

A-Engrossed
House Bill 2484

Ordered by the House April 10
Including House Amendments dated April 10

Sponsored by Representative POWER; Representatives ALONSO LEON, CAMPOS, RUIZ, WILDE, ZIKA (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.

Requires landlord to allow dwelling to be used as family child care home. Sets conditions on use. Authorizes Early Learning Council to establish rules for landlords.

A BILL FOR AN ACT

1
2 Relating to use of rental unit as family child care home; creating new provisions; and amending ORS
3 90.385, 329A.280 and 329A.330.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 90.**

6 **SECTION 2. (1) Except as provided in subsection (4) of this section, a landlord may not**
7 **prohibit the tenant's use of a dwelling as a family child care home if:**

8 (a) **The family child care home is certified under ORS 329A.280 or registered under ORS**
9 **329A.330; and**

10 (b) **The tenant has notified the landlord of the use.**

11 (2) **A landlord shall take reasonable steps to cooperate with a tenant who uses, or in-**
12 **tends, plans or attempts to use, the dwelling as a family child care home, including compli-**
13 **ance with rules of the Early Learning Council under ORS 329A.280 or 329A.330.**

14 (3) **A tenant may enforce the requirements of subsections (1) and (2) of this section under**
15 **ORS 90.360.**

16 (4) **This section and ORS 90.385 do not prohibit a landlord from:**

17 (a) **Requiring that a tenant pay in advance for costs of modifications necessary or desir-**
18 **able for the tenant's use, certification or registration of the dwelling as a family child care**
19 **home that are not required of the landlord under ORS 90.320 or the rental agreement.**

20 (b) **Prohibiting a use not allowed under the zoning for the dwelling unit or an**
21 **association's governing documents as defined in ORS 94.550 or 100.005.**

22 (c) **Prohibiting a use not allowed under rules established by the Early Learning Council**
23 **implementing ORS 329A.280.**

24 (5) **A landlord may require that a tenant using the property as a family child care home,**
25 **at the election of the landlord, either:**

26 (a) **Require parents of any children under the care of the family child care home sign a**
27 **document in which the parents:**

28 (A) **Agree for themselves and their children that the landlord, owner or association, as**

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 **defined in ORS 94.550 or 100.005, is not liable for losses from injuries to their children or**
2 **their guests connected with the operation of the family child care facility; and**

3 **(B) Acknowledge that the family home care provider does not maintain liability coverage**
4 **for losses from injuries to their children or their guests connected with the operation of the**
5 **family child care facility; or**

6 **(b) Notwithstanding ORS 90.222, carry and maintain a surety bond or liability policy**
7 **covering injuries to their children and guests that:**

8 **(A) Provides coverage of claims for injuries sustained on account of the negligence of the**
9 **tenant or its employees;**

10 **(B) Names the landlord, owner or association, as defined in ORS 94.550 or 100.005, as an**
11 **additional insured; and**

12 **(C) Provides coverage in an amount no less than the amount established by rule by the**
13 **Early Learning Division in consultation with the Department of Consumer and Business**
14 **Services.**

15 **(6) This section does not require a family child care home to carry any insurance policy**
16 **unless required by a landlord under subsection (5)(b) of this section.**

17 **(7) This section does not apply to housing for older persons as defined in ORS 659A.421.**

18 **SECTION 3.** ORS 90.385, as amended by section 9, chapter 3, Oregon Laws 2020 (third special
19 session), is amended to read:

20 90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent
21 or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening
22 to bring an action for possession after:

23 (a) The tenant has complained to, or expressed to the landlord in writing an intention to com-
24 plain to, a governmental agency charged with responsibility for enforcement of any of the following
25 concerning a violation applicable to the tenancy:

26 (A) A building, health or housing code materially affecting health or safety;

27 (B) Laws or regulations concerning the delivery of mail; or

28 (C) Laws or regulations prohibiting discrimination in rental housing;

29 (b) The tenant has made any complaint to the landlord that is in good faith and related to the
30 tenancy;

31 (c) The tenant has organized or become a member of a tenants' union or similar organization;

