

# Commercial, Consumer, Debtor-Creditor, and Lien Law

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\*The authors acknowledge the contribution of **Ted Piteo**, law student at Lewis & Clark Law School and law clerk at Lewis & Clark Legal Clinic, who provided invaluable help.

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## I. INTRODUCTION

The 2007 Legislature enacted a number of laws that will affect the practice of debtor-creditor and consumer law in Oregon. By far the largest number of bills that affect practice in these areas are in the consumer protection field. Significant changes were also made in procedure and execution.

## II. CONSUMER PROTECTION

### A. Annoyance, Privacy, Identity Theft

#### 1. SB 117 (ch 441) No-Call Program

SB 117 amends ORS 646.651–646.574 to reinstate the Oregon no-call program, which was preempted by federal law. It allows the attorney general to designate a federal do-not-call registry, including but not limited to the registry maintained by the Federal Trade Commission under 16 CFR part 310, in lieu of an Oregon do-not-call registry. The bill also expands the do-not-call registry to include cellphone customers of telecommunication companies.

SB 117 took effect on June 18, 2007.

#### 2. SB 583 (ch 759) Oregon Consumer Identity Theft Protection Act

SB 583 addresses four main topics.

The first topic is breach of security of computerized data containing a consumer's *personal information* (as defined in SB 583, §2(11)). Upon discovery of a breach of security, the person who owns, maintains, or otherwise possesses the data must give each affected consumer expeditious notice of the breach. Methods of notice are provided, including a substitute notice if the cost of notice will exceed \$250,000 or affect more than 350,000 consumers. If more than 1,000 consumers are affected, the person must also notify all consumer reporting agencies. Notice is not required if, after an appropriate investigation, the person determines that no reasonable likelihood of harm will result from the breach of security, and notice

may be delayed in some circumstances if a law enforcement agency so requests. SB 583, §3.

The second topic is the consumer's right to place a freeze on the consumer's consumer report. If a consumer requests a freeze, then information from the consumer report may not be released without the prior express authorization of the consumer. SB 583, §4. The bill provides procedures to be followed to implement a requested freeze and to implement the termination or temporary release of the freeze. SB 583, §§5, 7. Consumer reporting agencies may charge a fee not to exceed \$10 except in the case of a victim of identity theft. SB 583, §6. Certain exceptions apply to the freeze, including but not limited to:

(1) Persons with an existing account, contract, or debtor-creditor relation with the consumer may obtain the consumer's report for certain purposes, including collection;

(2) Persons acting pursuant to a judgment, court order, warrant, or subpoena;

(3) Government agencies investigating fraud; collecting taxes, judgments, or orders; or otherwise fulfilling certain statutory duties;

(4) Persons performing prescreening under the Fair Credit Reporting Act, 15 USC §§1681a–1681u; and

(5) Persons screening an applicant for a residential tenancy. SB 583, §8. Persons taking applications from a consumer for credit or other purposes for which consumer reports are generally obtained may consider the application incomplete if obtaining the report is prohibited because of a freeze. SB 583, §9.

The third topic is the release of Social Security numbers. The bill bars printing a person's Social Security number on materials mailed to the consumer unless redacted or on any card required for the consumer to access products or services. A person may not communicate or otherwise make available to the public a consumer's Social Security number. Exceptions to this restriction apply for situations in which the release of a number is required by law, for internal use, for enforcement of a judgment or court order, when applicable law mandates records to be made available to the public, and some other situations. SB 583, §11.

The fourth topic is safeguarding consumer personal information. Any person who owns, maintains, or otherwise possesses data that include information that is used in the course of the person's business must develop, implement, and maintain safeguards to protect the security of the personal information, including disposal of the data. The bill gives examples of procedures that will comply with this requirement. Small businesses may adopt procedures appropriate to their size and complexity. SB 583, §12. This part of the bill becomes operative January 1, 2008. SB 583, §16.

The Department of Consumer and Business Services is given authority to make rules and to investigate violations of the act. Violations can result in civil penalties not to exceed \$1,000 each, but each violation is a separate offense and for continuing violations, each day's continuance is a separate offense. The maximum

civil penalty is \$500,000. These penalties are in addition to any other consequence which may be applicable. SB 583, §§13–14.

SB 583 took effect on October 1, 2007.

**3. SB 447 (ch 583) Identity Theft Involving Deceased Person**

ORS 165.800 criminalizes the identity theft of “personal identification” of “another person.” SB 447 amends the statute to provide that *another person* includes a deceased person and *personal identification* includes identifying information at a trust company.

**4. SB 464 (ch 584) Aggravated Identity Theft**

SB 464 creates the Class B felony of aggravated identity theft. A person commits aggravated identity theft if the person commits identity theft (1) in 10 or more incidents within a 180-day period (2) and has a previous conviction for aggravated identity theft (3) in which the losses incurred in a single or aggregate transaction are \$10,000 or more within a 180-day period or (4) and has custody or control of 10 or more pieces of personal identification from 10 or more different persons.

**5. SB 950 (ch 181) Confidentiality of Library Patrons’  
E-mail Addresses**

For a discussion of SB 950, see chapter 4.

**6. SB 863 (ch 823) Automatic Dialing and Announcing Devices**

SB 863 substantially rewrites the law on automatic dialing machines, formerly in ORS 759.290 (which SB 863, §6, repeals). The new law prohibits the use of such devices unless the device is operated in a manner that disconnects within 10 seconds after the telephone subscriber hangs up. The device must not call emergency service agencies, hospitals, health care facilities, doctors’ offices, poison control centers, or suicide prevention or domestic relations counseling services. The device may not call a consumer who is on a do-not-call list (unless the caller has an existing business relationship with the consumer, is a debt collector, is a public safety agency, or is a school district). Calls must be made between 9:00 a.m. and 9:00 p.m. SB 863, §2. The caller may not misrepresent or falsify its identity or that of any person on whose behalf the call is made, the caller’s phone number or location, or the purpose of the call. The caller may not alter, misrepresent, or falsify its caller identification information. SB 863, §3. Violation of these provisions is an unlawful trade practice under ORS 646.608, thereby subjecting the perpetrator to the usual panoply of sanctions for such practices. However, a civil penalty for a violation may not exceed \$5,000. SB 863, §4.

