income.

41 [(9)] (11) "Tourism-related facility":

42 (a) Means a conference center, convention center or visitor information center; and

43 (b) Means other improved real property that has a useful life of 10 or more years and has a
 44 substantial purpose of supporting tourism or accommodating tourist activities.

45 [(10)] (12) "Tourist" means a person who, for business, pleasure, recreation or participation in

1 events related to the arts, heritage or culture, travels from the community in which that person is
 2 a resident to a different community that is separate, distinct from and unrelated to the person's
 3 community of residence, and that trip:

- 4 (a) Requires the person to travel more than 50 miles from the community of residence; or
- 5 (b) Includes an overnight stay.

6 [(11)] (13) "Transient lodging" means:

- 7 (a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- 8 (b) Spaces used for parking recreational vehicles or erecting tents during periods of human oc-
 9 cupancy; or

10 (c) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any
 11 of these dwelling units, that are used for temporary human occupancy.

12 [(12)] (14) "Unit of local government" has the meaning given that term in ORS 190.003.

13 [(13)] (15) "Visitor information center" means a building, or a portion of a building, the main
 14 purpose of which is to distribute or disseminate information to tourists.

15 **SECTION 4.** ORS 320.305 is amended to read:

16 320.305. (1) A tax of one percent is imposed on any consideration rendered for the sale, service
 17 or furnishing of transient lodging **or the furnishing of residential care and services**. The tax
 18 imposed by this subsection shall be in addition to and not in lieu of any **applicable** local transient
 19 lodging tax. The tax shall be collected by the [*transient lodging provider*] **providers of transient**
 20 **lodging and residential care and services**.

21 (2) [*The transient lodging*] **A** provider shall withhold five percent of the amount the provider
 22 collects under subsection (1) of this section for the purpose of reimbursing the provider for the cost
 23 of tax collection, record keeping and reporting.

24 **SECTION 5.** ORS 320.308 is amended to read:

25 320.308. (1) The following are exempt from the state transient lodging tax:

26 [(1)] (a) A dwelling unit in a hospital, health care facility, long term care facility or any other
 27 residential facility that is licensed, registered or certified by the Department of Human Services or
 28 the Oregon Health Authority[;].

29 [(2)] (b) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing
 30 mental health treatment[;].

31 [(3)] (c) A dwelling unit that is used by members of the general public for temporary human
 32 occupancy for fewer than 30 days per year[;].

33 [(4)] (d) A dwelling unit, the consideration for which is funded through a contract with a gov-
 34 ernment agency and the purpose of which is to provide emergency or temporary shelter[;].

35 [(5)] (e) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or
 36 other nonprofit facility[; or].

37 [(6)] (f) A dwelling unit that is leased or otherwise occupied by the same person for a consec-
 38 utive period of 30 days or more during the year. The requirements of this [*subsection*] **paragraph**
 39 are satisfied even if the physical dwelling unit changes during the consecutive period, if:

40 [(a)] (A) All dwelling units occupied are within the same facility; and

41 [(b)] (B) The person paying consideration for the transient lodging is the same person through-
 42 out the consecutive period.

43 (2) **The exemptions in subsection (1) of this section do not apply to dwelling units fur-**
 44 **nished by providers of residential care and services.**

45 **SECTION 6.** ORS 320.310 is amended to read:

1 320.310. Every [*transient lodging*] provider responsible for collecting the tax imposed by ORS
2 320.305 shall keep records, render statements and comply with rules adopted by the Department of
3 Revenue with respect to the tax. The records and statements required by this section must be suf-
4 ficient to show whether there is a tax liability under ORS 320.305.

5 **SECTION 7.** ORS 320.315 is amended to read:

6 320.315. (1) Every [*transient lodging*] provider is responsible for collecting the tax imposed under
7 ORS 320.305 and shall file a return with the Department of Revenue, on or before the last day of
8 the month following the end of each calendar quarter, reporting the amount of tax due during the
9 quarter. The department shall prescribe the form of the return required by this section. The rules
10 of the department shall require that returns be made under penalties for false swearing.

11 (2) When a return is required under subsection (1) of this section, the [*transient lodging*] provider
12 required to make the return shall remit the tax due to the department at the time fixed for filing
13 the return.

14 **SECTION 8.** ORS 320.320 is amended to read:

15 320.320. If the amount paid by [*the transient lodging*] a provider to the Department of Revenue
16 under ORS 320.315 exceeds the amount of tax payable, the department shall refund the amount of
17 the excess with interest thereon at the rate established under ORS 305.220 for each month or frac-
18 tion of a month from the date of payment of the excess until the date of the refund. A refund may
19 not be made to a [*transient lodging*] provider who fails to claim the refund within two years after
20 the due date for filing the return to which the claim for refund relates.

