

Senate Bill 327

Sponsored by Senator BEYER (at the request of Conservice) (Pre-session 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**.

Allows landlord to bill residential tenant for utilities based on submeter reading. Amends other utility billing requirements and calculation of damages for landlord violations.

A BILL FOR AN ACT

1
2 Relating to billing for utilities in residential tenancies; amending ORS 90.100, 90.140 and 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:

6 (a) "Public service" means municipal services and the provision of public resources related to
7 the dwelling unit, including street maintenance, transportation improvements, public transit, public
8 safety and parks and open space.

9 (b)(A) "Public service charge" means a charge imposed on a landlord by a utility or service
10 provider, by a utility or service provider on behalf of a local government or directly by a local
11 government.

12 (B) "Public service charge" does not include real property taxes, income taxes, business license
13 fees or dwelling inspection fees.

14 (c) "Sewer service" includes storm water service and wastewater service.

15 (d) "Utility or service" includes but is not limited to electricity, natural or liquid propane gas,
16 oil, water, hot water, heat, air conditioning, cable television, direct satellite or other video sub-
17 scription services, Internet access or usage, sewer service, public services and garbage collection
18 and disposal.

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

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

27 [(4)(a)] (3) Except [for tenancies covered by ORS 90.505 to 90.850] **as provided in ORS 90.560**
28 **to 90.584**, if a written rental agreement so provides, a landlord may require a tenant to pay to the
29 landlord a utility or service charge or a public service charge that has been billed by a utility or
30 service provider to the landlord for utility or service provided directly, or for a public service pro-
31 vided indirectly, to the tenant's dwelling unit or to a common area available to the tenant as part

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 of the tenancy. A utility or service charge that *[shall be]* **is** assessed to a tenant for a common area
 2 must be described in the written rental agreement separately and distinctly from such a charge for
 3 the tenant's dwelling unit.

4 *[(b)(A)]* **(4)(a)** If a rental agreement provides that a landlord may require a tenant to pay a
 5 utility or service charge, the landlord must bill the tenant in writing for the utility or service charge
 6 within *[30]* **60** days after receipt of the provider's bill. If the landlord includes in the bill to the
 7 tenant a statement of the rent due, the landlord must separately and distinctly state the amount of
 8 the rent and the amount of the utility or service charge.

9 *[(B)]* **(b)** The landlord must provide to the tenant, in the written rental agreement or in a bill
 10 to the tenant, an explanation of:

11 *[(i)]* **(A)** The manner in which the provider assesses a utility or service charge; and

12 *[(ii)]* **(B)** The **general** manner in which the charge is allocated among the tenants if the
 13 provider's bill to the landlord covers multiple tenants.

14 *[(C)]* **(c)** The landlord must:

15 *[(i)]* **(A)** Include in the bill to the tenant a copy of the provider's bill; or

16 *[(ii)]* **(B)** If the provider's bill is not included, state that the tenant may inspect the provider's
 17 bill at a reasonable time and place and that the tenant may obtain a copy of the provider's bill by
 18 making a request to the landlord during the inspection and upon payment to the landlord for the
 19 reasonable cost of making copies.

20 *[(D)]* **(d)** A landlord may require that a bill to the tenant for a utility or service charge is due
 21 upon delivery of the bill. A landlord shall treat the tenant's payment as timely for purposes of ORS
 22 90.302 (3)(b)(A) if the payment is made by a date that is specified in the bill and that is not less than
 23 30 days after delivery of the bill.

24 *[(E)]* **(e)** *[If a written rental agreement so provides,]* The landlord may deliver a bill to the tenant
 25 as provided in ORS 90.155 or by electronic means.

26 *[(c)]* **(5)** Except as provided in this *[paragraph]* **subsection**, a utility or service charge may only
 27 include the cost of the utility or service as billed to the landlord by the provider. A landlord may
 28 add an additional amount to a utility or service charge billed to the tenant if:

29 **(a) The landlord bills the tenant for water or sewer based on readings from a submeter;**
 30 **or**

31 *[(A)]* **(b)(A)** The utility or service charge to which the additional amount is added is for cable
 32 television, direct satellite or other video subscription services or for Internet access or usage;

33 **(B)** The additional amount is not more than 10 percent of the utility or service charge billed to
 34 the tenant;

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

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

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

42 *[(d)(A)]* **(6)** A landlord must provide 60 days' written notice to a tenant before the landlord may
 43 amend an existing rental agreement for a month-to-month tenancy to require a tenant to pay a
 44 public service charge that was adopted by a utility or service provider or a local government within
 45 the previous six months.