32 (d) The tenant has testified against the landlord in any judicial, administrative or legislative
33 proceeding;

34 (e) The tenant successfully defended an action for possession brought by the landlord within the
35 previous six months except if the tenant was successful in defending the action only because:

36 (A) The termination notice by the landlord was not served or delivered in the manner required
37 by ORS 90.155; or

38 (B) The period provided by the termination notice was less than that required by the statute
39 upon which the notice relied to terminate the tenancy; *[or]*

40 **(f) The tenant uses, or intends or attempts to use, the dwelling as a family child care**
41 **home in compliance with section 2 of this 2021 Act; or**

42 *[(f)]* **(g) The tenant has performed or expressed intent to perform any other act for the purpose**
43 **of asserting, protecting or invoking the protection of any right secured to tenants under any federal,**
44 **state or local law.**

45 (2) As used in subsection (1) of this section, "decreasing services" includes:

1 (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of
2 common areas or facilities by tenant associations or tenants meeting to establish a tenant organ-
3 ization; and

4 (b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment
5 or use of the premises by the tenant.

6 (3) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to
7 recover an amount equal to up to three months' periodic rent or three times the actual damages
8 sustained by the tenant and has a defense in any retaliatory action against the tenant for possession.

9 (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for
10 possession if:

11 (a) The complaint by the tenant was made to the landlord or an agent of the landlord in an
12 unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of
13 unreasonably harassing the landlord[. *A determination whether the manner, time or effect of a com-
14 plaint was unreasonable shall include*] in consideration of all related circumstances preceding or
15 contemporaneous to the complaint;

16 (b) The violation of the applicable building or housing code was caused primarily by lack of
17 reasonable care by the tenant or other person in the household of the tenant or upon the premises
18 with the consent of the tenant;

19 (c) The tenant was in default in rent at the time of the service of the notice upon which the
20 action is based; or

21 (d) Compliance with the applicable building or housing code requires alteration, remodeling or
22 demolition which would effectively deprive the tenant of use of the dwelling unit.

23 (5) For purposes of this section, a complaint made by another on behalf of a tenant is considered
24 a complaint by the tenant.

25 (6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court
26 pursuant to ORS 90.370 shall not be considered to be in default in rent.

27 (7) The maintenance of an action under subsection (4) of this section does not release the land-
28 lord from liability under ORS 90.360 (2).

29 **SECTION 3a.** ORS 90.385, as amended by sections 9 and 18, chapter 3, Oregon Laws 2020 (third
30 special session), is amended to read:

31 90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent
32 or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening
33 to bring an action for possession after:

34 (a) The tenant has complained to, or expressed to the landlord in writing an intention to com-
35 plain to, a governmental agency charged with responsibility for enforcement of any of the following
36 concerning a violation applicable to the tenancy:

37 (A) A building, health or housing code materially affecting health or safety;

38 (B) Laws or regulations concerning the delivery of mail; or

39 (C) Laws or regulations prohibiting discrimination in rental housing;

40 (b) The tenant has made any complaint to the landlord that is in good faith and related to the
41 tenancy;

42 (c) The tenant has organized or become a member of a tenants' union or similar organization;

43 (d) The tenant has testified against the landlord in any judicial, administrative or legislative
44 proceeding;

45 (e) The tenant successfully defended an action for possession brought by the landlord within the

1 previous six months except if the tenant was successful in defending the action only because:

2 (A) The termination notice by the landlord was not served or delivered in the manner required
3 by ORS 90.155; or

4 (B) The period provided by the termination notice was less than that required by the statute
5 upon which the notice relied to terminate the tenancy; *[or]*

6 **(f) The tenant uses, or intends or attempts to use, the dwelling as a family child care
7 home in compliance with section 2 of this 2021 Act; or**

8 *[(f)]* (g) The tenant has performed or expressed intent to perform any other act for the purpose
9 of asserting, protecting or invoking the protection of any right secured to tenants under any federal,
10 state or local law.