**B. Interest, Usury, and Other Limitations**

**1. HB 2202 (ch 358) Fees for Check-Cashing Businesses**

HB 2202 applies to any *check-cashing business*, which is defined as a person who conducts a business that for a fee, charge, or other consideration provides money or credit in exchange for a payment instrument. A check-cashing business does not include credit unions or financial institutions licensed under ORS 706.008. A *payment instrument* is a check, warrant, or draft issued by a governmental entity; a payroll check; or a personal check, money order, or any other check. HB 2202, §1.

HB 2202 provides that a person cannot operate a check-cashing business without obtaining a license from the director of the Department of Consumer and Business Services. The bill sets forth the requirements to obtain a license. HB 2202, §§3–6.

HB 2202 prohibits a check-cashing business from charging an excessive fee. A fee for cashing a payment instrument issued by the federal government or an agency thereof, the state of Oregon or an agency thereof, or the government of the municipality in which the person is cashing the payment instrument is excessive if it is greater than \$5 or 2% of the face value of the payment instrument if the person provides valid and current government-issued photo identification, or \$5 or 2½% of the face value if the person does not present valid and current government-issued photo identification. HB 2202, §7(1)(a).

A fee is excessive for a payment instrument that is a payroll check, or issued by a state other than Oregon, if the fee is greater than \$5 or 3% of the face value of the instrument if the person provides valid and current government-issued photo identification, or \$5 or 3½% of the face value if the person does not provide valid and current government-issued photo identification. HB 2202, §7(1)(b).

For any other type of payment instrument, the fee may not exceed the greater of \$5 or 10% of the face value of the payment instrument. HB 2202, §7(1)(c). All types of payment instruments are subject to a maximum fee of \$100, regardless of how they are issued. The fees specified in HB 2202 do not affect the fees, statutory damages, or other charges a person may collect under ORS 30.701 for dishonored payment instruments. HB 2202, §7(2)–(3).

A check-cashing business must deposit or present for payment any payment instruments not later than one business day after the date of the transaction. HB 2202, §9(2).

HB 2202 requires a check-cashing business to conspicuously display a schedule of fees and file the schedule with the director of the Department of Consumer and Business Services. The bill contains a number of recordkeeping requirements and empowers the director of the Department of Consumer and Business Services to conduct investigations, suspend or revoke licenses, impose civil penalties, and order a check-cashing business to repay excessive fees. HB 2202, §§10–15.

HB 2202 took effect on June 12, 2007.

**2. HB 2203 (ch 472) Payday and Title Loan Lenders;  
Information Sharing**

HB 2203, 2204, and 2871 are companion bills to HB 2202 that make significant changes to the interest rates and fees charged by payday and title loan lenders, and licensees under the Consumer Finance Act, ORS chapter 725.

HB 2203 amends ORS 725.622, applicable to payday lenders, to add an additional provision that a lender may not charge the consumer more than the actual amount that the vendor or service provider charges the lender for access or use of the new electronic information-sharing system mandated by HB 2203. The bill also amends ORS 725.622 to provide that a payday lender may recover amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court. HB 2203, §3. These provisions become operative on January 1, 2008. HB 2203, §11.

The primary impact of HB 2203 is in three areas. First, the bill brings payday or title loan lenders within the coverage of the Oregon Consumer Finance Act (ORS chapter 725) if the lender makes a loan to a consumer who resides in or is domiciled in Oregon and the consumer (1) negotiates or agrees to the terms of the loan, or enters into or executes a loan contract, in person, by mail, by telephone, or through the Internet while physically present in Oregon, or (2) makes a payment on the loan in Oregon. HB 2203, §4. These provisions became operative on July 1, 2007. HB 2203, §10.

Second, the bill authorizes the director of the Department of Consumer and Business Services to contract with a vendor or service provider to implement an information-sharing system by which a lender may determine whether a consumer has an outstanding loan, the number of outstanding loans, the dates of the loans and any renewals, and other information necessary to comply with ORS 725.600–725.625. The director is required to implement rules to ensure at a minimum that the information is accessible to lenders in Oregon and secured against public disclosure or unauthorized acquisition. A vendor or service provider may charge lenders a fee for use of the system in an amount approved by the director. A lender subject to ORS 725.600–725.625 must enter or update required information into the system within one business day after any transaction that generates information required by the system, and comply with other updating requirements. HB 2203, §5. These provisions become operative on January 1, 2008. HB 2203, §11.

Third, the bill prohibits a lender from depositing a consumer's check, withdrawing funds electronically from a consumer's account, or otherwise collecting principal, interest, or fees unless at the time of the loan transaction the lender has a current and valid license to make loans in Oregon. There are certain cure provisions for a lender who violates this prohibition. HB 2203, §6. These provisions became operative on July 1, 2007. HB 2203, §10.

HB 2203 took effect on June 19, 2007.

### 3. HB 2204 (ch 473) Title Loan Limits

HB 2204 amends ORS 725.600 and 725.615 to limit the maximum interest rate, origination fees, collection fees, and loan terms for title loans.

HB 2204 amends ORS 725.600(4) by adding a new subsection (c), which includes in the definition of *title loan* a sale-leaseback arrangement between a consumer and a purchaser for a motor vehicle, recreational vehicle, boat, or mobile home under certain specified conditions. HB 2204, §1.

HB 2204 amends ORS 725.615 by providing that a title lender may not (1) make or renew a title loan at a rate of interest in excess of 36% per annum, (2) charge an origination fee for a new title loan of more than \$10 for each \$100 of the loan, (3) make or renew a title loan for a term of less than 31 days, (4) charge a consumer any fee or interest other than provided in ORS 725.615, (5) renew an existing loan that is secured by one title more than two times after the loan is first made, and (6) make a new title loan to a consumer within seven days of the date on which a previous title loan expires. HB 2204, §2.

HB 2203 amended HB 2204 to add an additional provision that a title lender may not charge the consumer more than the actual amount that the vendor or service provider charges the lender for access or use of the new electronic information-sharing system mandated by HB 2203. HB 2203, §2a.

HB 2204, §2, further amends ORS 725.615 by adding a new section (2)(a), which prohibits a title lender from charging a consumer more than one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many checks or debit agreements the lender obtains from the consumer for the transaction. Section (2)(a) also limits to the fee to a maximum of \$20.

