

# Senate Bill 490

Sponsored by Senator BONAMICI; Senator DINGFELDER (Presession filed.)

## 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**.

Requires utility providing natural or liquid propane gas, electricity or water to notify residential tenant of possible termination of utility or service paid for by landlord. Allows tenant to retain utility or service for up to lesser of three billing periods or 90 days by paying current amounts due.

## A BILL FOR AN ACT

1  
2 Relating to utilities in dwelling units; creating new provisions; and amending ORS 90.315.

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

4 **SECTION 1.** ORS 90.315 is amended to read:

5 90.315. (1) As used in this section, "utility or service" includes but is not limited to electricity,  
6 natural or liquid propane gas, oil, water, hot water, heat, air conditioning, cable television, direct  
7 satellite or other video subscription services, Internet access or usage, sewer service and garbage  
8 collection and disposal.

9 (2) The landlord shall disclose to the tenant in writing at or before the commencement of the  
10 tenancy any utility or service that the tenant pays directly to a utility or service provider that  
11 benefits, directly, the landlord or other tenants. A tenant's payment for a given utility or service  
12 benefits the landlord or other tenants if the utility or service is delivered to any area other than  
13 the tenant's dwelling unit.

14 (3) If the landlord knowingly fails to disclose those matters required under subsection (2) of this  
15 section, the tenant may recover twice the actual damages sustained or one month's rent, whichever  
16 is greater.

17 (4)(a) Except for tenancies covered by ORS 90.505 to 90.840, if a written rental agreement so  
18 provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has  
19 been billed by a utility or service provider to the landlord for utility or service provided directly to  
20 the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A  
21 utility or service charge that shall be assessed to a tenant for a common area must be described in  
22 the written rental agreement separately and distinctly from such a charge for the tenant's dwelling  
23 unit. Unless the method of allocating the charges to the tenant is described in the tenant's written  
24 rental agreement, the tenant may require that the landlord give the tenant a copy of the provider's  
25 bill as a condition of paying the charges.

26 (b) Except as provided in this paragraph, a utility or service charge may only include the cost  
27 of the utility or service as billed to the landlord by the provider. A landlord may add an additional  
28 amount to a utility or service charge billed to the tenant if:

29 (A) The utility or service charge to which the additional amount is added is for cable television,  
30 direct satellite or other video subscription services or for Internet access or usage;

31 (B) The additional amount is not more than 10 percent of the utility or service charge billed to

**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 the tenant;

2 (C) The total of the utility or service charge and the additional amount is less than the typical  
3 periodic cost the tenant would incur if the tenant contracted directly with the provider for the cable  
4 television, direct satellite or other video subscription services or for Internet access or usage;

5 (D) The written rental agreement providing for the utility or service charge describes the addi-  
6 tional amount separately and distinctly from the utility or service charge; and

7 (E) Any billing or notice from the landlord regarding the utility or service charge lists the ad-  
8 ditional amount separately and distinctly from the utility or service charge.

9 (c) A landlord may not require a tenant to agree to the amendment of an existing rental  
10 agreement, and may not terminate a tenant for refusing to agree to the amendment of a rental  
11 agreement, if the amendment would obligate the tenant to pay an additional amount for cable tele-  
12 vision, direct satellite or other video subscription services or for Internet access or usage as pro-  
13 vided under paragraph (b) of this subsection.

14 (d) A utility or service charge, including any additional amount added pursuant to paragraph (b)  
15 of this subsection, is not rent or a fee. Nonpayment of a utility or service charge is not grounds for  
16 termination of a rental agreement for nonpayment of rent under ORS 90.394 but is grounds for ter-  
17 mination of a rental agreement for cause under ORS 90.392.

18 (e) If a landlord fails to comply with paragraph (a), (b) or (c) of this subsection, the tenant may  
19 recover from the landlord an amount equal to one month's periodic rent or twice the amount  
20 wrongfully charged to the tenant, whichever is greater.

21 (5)(a) If a tenant, under the rental agreement, is responsible for a utility or service and is unable  
22 to obtain the service prior to moving into the premises due to a nonpayment of an outstanding  
23 amount due by a previous tenant or the owner, the tenant may either:

24 (A) Pay the outstanding amount and deduct the amount from the rent;

25 (B) Enter into a mutual agreement with the landlord to resolve the lack of service; or

26 (C) Immediately terminate the rental agreement by giving the landlord actual notice and the  
27 reason for the termination.