21 **SECTION 9.** ORS 320.325 is amended to read:

22 320.325. (1) Every [*transient lodging*] provider required to collect the tax imposed by ORS 320.305
23 shall be deemed to hold the amount collected in trust for the State of Oregon and for payment to
24 the Department of Revenue in the manner and at the time provided by ORS 320.315.

25 (2) At any time [*the transient lodging*] a provider required to collect the tax fails to remit any
26 amount deemed to be held in trust for the State of Oregon, the department may enforce collection
27 by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties,
28 interest and collection charges accrued thereon. The warrant shall be issued, docketed and pro-
29 ceeded upon in the same manner and shall have the same force and effect as is prescribed with re-
30 spect to warrants for the collection of delinquent income taxes.

31 **SECTION 10.** ORS 320.330 is amended to read:

32 320.330. Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316
33 as to the audit and examination of reports and returns, confidentiality of reports and returns, de-
34 termination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments,
35 warrants, conferences and appeals to the Oregon Tax Court, and procedures relating thereto, apply
36 to ORS 320.305 to 320.340, the same as if the tax were a tax imposed upon or measured by net in-
37 come. All such provisions apply to the taxpayer liable for the tax and to the [*transient lodging*]
38 provider required to collect the tax. As to any amount collected and required to be remitted to the
39 Department of Revenue, the tax shall be considered a tax upon the [*transient lodging*] provider re-
40 quired to collect the tax and that provider shall be considered a taxpayer.

41 **SECTION 11.** ORS 320.335 is amended to read:

42 320.335. (1) All moneys received by the Department of Revenue pursuant to ORS 320.305 to
43 320.340, and interest thereon, shall be paid to the State Treasurer to be held in a suspense account
44 established under ORS 293.445. After the payment of refunds:

45 [(1)] (a) Moneys necessary to reimburse the Department of Revenue for the actual costs incurred

1 by the department in administering the state transient lodging tax, not to exceed two percent of
 2 state transient lodging tax collections, are continuously appropriated to the department; and

3 **(b) The balance of the moneys received shall be segregated and placed in two accounts.**
 4 **One account is composed of moneys remitted by providers of transient lodging and the sec-**
 5 **ond account is composed of moneys remitted by providers of residential care and services.**

6 (2) *[The balance of the]* Moneys received **from providers of transient lodging** shall be trans-
 7 ferred to the account of the Oregon Tourism Commission established under ORS 284.131. The mon-
 8 eys transferred under this subsection are continuously appropriated to the Oregon Tourism
 9 Commission for the purposes set forth in ORS 284.131.

10 **(3) Moneys received from providers of residential care and services shall be transferred**
 11 **to the Department of Human Services Account established in ORS 409.060. The moneys**
 12 **transferred under this subsection are continuously appropriated to the Department of Hu-**
 13 **man Services for the purposes described in section 1 of this 2011 Act.**

14 **SECTION 12. ORS 320.308 is added to and made a part of ORS 320.305 to 320.340.**

15 **SECTION 13. (1) The Department of Human Services shall seek any federal approval that**
 16 **is necessary to ensure that medical assistance expenditures made with moneys appropriated**
 17 **to the department under ORS 320.335 (3) will qualify for federal financial participation. The**
 18 **department shall immediately notify the Department of Revenue and Legislative Counsel if**
 19 **federal approval is necessary and if so, the Department of Human Services shall immediately**
 20 **notify the Department of Revenue and Legislative Counsel upon the receipt or denial of fed-**
 21 **eral approval.**

22 **(2) Section 1 of this 2011 Act and the amendments to ORS 284.131, 320.300, 320.305, 320.308,**
 23 **320.310, 320.315, 320.320, 320.325, 320.330 and 320.335 by sections 2 to 11 of this 2011 Act become**
 24 **operative upon receipt by the Department of Human Services of federal approval described**
 25 **in subsection (1) of this section or, if no federal approval is required, on the effective date**
 26 **of this 2011 Act.**

27 **SECTION 14. The amendments to ORS 320.305 by section 4 of this 2011 Act apply to**
 28 **consideration received by a provider of residential care and services on or after the first day**
 29 **of the calendar quarter next following the operative date specified in section 13 of this 2011**
 30 **Act.**

31 **SECTION 15. This 2011 Act takes effect on the 91st day after the date on which the 2011**
 32 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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