A new section (2)(b) prohibits a title lender from collecting a fee for a dishonored check, or seeking statutory damages and attorney fees, under ORS 30.701. The title lender may, however, recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check.

HB 2871 amends HB 2204, which in turn amends ORS 725.340, to set a maximum annual percentage rate for a loan made by a licensee of the greater of 36% or 30 percentage points in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank of San Francisco. The discount rate is established on the first business day of each year and is applicable to all loans for the following 12 months. HB 2871, §3a; HB 2204, §3. On July 2, 2007, the director of the Department of Consumer and Business Services was required to determine the applicable annual percentage rate for the remainder of 2007. HB 2871, §13(1). The bill allows the licensee to collect certain specified charges in addition to the interest charge, and provides that the annual percentage rate and finance charge are calculated in accordance with the Truth in Lending Act. HB 2871, §3a. Other provisions of ORS chapter 725 that provide that the interest rate is whatever is agreed to by the licensee and consumer are repealed. HB 2871, §§3a, 4.

HB 2204 took effect on July 1, 2007.

**4. HB 2871 (ch 603) Consumer Loan Broker Licensing**

HB 2871 amends portions of the Oregon Consumer Finance Act, ORS chapter 725, to require a broker or facilitator of a consumer finance loan to obtain a license from the Department of Consumer and Business Services.

The bill amends the Consumer Finance Act to add definitions of the terms *broker or facilitator* and *consumer finance loan*. A *broker or facilitator* is a person who conducts a business in which, for a fee, the person acts as an agent, broker, or facilitator between the lender and the consumer for a loan. A *consumer finance loan* is a loan or line of credit that has periodic payments and terms longer than 60 days. A broker or facilitator must first obtain a license from the Department of Consumer and Business Services before the person can act as broker or facilitator for a person making a loan of \$50,000 or less that is a payday loan, title loan, or consumer finance loan. HB 2871, §2.

ORS 725.622 is amended to repeal the provision that a payday lender may not charge an origination fee for a new loan of more than \$10 for each \$100 of the amount of the loan. A payday lender may not charge during the term of a new loan, including all renewals, more than one origination fee of \$10 per \$100 of the loan amount, or \$30, whichever is less. HB 2871, §10.

HB 2871 took effect on July 1, 2007.

**5. HB 2220 (ch 360) Licensing and Recordkeeping Requirements for Pawnbrokers**

HB 2220 amends the licensing and recordkeeping requirements for pawnbrokers under ORS chapter 726. It allows the director of the Department of Consumer and Business Services to determine the need and frequency of licensee examinations, which were required every two years under prior law. HB 2220, §6 (amending ORS 726.250). It allows licensees to keep records electronically rather than only in ink as required under prior law. HB 2220, §7 (amending ORS 726.280). The bill eliminates the residency and license application posting requirement for licensees. HB 2220, §§1–2.

**6. SB 122 (ch 304) Payment Instruments that Create a Payment Obligation When Cashed**

SB 122 amends the Unlawful Trade Practices Act by adding to the list of prohibited practices in ORS 646.608 that a person may not mail a check, draft, or other payment instrument that when deposited or cashed obligates the depositor or payee to make any payment. The prohibition does not apply to an extension of credit or an offer to lend money.

**C. Enforcement by State**

**SB 192 (ch 306) Enforcement Powers of Department of Consumer and Business Services**

The failure of a construction contractor to comply with a number of designated statutes, including the provisions of ORS chapter 455, is a basis for suspension or revocation of a contractor’s license, or other sanctions. ORS 701.100. The director of the Department of Consumer and Business Services may impose the same type of sanctions for the failure of any business with a registration, certification, or license to perform work under laws administered by the department. ORS 455.125. SB 192 amends ORS 455.125 to provide that for the purposes of ORS 701.100, if the director or an advisory board denies, suspends, conditions, or revokes a registration, certification, license, or other authority to conduct business, that action may be treated as a failure to comply with ORS chapter 455. SB 192 provides that the department may administer and enforce these provisions in the same manner as any advisory board. This expands the scope of action against building contractors for violations of the statute.

ORS 455.129 specifies the circumstances under which a regulatory body listed in the statute may take adverse action against a license, certificate, registration, or application. SB 192 adds five new bases for such action.

The bill amends ORS 455.450 to bring within the scope of ORS chapter 455 any person who “assist[s]” another person in the violation of any final order of the director, an advisory board, a state administrative officer or local appeals board, or building official or inspector “concerning the application of the state building code in a particular case or concerning a license, certificate, registration or other authorization.”

**D. Motor Vehicles**

**1. HB 2941 (ch 382) Time Limit for Returning Buyer’s Trade-in**

The Oregon Lemon Law, ORS 646.315–646.375, protects buyers of new motor vehicles sold in Oregon. HB 2941 amends the law by deleting the requirement that the vehicle be sold in Oregon. HB 2941, §1. As amended, the law will apply to any Oregon resident who purchases a vehicle in any state.

Under current law, a consumer who finances the purchase of a motor vehicle may take possession of the vehicle before the financing is approved by the prospective lender. ORS 646.877 sets forth the rights of the buyer and seller when the financing is not successful. One of the requirements is that if a lender does not agree to finance the transaction on the exact terms negotiated between the buyer and the seller, the seller must return to the buyer all items of value received from the buyer as part of the transaction. The typical item to be returned is the buyer’s trade-in.

The statute currently does not provide a time frame within which the seller must return the items to the buyer. HB 2941 amends the statute to provide that if the seller has not received “final approval of funding” from the lender, the items must

be returned within 14 days after the date on which the buyer takes possession of the motor vehicle. HB 2941, §2. *Final approval of funding* is defined as “a lender’s irrevocable agreement to finance a sale or lease of a motor vehicle according to the exact terms that the seller and buyer have negotiated.” HB 2941, §2.

Under current law, if the financing is not successful, the buyer must return to the seller all items of value received as part of the transaction. The seller may include in the contract of purchase that if within 20 days of the date the buyer takes possession, the seller sends a notice to the buyer that financing is unavailable, the buyer is liable to the seller for a reasonable charge per mile for use of the vehicle. If the buyer returns the vehicle within five days of the mailing of the notice, the seller may charge the buyer for miles driven during the first 20 days that the buyer had possession. HB 2941 amends ORS 646.877 to reduce the two 20-day periods to 14-day periods. HB 2941, §2.

