OREGON BANKERS ASSOCIATION

2017 OREGON LAWS IMPACTING BANKS

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OVERVIEW

The 2017 Oregon Legislative Session concluded late on July 7, 2017, after almost six months in Salem. With the introduction of more than 2800 bills, the session came to a close just prior to the July 10, 2017 constitutional deadline for the session to end.

From a political point-of-view, Democrats continued to hold strong control over both houses of the legislature. Democrats maintained a 17 to 13 majority in the Senate, one vote from a supermajority, and were within one vote of a supermajority in the House, 35 to 25. Given these numbers, the Democrat caucuses, if they chose to vote as a unified block, were in a position to pass anything they wanted without the need for Republican help. The lone exception was with respect to tax increases that require supermajorities in both houses. Democrat control of the Governor's office meant that the majority party faced little threat of a veto on most legislative initiatives that survived the gauntlet of the House and Senate.

OBA's government relations team worked hard throughout the session advocating on behalf of the banking industry. Overall, OBA had a successful session with its pro-active legislative agenda. Three of the four bills that we introduced passed the legislature with near unanimous support and were signed into law by the Governor. House Bill 2622 (permitting an account hold if elder abuse is suspected), House Bill 2623 (updating the Oregon Trust Code), and House Bill 2624 (updating the Oregon Bank Act) were signed into law during the last weeks of the session. The details of these bills are summarized in the following pages.

OBA's fourth bill, Senate Bill 968 did not meet the same fate. The bill would have amended the Oregon Trust Deed Act to address the remaining issues left unsettled by the Oregon Supreme Court regarding the use of MERS as a nominee or agent for lenders in residential trust deeds. This uncertainty has resulted in lawsuits being filed against banks by counties seeking to recover recording fees for certain assignments that were not recorded. Following a hearing on Senate Bill 968 before the Senate Business and Transportation Committee, the Department of Justice had the bill killed for fear that it would adversely impact the department's foreclosure mediation program. After additional negotiations, the department said it would not object to an alternative approach to the matter. OBA sought to introduce a bill under the new approach, but a suitable vehicle could not be identified before the session drew to a close. OBA will continue its work on this important issue during the interim with the goal of introducing a bill during the 2018 session.

OBA's advocacy work did not stop with the passage of our proactive legislative agenda. As noted above, more than 2800 bills on a myriad of topics were introduced. Bills relating to the state budget, taxes, transportation funding, human resources, the environment, veteran's affairs, corporate disclosure, and a variety of other topics were introduced. Even bills to change the state bird and designate a state tartan and state pie moved through the legislature. While the anti-bank rhetoric has continued to ebb over the last few sessions, the broader business community, in which the banking industry is an integral part, has remained under siege.

Perhaps no topic received as much attention this session as the state budget. Lawmakers entered the 2017 session facing a $1.8 billion "shortfall". Legislators wrestled with how to close this shortfall throughout the session. A variety of tax proposals were introduced that the business community defeated, including several gross receipts tax proposals and a bill to remove the favorable tax treatment that pass-through entities received as part of the "grand bargain" in 2015. At the end of the session, a mixture of stronger than expected revenue growth, a healthcare "provider tax" to raise over $600 million in biennial revenue to retain coverage under the Oregon Health Plan for the 350,000 Oregonians added to the plan under the Affordable Care Act, cuts, and a hiring freeze were cobbled together to balance the budget. Unfortunately, the concept of a gross receipts tax has not gone away despite resounding rejection by voters of Measure 97 in November 2016 and by the legislature in 2017. Public employee unions are poised to place another gross receipts tax on the ballot in 2018.

Employer mandates were another major topic of discussion again this session. Three major concepts of note were predictive scheduling, pay equity, and paid family leave. Predictive scheduling and pay equity passed and are discussed later in this volume. Paid family leave, however, did not but is likely to be a topic of discussion in 2018. Predictive scheduling and pay equity are just two more examples of the added obligations businesses face to go along with government mandated paid sick leave, minimum wage increases, and a state retirement program, all of which passed in recent sessions. Despite challenges on the human resources front, OBA was able to score an important victory by ensuring that the predictive scheduling bill did not apply to banks.