1 [(B)] (7) A landlord may not hold a tenant liable for a public service charge billed to a previous
2 tenant.

3 [(C)] (8) A landlord may not require a tenant to agree to the amendment of an existing rental
4 agreement, and may not terminate a tenant for refusing to agree to the amendment of a rental
5 agreement, if the amendment would obligate the tenant to pay an additional amount for cable tele-
6 vision, direct satellite or other video subscription services or for Internet access or usage [*as pro-*
7 *vided under paragraph (c) of this subsection*].

8 [(e)] (9) A utility or service charge, including any additional amount added pursuant to [*para-*
9 *graph (c) of this subsection*] **subsection (5) of this section**, is not rent or a fee. Nonpayment of a
10 utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent
11 under ORS 90.394 but is grounds for termination of a rental agreement for cause under ORS 90.392.

12 [(f)] (10) If a landlord fails to comply with [*paragraph (a), (b), (c) or (d) of this subsection,*] **sub-**
13 **sections (4) to (8) of this section**, the tenant may recover from the landlord [*an amount equal to*
14 *one month's periodic rent or twice*] **three times** the amount wrongfully charged to the tenant[,
15 *whichever is greater*].

16 [(5)(a)] (11)(a) If a tenant, under the rental agreement, is responsible for a utility or service and
17 is unable to obtain the service prior to moving into the premises due to a nonpayment of an out-
18 standing amount due by a previous tenant or the owner, the tenant may either:

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

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

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

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

25 [(6)] (12) If a tenant, under the rental agreement, is responsible for a utility or service and is
26 unable to obtain the service after moving into the premises due to a nonpayment of an outstanding
27 amount due by a previous tenant or the owner, the tenant may either:

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

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

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

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

36 [(7)] (13) If a landlord, under the rental agreement, is responsible for a utility or service and the
37 utility or service is shut off due to a nonpayment of an outstanding amount, the tenant may either:

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

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

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

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

2 [(8)] (14) If a landlord fails to return to the tenant the moneys owed as provided in subsection
 3 [(5), (6) or (7)] (11), (12) or (13) of this section, the tenant [shall be] is entitled to twice the amount
 4 wrongfully withheld.

5 [(9)] (15) This section does not preclude the tenant from pursuing any other remedies under this
 6 chapter.

7 **SECTION 2.** ORS 90.100 is amended to read:

8 90.100. As used in this chapter, unless the context otherwise requires:

9 (1) “Accessory building or structure” means any portable, demountable or permanent structure,
 10 including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks,
 11 steps, ramps, piers and pilings, that is:

12 (a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

13 (b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a
 14 tenant of a manufactured dwelling or floating home.

15 (2) “Action” includes recoupment, counterclaim, setoff, suit in equity and any other proceeding
 16 in which rights are determined, including an action for possession.

17 (3) “Applicant screening charge” means any payment of money required by a landlord of an
 18 applicant prior to entering into a rental agreement with that applicant for a residential dwelling
 19 unit, the purpose of which is to pay the cost of processing an application for a rental agreement for
 20 a residential dwelling unit.

21 (4) “Building and housing codes” includes any law, ordinance or governmental regulation con-
 22 cerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or ap-
 23 pearance of any premises or dwelling unit.

24 (5) “Carbon monoxide alarm” has the meaning given that term in ORS 105.836.

25 (6) “Carbon monoxide source” has the meaning given that term in ORS 105.836.

26 (7) “Conduct” means the commission of an act or the failure to act.

27 (8) “DBH” means the diameter at breast height, which is measured as the width of a standing
 28 tree at four and one-half feet above the ground on the uphill side.

29 (9) “Dealer” means any person in the business of selling, leasing or distributing new or used
 30 manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling
 31 or floating home for use as a residence.

32 (10) “Domestic violence” means:

33 (a) Abuse between family or household members, as those terms are defined in ORS 107.705; or

34 (b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.

35 (11) “Drug and alcohol free housing” means a dwelling unit described in ORS 90.243.

36 (12) “Dwelling unit” means a structure or the part of a structure that is used as a home, resi-
 37 dence or sleeping place by one person who maintains a household or by two or more persons who
 38 maintain a common household. “Dwelling unit” regarding a person who rents a space for a manu-
 39 factured dwelling or recreational vehicle or regarding a person who rents moorage space for a
 40 floating home as defined in ORS 830.700, but does not rent the home, means the space rented and
 41 not the manufactured dwelling, recreational vehicle or floating home itself.