## **2. HB 3386 (ch 685) Motor Vehicle Protection Products with Warranties**

HB 3386 establishes the comprehensive regulation of vehicle protection warranties and amends the Unlawful Trade Practices Act to create a cause of action for consumers.

The bill applies to persons in the business of offering vehicle protection products for sale to consumers in Oregon. A *vehicle protection product* is a system or service that is designed to prevent a particular type of loss or damage to a vehicle from theft and that is (1) installed on a vehicle or provided as a service to a specific vehicle and (2) accompanied by a written warranty. A *reimbursement insurance policy* is an insurance policy issued to a warrantor that reimburses the warrantor for expenses incurred in complying with the terms of a vehicle protection product warranty, or pays on a warrantor’s behalf all obligations due under the warranty. A *warrantor* is a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer. HB 3386, §1.

HB 3386 prohibits a person from selling a vehicle protection product that includes a vehicle protection product warranty unless at the time of the sale the person provides to the consumer either a copy of the warranty or a receipt for the purchase of the vehicle protection product followed by a copy of the warranty within the next 30 days. The warranty must disclose a long list of information, including the scope of coverage and procedure for making claims. HB 3386, §3.

HB 3386 prohibits a warrantor from doing business in Oregon without registering with the director of the Department of Consumer and Business Services on a form that complies with the requirements set forth in the bill. HB 3386, §4.

A warrantor must obtain a reimbursement insurance policy from a qualified reimbursement insurer that covers all liability to the consumer under all vehicle protection product warranties that the warrantor issues. HB 3386 sets forth mandatory provisions for the insurance policy. HB 3386, §§5–6.

HB 3386 mandates recordkeeping requirements for warrantors and prohibits the use in the warrantor's name of *casualty*, *surety*, *insurance*, *mutual*, or any other word descriptive of the casualty, surety, or insurance business. HB 3386, §§8–9. The bill clarifies that vehicle product protection warranties are neither insurance nor subject to Oregon insurance laws.

A violation of HB 3386 is a prohibited practice under the Unlawful Trade Practices Act, ORS 646.608. HB 3386, §13.

HB 3386 becomes operative on July 1, 2008. HB 3386, §15(1).

### **3. SB 431 (ch 565) Motor Vehicles Towed by Landlord**

SB 431 amends ORS chapter 90 by adding new provisions regarding towing of motor vehicles from a landlord's premises. Except for abandoned vehicles covered by ORS 90.425, a landlord may have a vehicle removed from the premises without notice only under seven delineated circumstances, all of which relate to illegally parked vehicles.

One of the prescribed circumstances is a vehicle parked in a space reserved for tenants without displaying an applicable parking tag, sticker, or other device as required by SB 431. A landlord may have a vehicle towed in this circumstance only if the landlord provides parking tags, stickers, or other devices that identify authorized vehicles and enters into a written agreement with the vehicle owners that complies with the statutory requirements.

Another prescribed circumstance is a vehicle parked in a specific parking space assigned to a tenant. A landlord may tow such a vehicle only with the agreement of the tenant.

Finally, a landlord may have a motor vehicle that is inoperable, but otherwise parked in compliance with an agreement with the landlord, removed from the premises if the landlord affixes a prominent notice to the vehicle that the vehicle will be towed if it is not removed or otherwise brought into compliance with the agreement. The notice must be affixed for at least 72 hours before the vehicle is removed. The term *inoperable* is meant in the mechanical sense and does not apply to vehicles with expired plates or tags.

SB 431 does not affect the landlord's obligations under ORS chapter 98.

### **4. SB 116 (ch 538) Towing Company Practices**

SB 116 creates greater local governmental autonomy over predatory towing practices in two distinct areas: acquisition of towing business and notice to the owner of a towed vehicle. It also establishes new permit requirements. The bill gives authority to local government to regulate the price of any towing services lacking the express consent of vehicle owner.

The bill establishes a few ground rules for protection against predatory towing. Solicitation of services is prohibited within 1,000 feet of an automobile accident unless by a predefined contract with a collision services provider. Towers may not

monitor parking areas for possible business unless the times monitored are clearly posted in each parking spot or entrance. No consideration may change hands for any privileged towing contract between towers and parking facility owners. SB 116, §3.

To expedite recovery, notice to the owner of a towed car must meet key elements of price and location. The notice must have in boldface the price charged for services, payment type accepted, and a contact telephone number for both the towing agency and for the storage facility (if owned by the third party). Towers must provide universal redemption to all impounded cars in and outside normal business hours within 60 minutes of request. Towers may not charge a fee for retrieval of emergency items from the vehicle unless outside mandated business hours. HB 116, §§4–5.

**5. HB 2438 (ch 371) Motor Vehicle Dealer Illegal  
Consignment Practices**

ORS 822.060 contains the elements of the offense of illegal consignment practices for a motor vehicle dealer. One of the elements is the failure of the dealer to provide a statutorily prescribed written disclosure to the consignor of a motor vehicle. HB 2438 modifies the required language to more clearly disclose whether there is a security interest in the vehicle.

**6. HB 3379 (ch 684) Criminal Possession of Rented or  
Leased Vehicle**

HB 3379 creates a new Class C felony for criminal possession of a rented or leased vehicle. The elements include the knowing failure to return a rented vehicle within three calendar days of receipt of a written demand, or the knowing failure to return a leased vehicle within three calendar days of receipt of a written demand sent after the failure to pay a periodic payment when due for a period of 45 days. HB 3379 sets forth the form and content requirements of the written demand, as well as available affirmative defenses.

**E. Utilities**

**HB 2792 (ch 211) Delinquency Notice to Property Owner**

HB 2792 amends ORS 757.069 to provide that if a water utility customer fails to pay a water bill for more than 120 days after the due date, the utility must mail a notice of the delinquency to the persons who are listed as the property owners in the county tax records “only if the utility asserts that the property owners are responsible for the bill.” Under current law, a utility mailed the notice to the property owner even if the owner was not responsible for the bill.