11 (2) As used in subsection (1) of this section, “decreasing services” includes:

12 (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of
13 common areas or facilities by tenant associations or tenants meeting to establish a tenant organ-
14 ization; and

15 (b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment
16 or use of the premises by the tenant.

17 (3) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the
18 remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for
19 possession.

20 (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for
21 possession if:

22 (a) The complaint by the tenant was made to the landlord or an agent of the landlord in an
23 unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of
24 unreasonably harassing the landlord. *A determination whether the manner, time or effect of a com-
25 plaint was unreasonable shall include* **in** consideration of all related circumstances preceding or
26 contemporaneous to the complaint;

27 (b) The violation of the applicable building or housing code was caused primarily by lack of
28 reasonable care by the tenant or other person in the household of the tenant or upon the premises
29 with the consent of the tenant;

30 (c) The tenant was in default in rent at the time of the service of the notice upon which the
31 action is based; or

32 (d) Compliance with the applicable building or housing code requires alteration, remodeling or
33 demolition which would effectively deprive the tenant of use of the dwelling unit.

34 (5) For purposes of this section, a complaint made by another on behalf of a tenant is considered
35 a complaint by the tenant.

36 (6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court
37 pursuant to ORS 90.370 shall not be considered to be in default in rent.

38 (7) The maintenance of an action under subsection (4) of this section does not release the land-
39 lord from liability under ORS 90.360 (2).

40 **SECTION 4.** ORS 329A.280 is amended to read:

41 329A.280. (1) A person may not operate a child care facility, except a facility subject to the
42 registration requirements of ORS 329A.330, without a certification for the facility from the Office
43 of Child Care.

44 (2) The Early Learning Council shall adopt rules for the certification of a family child care home
45 caring for not more than 16 children. The rules shall be specifically adopted for the regulation of

1 certified child care facilities operated in a facility constructed as a single-family dwelling.
2 Notwithstanding fire and other safety regulations, the rules that the council adopts for certified
3 child care facilities shall set standards that can be met without significant architectural modifica-
4 tion of a typical home. **The rules may establish reasonable requirements for landlords of ten-**
5 **ants who operate a family child care home under section 2 of this 2021 Act.** In adopting the
6 rules, the council may consider and set limits according to factors including the age of children in
7 care, the ambulatory ability of children in care, the number of the provider's children present, the
8 length of time a particular child is continuously cared for and the total amount of time a particular
9 child is cared for within a given unit of time.

10 (3) In addition to rules adopted for and applied to a certified family child care home providing
11 child care for not more than 16 children, the council shall adopt and apply separate rules appro-
12 priate for any child care facility that is a child care center.

13 (4) Any person seeking to operate a child care facility may apply for a certification for the fa-
14 cility from the Office of Child Care and receive a certification upon meeting certification require-
15 ments.

16 (5) A facility described in ORS 329A.250 (5)(d) may, but is not required to, apply for a certi-
17 fication under this section and receive a certification upon meeting certification requirements.

18 **SECTION 5.** ORS 329A.330 is amended to read:

19 329A.330. (1) A provider operating a family child care home where care is provided in the family
20 living quarters of the provider's home that is not subject to the certification requirements of ORS
21 329A.280 may not operate a child care facility without registering with the Office of Child Care.

22 (2) A child care facility holding a registration may care for a maximum of 10 children, including
23 the provider's own children. Of the 10 children:

24 (a) No more than six may be younger than school age; and

25 (b) No more than two may be 24 months of age or younger.

26 (3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting
27 a completed application work sheet and a nonrefundable fee. The fee shall vary according to the
28 number of children for which the facility is requesting to be registered[,] and shall be determined
29 and applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall
30 be deposited as provided in ORS 329A.310 (2). The office may waive any or all of the fee if the office
31 determines that imposition of the fee would impose a hardship on the provider.

32 (b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall
33 conduct an on-site review of the child care facility under this section. The on-site review shall be
34 conducted within 30 days of the receipt of a satisfactory application.