Another focus for many legislators this session was affordable housing. In many cities and counties, affordable housing availability has been a major challenge. A variety of bills were introduced during the session to address this concern. Some bills passed and are summarized in the coming pages. Two major proposals that did not pass, however, would have prohibited "no-cause" evictions and would have allowed local jurisdictions to impose rent control. These proposals, had they passed, would have negatively impacted the stock of affordable housing. OBA and its member banks remain committed to working to find ways to increase the affordable housing supply in Oregon.

Despite some anti-business headwinds, OBA's government relations team was successful stopping or substantially modifying a number of bills that would have negatively impacted the banking industry. Examples include proposals to limit the use of reverse mortgages, permit residential PACE loans, mandate notices for closing bank accounts, change tax apportionment rules, and create requirements that corporations file and make public tax disclosure statements, to name just a few of the problematic bills introduced this session.

OBA's success during the 2017 session was thanks in large part to the time and expertise provided by hundreds of Oregon bankers who participated in OBA's committees and were active on the grassroots level. This input was invaluable and provided critical understanding and background on hundreds of bills that OBA tracked during the session. We truly are indebted to these tireless bankers that provided so much of their time and energy. Whether

testifying at a committee, taking part in Bankers Day, being active on the grassroots level, or simply participating and offering input during OBA committee meetings, OBA member involvement was truly invaluable again this session. Thank you.

As always, should you have any questions regarding the bills included in this digest, or any questions about the 2017 legislative session, please contact the OBA government affairs team.

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OBA 2015-2017 GOVERNMENT RELATIONS COMMITTEE

OBA committees played a key role in reviewing and advocating on hundreds of legislative issues during the 2017 session. OBA is grateful for the time and effort put forth by hundreds of volunteer Oregon bankers that serve on OBA committees. Special thanks are extended to the members of the **2015-2017 OBA Government Relations Committee** listed below:

CHAIR: Jill Faughender
First Federal
McMinnville, OR

Mark Brandon
Banner Bank
Portland, OR

Cara Coon
Umpqua Bank
Spokane, WA

Steve Erb
People's Bank of Commerce
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JPMorgan Chase & Co
Portland, OR

Gary Propheter
Bank of Eastern Oregon
Heppner, OR

Chris Pugliese
Key Bank
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Brian Putler
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Vancouver, WA

Betsy Steinberg
Pioneer Trust Bank
Salem, OR

Jeff Sumpter
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Dave Swartley
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Steve Terjeson
Citizens Bank
Corvallis, OR

Linda Thomas-Bush
U.S. Bank
Eugene, OR

Brad Webster
Citizens Bank
Corvallis, OR

Bruce Whiting
Key Bank
Seattle, WA

Bank Operations

Several bills related to bank operations worked their way through the legislative session in 2017. Of particular note was House Bill 2622, a bill introduced at the request of the OBA, that allows a bank to place a temporary hold on an account when financial exploitation of a vulnerable person is suspected. Our bankers indicated this would be a helpful tool in working to stop elder abuse. House Bill 2624, also a bill introduced by OBA, made technical corrections to the Oregon Bank Act related to out-of-state banks. These changes come on the heels of OBA's comprehensive Bank Act modernization that took place in 2015.

A bill related to data match also passed during the session. The bill, Senate Bill 254, was introduced by the Department of Revenue. The concept of data match is not new. The Department of Justice currently utilizes data match in regards to support enforcement. The Department of Revenue's data match bill was initially introduced during the short, February, 2016 session. That bill had a variety of serious flaws and OBA successfully killed it. After its failure in 2016, the department indicated that it intended to reintroduce the bill in 2017, but wanted to work with OBA to address problems with the bill. The OBA Bank Operations and Government Relations Committees spent a great deal of time identifying issues and working to address them. The product was SB 254. While not perfect, it is a considerable improvement on what introduced in 2016.