42 (13) “Essential service” means:

43 (a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or
 44 recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.850:

45 (A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior

1 doors, latches for windows and any cooking appliance or refrigerator supplied or required to be
2 supplied by the landlord; and

3 (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320,
4 the lack or violation of which creates a serious threat to the tenant's health, safety or property or
5 makes the dwelling unit unfit for occupancy.

6 (b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or rec-
7 reational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.850:

8 (A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any
9 drainage system; and

10 (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730,
11 the lack or violation of which creates a serious threat to the tenant's health, safety or property or
12 makes the rented space unfit for occupancy.

13 (14) "Facility" means a manufactured dwelling park or a marina.

14 (15) "Fee" means a nonrefundable payment of money.

15 (16) "First class mail" does not include certified or registered mail, or any other form of mail
16 that may delay or hinder actual delivery of mail to the recipient.

17 (17) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a
18 specific ending date and terminating on that date without requiring further notice to effect the ter-
19 mination.

20 (18) "Floating home" has the meaning given that term in ORS 830.700. "Floating home" includes
21 an accessory building or structure.

22 (19) "Good faith" means honesty in fact in the conduct of the transaction concerned.

23 (20) "Hazard tree" means a tree that:

24 (a) Is located on a rented space in a manufactured dwelling park;

25 (b) Measures at least eight inches DBH; and

26 (c) Is considered, by an arborist licensed as a landscape construction professional pursuant to
27 ORS 671.560 and certified by the International Society of Arboriculture, to pose an unreasonable
28 risk of causing serious physical harm or damage to individuals or property in the near future.

29 (21) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

30 (22) "Informal dispute resolution" includes voluntary consultation between the landlord or
31 landlord's agent and one or more tenants or voluntary mediation utilizing the services of a third
32 party, but does not include mandatory mediation or arbitration.

33 (23) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or
34 premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor
35 or sublessor to manage the premises or to enter into a rental agreement.

36 (24) "Landlord's agent" means a person who has oral or written authority, either express or
37 implied, to act for or on behalf of a landlord.

38 (25) "Last month's rent deposit" means a type of security deposit, however designated, the pri-
39 mary function of which is to secure the payment of rent for the last month of the tenancy.

40 (26) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured
41 home as those terms are defined in ORS 446.003. "Manufactured dwelling" includes an accessory
42 building or structure.

43 (27) "Manufactured dwelling park" means a place where four or more manufactured dwellings
44 are located, the primary purpose of which is to rent space or keep space for rent to any person for
45 a charge or fee.

1 (28) "Marina" means a moorage of contiguous dwelling units that may be legally transferred as
2 a single unit and are owned by one person where four or more floating homes are secured, the pri-
3 mary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

4 (29) "Marina purchase association" means a group of three or more tenants who reside in a
5 marina and have organized for the purpose of eventual purchase of the marina.

6 (30) "Month-to-month tenancy" means a tenancy that automatically renews and continues for
7 successive monthly periods on the same terms and conditions originally agreed to, or as revised by
8 the parties, until terminated by one or both of the parties.

9 (31) "Organization" includes a corporation, government, governmental subdivision or agency,
10 business trust, estate, trust, partnership or association, two or more persons having a joint or com-
11 mon interest, and any other legal or commercial entity.

12 (32) "Owner" includes a mortgagee in possession and means one or more persons, jointly or se-
13 verally, in whom is vested:

14 (a) All or part of the legal title to property; or

15 (b) All or part of the beneficial ownership and a right to present use and enjoyment of the
16 premises.

17 (33) "Person" includes an individual or organization.

18 (34) "Premises" means:

19 (a) A dwelling unit and the structure of which it is a part and facilities and appurtenances
20 therein;

21 (b) Grounds, areas and facilities held out for the use of tenants generally or the use of which
22 is promised to the tenant; and

23 (c) A facility for manufactured dwellings or floating homes.

24 (35) "Prepaid rent" means any payment of money to the landlord for a rent obligation not yet
25 due. In addition, "prepaid rent" means rent paid for a period extending beyond a termination date.

26 (36) "Recreational vehicle" has the meaning given that term in ORS 174.101.

27 (37) "Rent" means any payment to be made to the landlord under the rental agreement, periodic
28 or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit
29 to the exclusion of others and to use the premises. "Rent" does not include security deposits, fees
30 or utility or service charges as described in ORS 90.315 [(4) and] or 90.562.

31 (38) "Rental agreement" means all agreements, written or oral, and valid rules and regulations
32 adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and
33 occupancy of a dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement
34 is either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

35 (39) "Roomer" means a person occupying a dwelling unit that does not include a toilet and ei-
36 ther a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and
37 where one or more of these facilities are used in common by occupants in the structure.