**F. Services and Benefits**

**1. HB 2993 (ch 416) Informed Choice in Delivery of In-home Services**

ORS 410.020 reflects the goals of Oregon in coordinating and providing services to older citizens and citizens with disabilities. HB 2293 amends the statute to ensure that this target group is “able to make informed choices regarding the delivery of in-home care services by providing information about their responsibilities as employers of in-home care providers or, alternatively, about the responsibilities of an in-home care agency to provide services.”

HB 2993 took effect on June 13, 2007.

**2. SB 865 (ch 526) Food Stamp Eligibility**

SB 865 amends ORS 411.806–411.845 by directing the Department of Human Services, no later than October 1, 2007, to seek approval from the United States Department of Agriculture under 7 USC §2026 to disregard the amount of the annual cost-of-living adjustment for Social Security benefits and for Supplemental Security Income benefits in determining eligibility for food stamp benefits. If approval is obtained, the department must adopt temporary rules consistent with the approval. The department must annually renew the application for calculating food stamp benefits when the stamp claimant is also receiving federal assistance.

SB 865 took effect on June 20, 2007.

**3. HB 2155 (ch 766) Amortization of Veterans’ Home Loans**

HB 2155 increases the maximum loan amortization period for veterans’ home loans from 30 to 40 years.

**4. HB 2159 (ch 43) Cap on Veterans’ Farm Loans**

HB 2159 removes the \$185,000 cap on veterans’ farm loans under the Veterans’ Affairs (VA) program, making the federal cap on VA loans equally applicable to farm and nonfarm loans.

**5. SB 41 (ch 29) Oregon Telephone Assistance Program**

SB 41 expands the group of eligible participants in the Oregon Telephone Assistance Program to include certain residents of long-term-care facilities or residential care facilities who receive benefits under ORS chapter 414 and whose incomes do not exceed 135% of federal poverty guidelines.

**6. SB 362 (ch 67) Oregon Prescription Drug Program**

SB 362 expands the list of eligible participants in the Oregon Prescription Drug Program (ORS 414.312–414.320) to include those who are underinsured for prescription drugs, private entities, and labor organizations. It removes an annual application requirement.

This bill took effect on April 26, 2007.

**G. Service Members**

**HB 2093 (ch 400) Administrative Proceedings; State Active Duty**

HB 2093 amends ORS 399.238 to broaden the definition of *service member* to include service outside the state under Title 32 of the United States Code and to include active state duty under ORS 399.075. It also broadens the protections afforded to service members to include relief in administrative proceedings in addition to judicial proceedings.

**H. Other Consumer Protection**

**1. SB 118 (ch 223) Abnormal Disruption of the Market; Unconscionably Excessive Price**

SB 118 amends ORS 401.015 to authorize the governor to declare an abnormal disruption of the market by proclamation or as part of a state of emergency declared under ORS 401.015. The bill sets forth the geographic and time limitations for such a declaration. SB 118, §3. An *abnormal disruption of the market* is defined as “any human created or natural event or circumstance that causes essential consumer goods or services to be not readily available.” SB 118, §5. The bill adds definitions of *essential consumer goods or services* and *human created or natural event or circumstance*. These provisions apply to events or circumstances that occur on or after May 30, 2007. SB 118, §7.

During a declaration of an abnormal disruption of the market, a merchant or wholesaler may not sell or offer to sell essential consumer goods or services at an unconscionably excessive price. The issue of unconscionably excessive price is a matter of law, and the bill sets forth guidelines for determining the issue. SB 118, §4. SB 118 amends ORS 646.607 to provide that the foregoing is an unlawful trade practice. SB 118, §6. The remedies under SB 118 are in addition to any other existing remedies. These provisions apply to sales or offers to sell essential consumer goods or services that are made on or after May 30, 2007. SB 118, §7.

SB 118 took effect on May 30, 2007.

**2. SB 484 (ch 890) Forum Selection in Consumer Contracts**

SB 484 allows a consumer to revoke a provision in a consumer contract (for the purchase of goods or services for personal, family, or household purposes with a total cost of \$15,000 or less) that requires the consumer to assert or defend a claim in a forum not in this state. If the provision requires arbitration, the revocation affects only the location of the arbitration. The bill is limited to contracts entered

into by a consumer who was a resident of the state at the time. Attorney fees may be awarded to a consumer who has to litigate the attempted enforcement of the revoked provision.

### III. COURTS AND PROCEDURE

#### A. HB 2316 (ch 125) Jurisdiction of Small Claims Court

HB 2316 amends ORS 46.405, 46.425, 46.461, 51.080, 55.011, 55.095, and 133.055 to increase the jurisdiction of small claims courts from \$5,000 to \$7,500. The bill applies to all actions commenced in the small claims department of a court on or after January 1, 2008, regardless of when the underlying claim arose.

#### B. HB 2331 (ch 860) Fees and Costs

HB 2331 changes numerous filing fees and other fees collected in both circuit and appellate courts. The bill also establishes temporary surcharges to be collected for most filings. HB 2331, §15. By order, the chief justice may impose fees for filing of certain motions. HB 2331, §29.

The fee prescribed in ORS 21.325 for issuance of a writ of garnishment is now \$12 (up from \$7). HB 2331, §10. Fees paid to a lawyer to issue a writ are recoverable under ORS 18.999 up to \$12. HB 2331, §11. Prevailing-party fees in small claims, county, and justice court money damages matters are now \$85, up from \$75. HB 2331, §16.

Most of the changes to fees apply to filings made or judgments entered on or after September 1, 2007, but some are postponed to July 1, 2009. *See* HB 2331, §§25, 27.

HB 2331 took effect on July 31, 2007.

### IV. JUDGMENTS, EXECUTION, AND GARNISHMENTS

#### A. SB 345 (ch 580) Notice of Execution on Sale of Real Property

SB 345 amends ORS 18.875 to provide that a judgment creditor seeking the sale of real property under a writ of execution must direct the sheriff to include a warning disclosure in the notice of sale required by ORS 18.924. The warning notice encourages a prospective bidder to independently investigate (1) the priority of the interest of the judgment creditor, (2) applicable land use laws, (3) approved uses for the property, (4) limits on farming or forest practices on the property, (5) rights of neighboring owners, and (6) applicable environmental laws.