OBA was successful stopping other operations related bills. One of the more onerous of these bills was House Bill 2112 that would have prohibited a bank from unilaterally closing a customer account unless the customer is given 60 days' notice and the reasons the account is being closed. Fortunately, this bill did not make it out of committee. Another bad bill that was stopped, House Bill 3096, would have required banks to report to the Department of Consumer and Business Services customer complaints concerning improper charges to a customer's credit card or debit card when the customer alleges that improper charges came after inadequate disclosure that the initial purchase obligated the customer to make additional purchases or payments unless the customer acted affirmatively to cancel the obligation. This burdensome bill was also stopped in committee.

The following are bills related to bank operations that passed during the 2017 session.

House Bill 2090: Unlawful Trade Practice Related to Personal Information

HB 2090 provides that a person (which includes a natural person, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity except bodies or officers acting under statutory authority of Oregon or the United States) engages in an unlawful trade practice if the person publishes on a website related to the person's business, or in a consumer agreement related to a consumer transaction, a statement or representation of fact in which the person asserts that the person, in a particular manner or for a particular purpose, will use, disclose, collect, maintain, delete, or dispose of information that the person

requests, requires, or receives from a consumer and the person uses, discloses, collects, maintains, deletes, or disposes of the information in manner that is materially inconsistent with person's statement or representation. Although a violation of the requirements of this bill is an Unlawful Trade Practices Act violation, there is no private right of action, only attorney general enforcement.

Reference: Chapter 145
Statutory Changes: Amends ORS 646.607.
Effective Date: January 1, 2018.

House Bill 2346: Use of Declaration for DHS Claims

HB 2346 permits banks and credit unions to accept a declaration (current law only permits financial institutions to accept an affidavit) from the Department of Human Services ("DHS") or the Oregon Health Authority ("OHA") to pay claims on the death of depositor. A bank or credit union shall accept from DHS or OHA, without additional requirements, a declaration, under the penalties of perjury, that must: 1) state where and when the depositor died; 2) state that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed $25,000; 3) show the relationship of the affiant or declarant to the deceased depositor; and 4) embody a promise to pay the expenses of last sickness, funeral expenses, and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons that are entitled to the moneys by law. A declaration submitted under this section must be signed by the declarant and must include the following sentence immediately above the signature line of the declarant: "I hereby declare under penalty of perjury that I am authorized by the Department of Human Services or the Oregon Health Authority to make this declaration, that the above statement is true to the best of my knowledge and belief, and that I understand that it is subject to penalty for perjury." Moneys disbursed to DHS and OHA may be made payable only to DHS and OHA, respectively.

The bill also clarifies the timeline for payment of moneys on deposit in a decedent's account at a bank or credit union. The bill provides that a bank or credit union may not pay moneys on deposit under ORS 708A.430 (for banks) or ORS 723.466 (for credit unions) to anyone other than the decedent's spouse earlier than 46 days after the death of the depositor. Neither may a bank or credit union pay moneys on deposit in the decedent's account to anyone other than the decedent's spouse or DHS or OHA earlier than 76 days after the death of the depositor, unless the financial institution obtains prior verbal or written authorization from OHA and DHS. On or after the 76 days after the decedent's death, the bank may pay any remaining funds to the following individuals: 1) the depositor's surviving children 18 years of age or older, if the depositor does not have a surviving spouse and DHS and OHA do not have a claim; 2) the depositor's surviving parent, if the depositor does not have a surviving spouse or surviving child 18 years of age or older and if DHS and OHA do not have a claim; or 3) the depositor's surviving brothers and sisters 18 years of age or older, if the depositor does not have a surviving spouse,

a surviving child 18 years of age or older, or a surviving parent and DHS and OHA do not have a claim.