28 (b) If the tenancy terminates, the landlord shall return all moneys paid by the tenant as deposits,  
29 rent or fees within four days after termination.

30 (6) If a tenant, under the rental agreement, is responsible for a utility or service and is unable  
31 to obtain the **utility or** service after moving into the premises due to a nonpayment of an out-  
32 standing amount due by a previous tenant or the owner, the tenant may either:

33 (a) Pay the outstanding amount and deduct the amount from the rent; or

34 (b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the  
35 date of termination and the reason for the termination. The tenancy does not terminate if the land-  
36 lord restores service or the availability of service during the 72 hours. If the tenancy terminates,  
37 the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord  
38 shall return:

39 (A) Within four days after termination, all rent and fees; and

40 (B) All of the security deposit owed to the tenant under ORS 90.300.

41 (7) If a landlord, under the rental agreement, is responsible for a utility or service and the utility  
42 or service is shut off due to a nonpayment of an outstanding amount, the tenant may either:

43 (a) Pay the outstanding balance and deduct the amount from the rent; or

44 (b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the  
45 date of termination and the reason for the termination. The tenancy does not terminate if the land-

1 lord restores service during the 72 hours. If the tenancy terminates, the tenant may recover actual  
2 damages from the landlord resulting from the shutoff and the landlord shall return:

3 (A) Within four days after termination, all rent prepaid for the month in which the termination  
4 occurs prorated from the date of termination or the date the tenant vacates the premises, whichever  
5 is later, and any other prepaid rent; and

6 (B) All of the security deposit owed to the tenant under ORS 90.300.

7 **(8) If a landlord, under the rental agreement, is responsible for providing natural or liquid**  
8 **propane gas, electricity or water and the utility or service is noticed for shutoff due to**  
9 **nonpayment of an outstanding amount, the tenant may pay the balance due for the current**  
10 **billing period, as defined in section 3 of this 2011 Act, to retain or restore the utility or ser-**  
11 **vice as provided in section 3 of this 2011 Act and deduct the amount from the rent.**

12 [(8)] (9) If a landlord fails to return to the tenant the moneys owed as provided in subsection (5),  
13 (6) or (7) of this section, the tenant shall be entitled to twice the amount wrongfully withheld.

14 [(9)] (10) This section does not preclude the tenant from pursuing any other remedies under this  
15 chapter.

16 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS chapter 757.**

17 **SECTION 3. (1) As used in this section:**

18 (a) **“Covered utility” means a public utility, a consumer-owned utility and,**  
19 **notwithstanding the exceptions in the definition of a public utility in ORS 757.005 (1)(b), any**  
20 **other person that supplies natural or liquid propane gas, electricity or water to a dwelling**  
21 **unit that is subject to ORS chapter 90.**

22 (b) **“Current billing period” means the first billing period for which charges are not past**  
23 **due on the date that a covered utility first issues a termination notice for nonpayment under**  
24 **this section to tenants of a landlord for charges that are already past due on the landlord’s**  
25 **utility account.**

26 (2) **When the records of a covered utility establish that the covered utility provides ser-**  
27 **vice to property with master-metered, multifamily dwelling units or to a dwelling unit at a**  
28 **service address that is different from the billing address of the account holder, the covered**  
29 **utility shall notify the occupants of the dwelling units at least 15 days before termination of**  
30 **the service for nonpayment.**

31 (3) **If a tenant, or group of tenants, pays the current amount due for the current billing**  
32 **period within the 15-day period after receiving the notice required by this section, the cov-**  
33 **ered utility must:**

34 (a) **Continue providing the service to the service address for the following billing period;**  
35 **and**

36 (b) **Subject to the timely payment of the current amount due in each billing period as it**  
37 **comes due, continue providing the service to the service address under this section for at**  
38 **least three consecutive billing periods or 90 days, whichever is less.**

39 (4) **A covered utility may not require the tenant, or group of tenants, to pay any**  
40 **arrears, fees or deposits owed by the landlord. Notwithstanding any payments made by**  
41 **the tenant, or group of tenants, the landlord remains the customer of the covered utility.**

42 (5) **A covered utility may not require the tenant, or group of tenants:**

43 (a) **To undergo credit screening;**

44 (b) **To pay a higher rate for the service than the rate at which the service is provided**  
45 **to the landlord; or**

1 (c) To pay new deposits or fees for the extension of service.