SB 345 also amends ORS 18.930 to provide that at least 10 days before the date first set for an execution sale of real property, the judgment creditor in possession of the property must give the sheriff a record that shows interests of record in the property. The sheriff must make this report available to bidders who appear at the sale. SB 345 also provides immunity to a civil action because of good-faith errors or omissions in the report.

**B. SB 501 (ch 339) Amount to Be Included in Money Judgment Form**

ORS 18.042 delineates the information that must be included in a civil judgment that includes a money award. SB 501 amends the statute to clarify that the information must include the amount of money awarded in the judgment, separate from interest as of the date of the judgment and payment of costs, disbursements, and attorney fees. ORS 18.042 provides that when a judgment creates a lien, certain information must be noted by the court administrator in a separate record. SB 501 amends the statute to provide that this record is called the “judgment lien” record.

**C. HB 2869 (ch 255) Time for Sheriff’s Garnishment Sale; Forcible Entry in Certain Child Custody Retrieval Proceedings**

HB 2869 is a lengthy bill that modifies a number of statutes to provide greater flexibility to the sheriff in the garnishment process, enforcement of the writ of execution of judgment of restitution, and a variety of orders in child custody cases.

HB 2869 amends ORS 18.758 to extend the time period from 15 to 20 days within which the sheriff must sell property in carrying out a garnishment. This provision applies to garnishments issued on or after June 1, 2007. HB 2869, §§1–2.

HB 2869 amends ORS 105.135 to provide that in an eviction action, a sheriff may serve a facsimile of a certified true copy of a summons and complaint that is transmitted to the sheriff by a trial court administrator or another sheriff. HB 2869, §3.

HB 2869 amends the writ of execution form in ORS 105.156 by deleting the language instructing the sheriff to remove the defendant from the premises at the end of the applicable four-day period. HB 2869 replaces this language with the following instruction:

You are ordered to enter the premises and remove the defendant and any other individual present on the premises who is subject to the judgment and return possession of the premises to the plaintiff. You may use all reasonable force that may be necessary to enter the premises and remove individuals who are subject to the judgment.

HB 2869, §4.

In regard to domestic relations, HB 2869 amends ORS 107.437 and 107.732 to allow an order to retrieve a child to authorize the forcible entry into specified premises. HB 2869, §§5, 8. HB 2869 also provides that under certain circumstances a sheriff may enter into the Law Enforcement Data System a facsimile of a certified true copy of a restraining order under ORS 107.718, 124.020, and 419B.845. HB 2869, §§7, 9, 14.

HB 2869 took effect on June 1, 2007.

**D. SB 133 (ch 483) Effect of Disclaimers on Restitution**

SB 133 amends ORS 105.643 by adding one more exception to functional disclaimers. The disclaimer is barred if its purpose or its effect is to prevent recovery of money or property to be applied toward fulfillment of a judgment of restitution to a victim of a criminal offense.

**E. SB 303 (ch 496) Wages Exempt from Garnishment;  
Garnishments Involving Payroll Administrators**

SB 303 amends ORS 18.385 and related statutes to increase the base wage exemption from garnishment from \$170 to \$183 for any period of one week or less; from \$340 to \$366 for any two-week period; from \$268 to \$394 for any half-month period; and from \$731 to \$786 for any one-month period. This amendment applies to wage garnishments delivered on or after January 1, 2008. SB 303, §§9–13.

Effective for wage garnishments delivered on or after January 1, 2009, these amounts are further increased to \$196 for any period of one week or less; \$392 for any two-week period; \$420 for any half-month period; and \$840 for any one-month period. SB 303, §§14–18.

The amendments to ORS 18.385 were proposed by the labor commissioner to reflect federal poverty-level guidelines. In May 2007, however, while the Oregon Legislature was in session, Congress enacted a new minimum-wage scheme. Fair Minimum Wage Act of 2007, Pub L No 110-28, §8102(a), 121 Stat 188, 189 (codified at 29 USC §206(a)(1)). The federal minimum wage increased on July 24, 2007, and it will increase twice more, on July 24, 2008, and July 24, 2009.

Consequently, the current exemption amounts in ORS 18.385 are superseded by 15 USC §1673 (maximum allowable garnishment is based on federal minimum wage) as of July 24, 2007. In January 2008, the exemption amounts in SB 303 will control, but only until July 24, 2008, when the federal minimum wage again increases. The federal exemption amounts will continue to apply despite the provision in SB 303 that would increase the Oregon exemption amounts again in January 2009, because the Oregon amounts will still be below the applicable federal amounts. When the federal minimum wage rises on July 24, 2009, the exemption amounts will increase correspondingly.

SB 303 also reconciles the garnishment statutes with the fact that many employers offer direct-deposit options to their employees or contract with third-party payroll administrators. The timing of a garnishment may conflict with the obligation of the employer to deposit the employees' wages or notify the payroll administrator of the amount of wages to be paid.

SB 303 amends ORS 18.618 and related statutes to provide that wages owing by a garnishee to a debtor are not garnishable if (1) the writ is delivered within two business days before the debtor's normal payday, (2) the debtor's wages are paid by direct deposit to financial institution, or the garnishee uses the Oregon Department of Administrative Services or an independent contractor as a payroll administrator, and (3) before the writ is delivered, the employer issued instructions to the financial

institution or payroll administrator to pay the debtor for the pay period. Employer responses to requests for garnishment must contain notes to the effect that each of these conditions has been met for each individual wage-earner's garnishment.

The amendments to ORS 18.628 become effective for writs of garnishment delivered on or after January 1, 2008, the effective date of SB 303.

**F. HB 2314 (ch 204) Fees Paid to Private Collection Agencies**

ORS 697.105 authorizes a public body to use a private collection agency to collect a debt owed to the public body and to add a reasonable fee to the amount of the debt for the collection agency fee incurred. ORS 697.115 allows a person using a private collection agency to collect a commercial debt to add the same fee to the amount of the debt. HB 2314 amends both these statutes to clarify that the fee is to "compensate" the public body or the person "in whole or in part" for the collection agency fee.

HB 2314 took effect on May 30, 2007.

**G. HB 2124 (ch 356) Child Support Garnishments and Withholding Orders**

HB 2124 allows the state child-support program to contract with financial institutions for payment of garnishment search fees on a periodic basis rather than with each writ issued. It also amends the timing of wage withholding. A wage withholding order will generally be effective for the first pay period after the service of the order, but if the employer has already calculated the payroll for that period and has already prepared a paycheck or submitted a deposit for payroll at that time, the withholding begins with the second pay period.