Reference: Chapter 51
Statutory Changes: Amends ORS 192.589, 708A.430, 711.577, and 723.466.
Effective Date: January 1, 2018

House Bill 2622: Account Hold When Financial Exploitation of Vulnerable Person Suspected

Introduced at the request of the OBA, HB 2622 permits a bank to place a hold on an account of a vulnerable person (defined in ORS 124.100 as an elderly person, a financially incapable person, an incapacitated person, or a person with a disability who is susceptible of threat duress or coercion) if the financial institution reasonably believes, or has received information from law enforcement or the Department of Human Services, that financial exploitation may have occurred, may have been attempted, or is being attempted. "Financial exploitation" is defined as: 1) wrongfully taking assets, funds, or property belonging to or intended for use of an elderly person or person with a disability; 2) alarming an elderly person or person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat would be carried out; 3) misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an elderly person or person with a disability; or 4) failing to use the income or assets of an elderly person or person with a disability effectively for the support and maintenance of the person. The bank may refuse a transaction, refuse to permit a withdrawal or disbursement of funds, prevent a change of ownership to an account, refuse a transfer of funds, or refuse to comply with an agent under a power of attorney. The bank may, but is not required to act. If a bank does take one of the above actions, it shall make reasonable efforts to notify all parties authorized to transact business on the account unless the bank determines, in their discretion, that providing that information would compromise an investigation. The default rule is that a freeze ends 15 business days after the bank first acted. Exceptions to this time limit are included in the bill. A court may order the termination of a freeze. Banks are permitted to extend the duration of a freeze, unless directed otherwise by a court, based on a reasonable belief that the financial exploitation may have occurred or may continue to occur or be attempted. Banks and their employees are immune from criminal, civil, and administrative liability for account freezes taken in good faith. The bill also provides that the authority to place a hold on an account is in addition to, and not in lieu of, any right a bank may have under the bank's deposit or other contract with the bank's customer. The bill contains an emergency clause, however, the primary provisions of the bill become operative on October 1, 2017.

Reference: Chapter 290
Statutory Changes: Creates new provisions.
Effective Date: June 14, 2017

House Bill 2624: Bank Act Modification Regarding Out-of-State Banks

HB 2624 is OBA's bill that makes a change to Oregon's Bank Act. Readers will recall in 2015 that OBA was successful in getting a bill passed that updated and modernized the Oregon Bank Act. Due to an inadvertent oversight, a change to ORS 713.330 was made that was not intended. HB 2624 remedies this oversight. It exempts out-of-state banks, extranational institutions, and foreign associations from the requirement to file a notice before dealing in notes secured by mortgages or trust deeds if the out-of-state bank, extranational institution, or foreign association is authorized to transact banking business in the state under ORS 713.160 (relating to certificates of authority).

Reference: Chapter 209
Statutory Changes: Amends ORS 713.330.
Effective Date: January 1, 2018

Senate Bill 95: Mandatory Reporting for Non-Bank Securities Professionals

SB 95 was introduced at the request of the Department of Consumer and Business Services ("DCBS"). The bill requires certain securities professionals (defined in the bill as "qualified individuals") who have reasonable cause to believe that financial exploitation of a vulnerable person with whom that individual has come into contact has occurred, has been attempted, or is being attempted, to notify DCBS either orally or in writing as soon as is practicable. OBA successfully obtained an amendment to the bill that provides that this reporting requirement does not apply to securities professionals, or "qualified individuals", employed by a bank or a trust company. However, some of the remaining provisions of this bill do apply to qualified individuals who work for banks and trust companies. If such an individual has reason to believe that financial exploitation of a vulnerable person has occurred or been attempted, the qualified person may notify any person previously designated by the vulnerable person to receive information, except for a person who is suspected of the abuse. Qualified individuals employed by banks or trust companies will not be liable under state law for disclosing information under the Act or failing to disclose to the vulnerable person as provided in the Act.

Reference: Chapter 514
Statutory Changes: Creates new provisions; amends ORS 59.995.
Effective Date: January 1, 2018

Senate Bill 96: Broker Dealers and E & O Coverage

SB 96 requires broker-dealers and state investment advisers to maintain an errors and omissions insurance policy in an amount of at least $1 million as a condition of state licensure. A licensed broker-dealer subject to Section 15 of the Securities Exchange Act of 1934, as amended, is not required to comply with this requirement. A licensed state investment adviser

who has its principal place of business in a state other than Oregon is also exempt from this requirement. This requirement becomes operative July 31, 2018. The Department of Consumer and Business Services ("DCBS") may take any action before July 31, 2018 that is necessary for the department to exercise, on and after the operative date, all of the duties, functions, and powers conferred on the DCBS by the bill.