35 (4) The office shall issue a registration to a provider operating a family child care home if:

36 (a) The provider has completed a child care overview class administered by the office;

37 (b) The provider has completed two hours of training on child abuse and neglect issues;

38 (c) The provider is currently certified in infant and child first aid and cardiopulmonary resus-
39 citation;

40 (d) The provider is certified as a food handler under ORS 624.570; and

41 (e) The office determines that the application meets the requirements of ORS 181A.200, 329A.030
42 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215,
43 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal
44 records and protective services records.

45 (5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for

1 a period of two years from the date of issuance. The office may not renew a registration of a pro-
2 vider operating a family child care home unless the provider:

3 (a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;

4 (b) Has completed a minimum of eight hours of training related to child care during the most
5 recent registration period; and

6 (c) Is certified as a food handler under ORS 624.570.

7 (6) A registration authorizes operation of the facility only on the premises described in the
8 registration and only by the person named in the registration.

9 (7) The Early Learning Council shall adopt rules:

10 (a) Creating the application work sheet required under subsection (3) of this section;

11 (b) Defining full-time and part-time care;

12 (c) Establishing under what circumstances the adult to child ratio requirements may be tempo-
13 rarily waived; *[and]*

14 **(d) Establishing reasonable requirements for landlords of tenants who operate a family**
15 **child care home under section 2 of this 2021 Act; and**

16 *[(d)]* (e) Establishing health and safety procedures and standards on:

17 (A) The number and type of toilets and sinks available to children;

18 (B) Availability of steps or blocks for use by children;

19 (C) Room temperature;

20 (D) Lighting of rooms occupied by children;

21 (E) Glass panels on doors;

22 (F) Condition of floors;

23 (G) Availability of emergency telephone numbers; and

24 (H) Smoking.

25 (8) The office shall adopt the application work sheet required by subsection (3) of this section.

26 The work sheet must include, but need not be limited to, the following:

27 (a) The number and ages of the children to be cared for at the facility; and

28 (b) The health and safety procedures in place and followed at the facility.

29 (9)(a) If the Office of Child Care determines that it is necessary to protect the health and safety
30 of the children for whom a child care facility is to provide care, the office may impose a condition
31 on the facility's registration that is reasonably designed to protect the health and safety of children.
32 The office may impose a condition during the application process for an initial registration, during
33 the application process for a renewal of a registration or at any time after the issuance of a regis-
34 tration.

35 (b) Except as provided in paragraph (c) of this subsection, when the office imposes a condition
36 on a child care facility's registration, the facility shall be afforded an opportunity for a hearing
37 consistent with the provisions of ORS chapter 183.

38 (c)(A) If the office finds a serious danger to the health and safety of the children receiving care
39 at a child care facility, the office shall notify the facility of the specific reasons for the finding and
40 may impose an emergency condition on the facility's registration without a hearing.

41 (B) If the facility demands a hearing within 90 days after the office notifies the facility of the
42 emergency condition, a hearing consistent with the provisions of ORS chapter 183 must be granted
43 to the facility as soon as practicable after the demand and the agency shall issue an order consistent
44 with the provisions of ORS chapter 183 confirming, altering or revoking the order imposing the
45 emergency condition.

1 (10) The office, upon good cause shown, may waive one or more of the registration requirements.
2 The office may waive a requirement only if appropriate conditions or safeguards are imposed to
3 protect the welfare of the children and the consumer interests of the parents of the children. The
4 office may not waive the on-site review requirement for applicants applying for an initial registra-
5 tion or renewal of a registration.

6 (11) The Early Learning Council, by rule, shall develop a list of recommended standards con-
7 sistent with standards established by professional organizations regarding child care programs for
8 child care facilities. Compliance with the standards is not required for a registration, but the office
9 shall encourage voluntary compliance and shall provide technical assistance to a child care facility
10 attempting to comply with the standards. The child care facility shall distribute the list of recom-
11 mended minimum standards to the parents of all children cared for at the facility.

12 (12) In adopting rules relating to registration, the Early Learning Council shall consult with the
13 appropriate legislative committee in developing the rules to be adopted. If the rules are being
14 adopted during a period when the Legislative Assembly is not in session, the Early Learning Council
15 shall consult with the appropriate interim legislative committee.

16