**H. HB 2913 (ch 663) Foreign Judgments**

HB 2913 provides that a judgment of a tribal court of a federally recognized tribe that complies with 26 USC §414(p) as a domestic relations order is a domestic relations order made under the laws of this state for the purpose of 26 USC §414(p).

HB 2913 took effect on June 27, 2007.

**I. SB 306 (ch 430) Reinstated Spousal Support Judgments**

SB 306 makes changes to ORS 107.136 regarding the circumstances and terms of any reinstatement of a previously terminated spousal support award. Although not explicit in the statute, testimony before the legislature made clear that a reinstated spousal support award has no retroactive lien effect.

**J. SB 307 (ch 22) Extension of Remedies for Judgments for Support**

SB 307 corrects a glitch in ORS 18.180 so that any judgment under ORS 107.105(1)(f) that provides for future payment of money may be extended under

ORS 18.182. The law previously was limited to judgments for which the future payment did not become due for 10 or more years after the judgment was entered.

**K. SB 322 (ch 166) Judgments and Execution**

SB 322 is the product of the Oregon Law Commission's efforts to clean up some problem areas with prior changes to Oregon's judgment and execution statutes.

Section 1 adds clarifying language to ORS 18.165(1)(a) indicating that a conveyance to a good-faith purchaser must be "delivered and accepted" before the entry or recording of a judgment in the county where the property is located.

Section 2 permits the use of a single writ of execution for two or more judgments against the same judgment debtor or debtors if the judgments were entered in the same case.

Section 5 adds a new statutory provision explicitly including interest accruing on the money award, as well as expenses defined elsewhere in statute (ORS 18.999), as amounts owing on the money award.

Sections 8 and 9 allow a judgment debtor to challenge a writ of execution if the amount specified in the writ is greater than the amount owed under the money award.

Section 11 establishes a detailed statutory process for authorizing orders in aid of judgment execution and grants the sheriff clear authority to enter into all structures, commercial or residential, and occupied or nonoccupied. The sheriff may use reasonable force and may rely on the order for the purpose of levying on personal property. The law is currently silent on this matter.

Section 12 amends ORS 18.878 to provide that upon levy, the interest of a judgment creditor in personal property is the same as that of a secured creditor with a perfected security interest in the property. The intended effect of this provision is to clarify that a judgment creditor who has levied on personal property has priority over other interests to the fullest extent allowed by law.

Section 14 allows a judgment creditor to seek an ex parte order from the court for the purpose of determining whether property to be levied on is tangible or intangible.

Sections 15 to 17, taken together, reorganize statutory provisions to clarify that the intended purpose of those provisions is limited to restricting deficiency judgments rather than to more generally governing priority between a mortgage and other encumbrances.

Section 18 limits a sheriff's ability under ORS 18.886 to require creditor bonds to situations in which (1) an identified third party has an interest in the property, (2) the property is perishable, or (3) the sheriff has reasonable doubts concerning the ownership or any encumbrance on the property, and the judgment creditor does not provide the sheriff with title documents or other appropriate records from state or federal government agencies establishing that no encumbering interests exist that would be affected by execution or sale.

The remaining sections of SB 322 provide minor clarifications to selected statutes about enforcement of judgments.

## V. FORECLOSURES

### A. SB 301 (ch 165) Trustee's Service of Notice of Sale

SB 301 amends ORS 86.750, which required a trustee to serve an occupant with a notice of nonjudicial foreclosure of a trust deed and intent to sell the property in the same manner as a summons under ORCP 7 D(2) and 7 D(3). SB 301 provides that if service cannot be made as required, the person attempting service must post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person must make a second attempt at service at least two days after the first attempt and, if not successful, again post a notice in a conspicuous place on the property. The person must then make a third attempt at least two days after the second attempt and, if not successful, send the notice by first-class mail, addressed to occupant. Service is effective on the earlier of the date the notice is personally served or the first date of posting.

### B. SB 302 (ch 495) Foreclosure of Decedent's Real Property

SB 302 corrects an oversight in the adoption of ORS 18.312 to allow the issuance of execution and sale of property under a judgment of foreclosure even when the owner of the secured property is deceased. If the proceeds from the sale are not sufficient to satisfy the judgment, the deficiency may be collected by making a claim against the estate as prescribed by ORS 114.505–114.560, unless otherwise barred.

### C. HB 2104 (ch 539) Unclaimed Property

HB 2104 shortens the applicable time periods regarding a presumption of abandonment in ORS 98.308, 98.314, and 98.322 from five years to three years. The bill eliminates the requirement for use of certified mail for notices under ORS 98.311 and makes changes to the description of circumstances in which an account holder is deemed to consent to renewal.

### D. HB 2592 (ch 864) Withholding on Transfer of Property

HB 2592 requires that an agent responsible for closing and settlement services in a conveyance of a real property interest must withhold for the benefit of the Department of Revenue an amount equal to 4% of the consideration, 4% of the net proceeds, or 10% of the gain includable in taxable income. *Closing and settlement services* are services provided for the benefit of the transferor or transferee in connection with the conveyance and the receipt or disbursement of money in connection with a sale, lease, encumbrance, mortgage, or deed of trust. An exception exists if the agent obtains written affirmation from the transferor that any of the following apply: the consideration does not exceed \$100,000, the transferee is acquiring the property interest through foreclosure, the transferor is an individual

resident of Oregon, the transferor is a corporation with a permanent place of business in Oregon, or the transferor has professionally competent knowledge or advice that the transferor will not owe tax. Document retention for six years is required if withholding is not retained and remitted to the department. An agent is subject to collection procedures if withheld amounts, or amounts required to be withheld, are not remitted to the department. The department may provide collection, enforcement, administration, and distribution services for local governments that impose income taxes.

HB 2592 took effect on September 27, 2007.

## VI. COMMERCIAL AND LIEN LAW

### A. **SB 304 (ch 32) Definition of *Securities Account* in ORS Chapter 79**

SB 304 amends ORS 79.0102 to remedy an inadvertent omission and incorporate the definition of *securities account* as defined in ORS 78.5010.