Reference: Chapter 313
Statutory Changes: Creates new provisions; amends ORS 59.175, 59.225, 59.255, 59.331, 59.991, and 59.995.
Effective Date: January 1, 2018

Senate Bill 254: Department of Revenue Data Match Program

As noted above, SB 254 is the 2017 session's version of a data match program that requires financial institutions ("FI") to work with the Department of Revenue ("DOR") to identify assets held at a FI by delinquent debtors. It is conceptually similar to the child support data match program implemented several years ago, but not identical.

While the concept of a non-child support data match program has existed for a number of years (in fact a number of states have already adopted data match programs), it was not until the 35-day short session of 2016 that the Oregon legislature seriously considered such a program. The data match bill that was introduced in 2016 had a multitude of problems and OBA successfully killed it. Understanding that the proponents of the bill would bring the concept back in 2017 (especially in light of a projected $1.8 billion state budget "shortfall" going into the session), OBA worked with the DOR to amend the 2016 bill to remove the more onerous provisions and make it more palatable to the banking industry. OBA, with recommendations from our committees and counsel, was able to make a variety of improvements to the 2016 version of the bill including removal of a provision that would have substantially altered garnishment law in the state.

The pertinent parts of SB 254 are summarized as follows:

- Section 1 defines several terms including FI (a depository institution as defined by the Federal Deposit Insurance Act ("FDI Act")) and delinquent debtor (any person for whom a warrant has been issued by the DOR).
- Section 2 provides that not more than once per calendar quarter a FI shall conduct a data match with the DOR that compares a list of delinquent debtors ("debtor"), identified by name and social security number, against a list of persons who hold accounts at the FI. A FI is not required to seek or obtain any information about the debtor beyond the information provided to the FI by the DOR. Each calendar quarter the DOR shall pay a fee to each FI for conducting the data match search. In the first quarter the program is utilized, the DOR must pay a fee not to exceed the lesser of $2,500 or the actual costs incurred by the FI. The fees payable to FI's for subsequent quarter data

matches may not exceed the lesser of $150 or the actual costs incurred by the FI. It will be important for FI's to keep good records of the costs they incur in complying if they wish to receive a quarterly reimbursement of costs under the Act. DOR may temporarily exempt a FI from the data match program if: 1) the DOR determines participation of the FI would not be cost effective to the DOR; 2) the DOR determines the FI's participation would be unduly burdensome for the FI; or 3) the FI provides the DOR with written notice from its supervisory banking authority that it has been determined to be undercapitalized. A FI is not liable under state law for: 1) any disclosure of information to the DOR; 2) encumbering or surrendering any assets held by the FI in response to a notice of lien or levy issued by the DOR; or 3) for any other action taken in good faith to comply with requirements of the data match program.

- Section 3 provides that if, when using the data match system, the DOR learns that a debtor holds an account at a FI, and the debtor is a delinquent child support obligor, the DOR may not issue a notice of garnishment within 30 days after the date that the DOR learned of the debtor.
- Section 4 states that a person may not disclose to a debtor the information relating to the debtor that was transmitted using the data match system. This applies only to disclosures regarding information that was transmitted using the data match system within 45 days prior to the disclosure. Nothing, however, prohibits a financial institution from disclosing the existence of, or the FI's participation in, the data match system. A violation of section 4 can result in a fine of $2,500.
- Section 5 provides that, except as otherwise permitted by law, a person is prohibited from knowingly using or disclosing information relating to a debtor that is transmitted to or from the DOR through the data match system. FI's should have little problem demonstrating that other laws pertaining to their banking operations permit, and in some cases require, that they use information about their customers and that they disclose certain information to their customers. The gathering and use of information on a customer's creditworthiness and financial capacity is absolutely imbedded in, and inseparable from, the institution's duty to conduct its business in a safe and sound manner. It would be very hard to argue that the FDI Act and regulations do not permit an insured institution to use every bit of customer information at the institution's disposal in making informed lending decisions, determining the source of repayment and the ability of the borrower to repay, and related items of this nature. In terms of disclosing information, there is a requirement in the Federal Reserve Board's Regulation B for creditors to give written notice of adverse action, including a statement of specific reasons for actions taken. If the institution learns through the data match program that a customer isn't paying taxes, for example, and uses that information (as it is permitted to do under the FDIC rules and regulations) to take adverse credit action against the customer, it is not only permitted but required to give the customer notice of that adverse action. Other law that may be pertinent include the FDIC Rules and Regulations, ORS 706.580, ORS 708A.250, and ORS 708A.630. A violation of section 5 can result in a fine of $1,000.
- Section 6, allows the DOR to impose a civil penalty of up to $1,000 on a FI for a failure to participate in the data match system if the noncompliance causes the DOR to be unable