38 (40) "Screening or admission criteria" means a written statement of any factors a landlord
39 considers in deciding whether to accept or reject an applicant and any qualifications required for
40 acceptance. "Screening or admission criteria" includes, but is not limited to, the rental history,
41 character references, public records, criminal records, credit reports, credit references and incomes
42 or resources of the applicant.

43 (41) "Security deposit" means a refundable payment or deposit of money, however designated,
44 the primary function of which is to secure the performance of a rental agreement or any part of a
45 rental agreement. "Security deposit" does not include a fee.

- 1 (42) “Sexual assault” has the meaning given that term in ORS 147.450.
- 2 (43) “Squatter” means a person occupying a dwelling unit who is not so entitled under a rental
3 agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter” does
4 not include a tenant who holds over as described in ORS 90.427 (11).
- 5 (44) “Stalking” means the behavior described in ORS 163.732.
- 6 (45) “Statement of policy” means the summary explanation of information and facility policies
7 to be provided to prospective and existing tenants under ORS 90.510.
- 8 (46) “Surrender” means an agreement, express or implied, as described in ORS 90.148 between
9 a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a
10 dwelling unit.
- 11 (47) “Tenant”:
- 12 (a) Except as provided in paragraph (b) of this subsection:
- 13 (A) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling
14 unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public
15 housing authority.
- 16 (B) Means a minor, as defined and provided for in ORS 109.697.
- 17 (b) For purposes of ORS 90.505 to 90.850, means only a person who owns and occupies as a
18 residence a manufactured dwelling or a floating home in a facility and persons residing with that
19 tenant under the terms of the rental agreement.
- 20 (c) Does not mean a guest or temporary occupant.
- 21 (48) “Transient lodging” means a room or a suite of rooms.
- 22 (49) “Transient occupancy” means occupancy in transient lodging that has all of the following
23 characteristics:
- 24 (a) Occupancy is charged on a daily basis and is not collected more than six days in advance;
- 25 (b) The lodging operator provides maid and linen service daily or every two days as part of the
26 regularly charged cost of occupancy; and
- 27 (c) The period of occupancy does not exceed 30 days.
- 28 (50) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occu-
29 pancy in a hotel or motel, that has all of the following characteristics:
- 30 (a) The occupant rents the unit for vacation purposes only, not as a principal residence;
- 31 (b) The occupant has a principal residence other than at the unit; and
- 32 (c) The period of authorized occupancy does not exceed 45 days.
- 33 (51) “Victim” means:
- 34 (a) The person against whom an incident related to domestic violence, sexual assault or stalking
35 is perpetrated; or
- 36 (b) The parent or guardian of a minor household member against whom an incident related to
37 domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the
38 perpetrator.
- 39 (52) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:
- 40 (a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven
41 days;
- 42 (b) There is a written rental agreement that defines the landlord’s and the tenant’s rights and
43 responsibilities under this chapter; and
- 44 (c) There are no fees or security deposits, although the landlord may require the payment of an
45 applicant screening charge, as provided in ORS 90.295.

1 **SECTION 3.** ORS 90.140 is amended to read:

2 90.140. (1) A landlord may require or accept the following types of payments:

3 (a) Applicant screening charges, pursuant to ORS 90.295;

4 (b) Deposits to secure the execution of a rental agreement, pursuant to ORS 90.297;

5 (c) Security deposits, pursuant to ORS 90.300;

6 (d) Fees, pursuant to ORS 90.302;

7 (e) Rent, as defined in ORS 90.100;

8 (f) Prepaid rent, as defined in ORS 90.100;

9 (g) Utility or service charges, pursuant to ORS 90.315 [(4)], 90.568 or 90.572;

10 (h) Late charges or fees, pursuant to ORS 90.260; and

11 (i) Damages, for noncompliance with a rental agreement or ORS 90.325, under ORS 90.401 or as
12 provided elsewhere in this chapter.

13 (2) A tenant who requests a writing that evidences the tenant's payment is entitled to receive
14 that writing from the landlord as a condition for making the payment. The writing may be a receipt,
15 statement of the tenant's account or other acknowledgment of the tenant's payment. The writing
16 must include the amount paid, the date of payment and information identifying the landlord or the
17 rental property. If the tenant makes the payment by mail, deposit or a method other than in person
18 and requests the writing, the landlord shall within a reasonable time provide the tenant with the
19 writing in a manner consistent with ORS 90.150.

20