### B. **SB 613 (ch 345) Disclosures on Mortgages or Trust Deeds Presented for Recording**

ORS 205.234 provides that when any instrument is presented to a county clerk for recording, the first page of the instrument must contain certain information. SB 613 amends the statute to provide that the first page must include “[f]or instruments assigning a mortgage or trust deed, the name and address of the assignee mortgagee or assignee trust deed beneficiary.” This change was intended to increase the likelihood of effective notice in the event of bankruptcy and county foreclosure sales. SB 613 applies to instruments assigning a mortgage or trust deed that are presented to a county clerk on or after January 1, 2008.

### C. **HB 3313 (ch 673) Lien for Costs to Decontaminate Illegal-Drug-Manufacturing Sites**

HB 3313 amends ORS chapter 105 to establish procedures for local governments to recoup costs incurred for illegal-drug-manufacturing-site rehabilitation. It requires notice to property owners and lienholders and establishes a process for the creation of a superior lien in favor of the county or local government for costs incurred in decontaminating the property. These provisions apply to liens for costs by counties or other local governments on or after June 27, 2007.

HB 3313 took effect on June 27, 2007.

### D. **HB 2233 (ch 363) Deferred Taxes on Manufactured Structures**

HB 2233 gives authority to the Oregon Department of Revenue to perfect liens for deferred taxes on manufactured structures regulated by the Department of Consumer and Business Services and on other personal property.

**E. SB 684 (ch 820) Going-Out-of-Business Sales**

SB 684 defines a *going out of business sale* as a sale or auction conducted by a person who engages in the retail sale of merchandise in the person's ordinary course of business, advertised or held out to the public as the disposal of merchandise in anticipation of the cessation of business, and it defines a *sham sale* as a going-out-of-business sale conducted with the intent to continue the same or a similar business in the same location or in the same relevant market but is represented as being conducted due to a cessation of business. SB 684, §§1, 7.

This bill makes it unlawful to engage in a going-out-of-business sale unless the person conducting the sale first files a notice of intent (including specified information) with the Oregon Secretary of State and displays the notice prominently on the premises. A sale conducted under the auspices of a bankruptcy court, receivership, or other court-ordered action need not give notice to the secretary of state but must have a copy of the relevant order displayed. SB 684, §2.

Going-out-of-business sales cannot last beyond the date listed in the notice of intent and in no case more than 90 days from the beginning date listed in the notice of intent. A second going-out-of-business sale cannot be conducted for one year after the conclusion of the original going-out-of-business sale. SB 684, §2.

The person conducting the sale cannot bring in additional merchandise from "an affiliated business or business location" nor may the person buy or order merchandise after filing the notice of intent. SB 684, §5.

Any person may bring an action to enjoin a sham sale in the same relevant market, and may recover attorney fees if successful; however, a defendant may not recover attorney fees. Certain facts constitute prima facie evidence that a sale is a sham sale, although a defendant may assert an affirmative defense that the person no longer needed to go out of business and immediately canceled the alleged sham sale. SB 684, §7.

The bill makes a violation of certain of its provisions an unlawful trade practice under ORS 646.608, thereby subjecting the perpetrator to the usual panoply of sanctions for such practices. SB 684, §8.

SB 684 took effect on July 17, 2007.

**F. SJR 18 Forfeiture**

SJR 18 places on the 2008 primary election ballot a measure to allow forfeiture of property without a criminal conviction and to change the standard and burden of proof currently in place for protection of bona fide lien interest holders.

Article XV, §10, of the Oregon Constitution currently prohibits forfeiture of property unless the owner of the property has been convicted of a crime and the property is found by clear and convincing evidence (1) to have been instrumental in committing or facilitating the crime or (2) to be proceeds of that crime. It further

currently protects innocent property owners in two ways. First, a financial institution's interest in property is not subject to forfeiture. Second, the interest of any other person claiming an interest in the property (other than a financial institution or the defendant in the criminal proceeding) is not forfeited unless the forfeiting agency demonstrates by clear and convincing evidence that the person took the interest in the property to defeat the forfeiture, or a conviction of the person is later obtained.

SJR 18 would allow forfeiture of property if the property was proceeds of, or was instrumental in committing or facilitating, one or more other crimes similar to the crime for which the owner (now denominated a claimant to an interest in the property) was convicted. For forfeiture under the similar-crimes provision, the forfeiting agency must notify the claimant of the other crimes claimed to be similar to the current crime, and the claimant must be given the opportunity to challenge the seizure and forfeiture of the property.

SJR 18 also would change the protection for third-party claimants. Under the new provision, either the third-party claimant must consent or the forfeiting agency must prove that the property constitutes proceeds or an instrumentality of a crime committed by another person and that the claimant (1) took the property with the intent to defeat forfeiture, (2) knew or should have known that the property constituted proceeds or an instrumentality of a crime, or (3) acquiesced in the criminal conduct. Acquiescence equals knowledge of the criminal conduct and failure to take reasonable steps to terminate the conduct or prevent use of the property to commit or facilitate the conduct.

If the property involved is personal property, the forfeiting agency would have only a preponderance standard to meet; if it is real property, then the forfeiting agency would have to meet the clear-and-convincing standard. If the property is cash, weapons, or negotiable instruments found in close proximity to controlled substances or found to be instrumentalities of criminal conduct, then the burden would shift to the claimant to prove that the property is not proceeds or an instrumentality.

SJR 18 makes an exception to the application of article XV, §10, for animals that have been abused, neglected, or abandoned, and it provides for sharing of the proceeds of the forfeiture when state or local law enforcement participates in a federal forfeiture.

#### **G. HB 2090 (ch 186) Identifying Numbers in Filings**

HB 2090 is another effort to reduce identity theft. This bill authorizes the secretary of state to refuse to file any document submitted for filing if it contains any of the following in unredacted form: (1) a Social Security number, (2) a state identification number, (3) a driver license number, (4) a credit or debit card number, or (5) an account number. A number is redacted if it includes only the last four digits.

## **COMMERCIAL, CONSUMER, DEBTOR-CREDITOR, AND LIEN LAW**

The bill makes corresponding changes to several ORS chapters to eliminate the requirement that numbers of the types described above be included in any official filing with the secretary of state, and it directs the secretary of state to provide a numbering system for use in farm product filings.

HB 2090 took effect on May 30, 2007.