2 (6) A covered utility must provide the notice required by this section in writing:

3 (a) By posting the notice on the door of each dwelling unit; or

4 (b) If it is not possible to post the notice on the door of each dwelling unit, by posting  
5 the notice in each accessible common area and at each point of access to each structure  
6 containing dwelling units.

7 (7) The notice must be:

8 (a) Printed in boldface type; and

9 (b) Addressed to "Tenants" or "Occupants".

10 (8) The notice must include:

11 (a) In boldfaced type, on the outside of the envelope or the face of the notice, the state-  
12 ment: "Important notice regarding termination of utility service";

13 (b) A description in clear and simple language of the right to continue the utility service  
14 ordinarily provided by the landlord by paying the current amount due in the current billing  
15 period and the right to offset under ORS 90.315 (8) the utility payments against rent owed  
16 to the landlord;

17 (c) The earliest date for the proposed interruption of service;

18 (d) The date by which payment must be made to avoid interruption of service;

19 (e) The current amount due in the current billing period, which is the amount the tenant,  
20 or group of tenants, must pay to avoid interruption of the utility service provided to the  
21 landlord;

22 (f) A statement of other requirements, including, if required, the submission of evidence  
23 of the residential tenancy, that must be met to avoid interruption of the utility service pro-  
24 vided to the landlord;

25 (g) A telephone number at which the tenant, or group of tenants, may call the covered  
26 utility for further information; and

27 (h) Contact information for the Oregon State Bar Lawyer Referral Service and informa-  
28 tion about how to find free legal assistance along with the following statement:

29 \_\_\_\_\_

30  
31 "FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU MAY WISH TO CONSULT A  
32 LAWYER. If you believe you need legal assistance, contact the Oregon State Bar and ask for  
33 the lawyer referral service at \_\_\_\_\_. If you do not have enough money to pay a lawyer  
34 and are otherwise eligible, you may be able to receive legal assistance for free. Find infor-  
35 mation about free legal assistance at \_\_\_\_\_."

36 \_\_\_\_\_

37  
38 (9) Before accepting a payment from a tenant, or group of tenants, and continuing to  
39 provide the service pursuant to this section, a covered utility may require evidence that the  
40 service address is occupied by a residential tenant, or group of tenants, who are subject to  
41 ORS chapter 90 and whose landlord is a customer of the covered utility and receives service  
42 at the service address. If the covered utility requires evidence of the residential tenancy as  
43 described in this subsection, information about the requirement and how to provide the evi-  
44 dence must be described clearly in the notice required by this section. Sufficient evidence  
45 of the residential tenancy includes, but is not limited to:

1 (a) A copy of a written rental agreement; or

2 (b) A cancelled check or other proof of payment of rent.

3 (10) For property described in subsection (2) of this section, evidence of the residential  
4 tenancy of one individual at the service address establishes the obligation of the covered  
5 utility to provide service under this section to all residential tenants at the service address.

6 (11) A covered utility may not provide more information about the account or the  
7 arrearages of the landlord that is the customer of the covered utility than is necessary for  
8 the tenant, or group of tenants, to pay the current amount due. The covered utility does not  
9 violate the landlord's right to privacy and is immune from liability for disclosure of the in-  
10 formation necessary for the tenant, or group of tenants, to pay the current amounts due for  
11 the current billing period or future billing periods.

12 (12) A covered utility may not terminate service to which this section applies unless the  
13 covered utility has complied with this section. For violation of this section, a tenant, or  
14 group of tenants, may seek injunctive relief against a covered utility and \$1,000 per tenant  
15 per violation of this section or actual damages, whichever is greater.

16 (13) A court shall award reasonable attorney fees and costs to the prevailing party in an  
17 action for equitable relief or damages under this section.

18 **SECTION 4.** Section 3 of this 2011 Act and the amendments to ORS 90.315 by section 1  
19 of this 2011 Act apply to termination of services by a covered utility on or after the effective  
20 date of this 2011 Act.

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