to identify whether a debtor holds an account at the FI and the FI does not remedy the noncompliance within 30 days of the DOR providing notice of non-compliance. The $1,000 penalty can be issued monthly while the FI does not remedy the noncompliance.

- Section 7 provides the DOR with rulemaking authority. Before adopting rules, however, the DOR is required to consult with or seek the participation of a representative from an association representing banks, an association representing credit unions, and a representative representing DCBS charged with financial regulation. Rules that are adopted must include 1) a procedure by which FI's and DOR can compare data; 2) information security standards; 3) a procedure by which a FI that lacks the technical ability to participate in the data match system may transmit to the DOR a list of the names and Social Security numbers of all account holders; and 4) a method to verify the actual costs to the FI in participating in the system. DOR shall adopt rules no later than July 1, 2018.

The provisions creating the data match system become operative on July 1, 2018, although the DOR may take action before the operative date that is necessary to enable the DOR to exercise, on or after the operative date, the duties, function and powers of the data match program. The bill has an emergency clause and is effective upon passage.

Reference: Chapter 644
Statutory Changes: Creates new provisions; amends ORS 18.999 and 192.586.
Effective Date: October 6, 2017

Senate Bill 510: Support Enforcement Data Match

SB 510 makes changes to ORS Chapter 25 regarding the existing Department of Justice ("DOJ") Support Enforcement data match program. It primarily addresses insurance companies (included in the bill's definition of financial institution) and the ability of the DOJ to enter into agreements with insurance companies to provide information and financial records to the DOJ for claimants who are obligors of past due support. The bill incorporates the definition of "financial records" from ORS 192.583 into the definitions found in ORS 25.640 (rather than simply referencing ORS 192.583). A financial institution can satisfy data match obligations as provided in rules adopted by DOJ. To that end, the bill permits the DOJ to conduct rulemaking to implement automated data exchanges for purposes of the data match program. The current law permits using automated data exchanges "to the maximum extent feasible." If a financial institution (insurance company) at which an obligor has a claim for insurance benefits or payments has not previously provided the DOJ with the information required by ORS 25.643, the financial institution must provide the DOJ with at least three business days' advance written notice before disbursing any payment to the obligor pursuant to the claim. The bill adds some additional protections for financial institutions. Financial institutions are not in violation of laws regulating the handling of accounts because: 1) the financial institution discloses information to the DOJ; 2) encumbers or surrenders any assets held by the financial institution in response to a

notice of lien or levy issued by the DOJ; or 3) takes any other action in good faith to comply with the requirements of this section ORS 25.643.

Reference: Chapter 486
Statutory Changes: Amends ORS 25.640, 25.643, and 25.646.
Effective Date: January 1, 2018

Senate Bill 769: Redacted Social Security Numbers

SB 769 is a bill in response to a recent Oregon Court of Appeals case dealing with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628, collectively "OCITPA"). ORS 646A.620 of the OCITPA prohibits a person from publicly posting or displaying a consumer's social security number unless it is redacted. In *122nd Group, LLC, v. DCBS*, 280 Or.App. 209 (2016), the Oregon Court of Appeals ruled that a company that placed 30 boxes of mortgage documents with unredacted Social Security numbers in a public dumpster was not in violation of the statute because placing the documents in a dumpster did not make them accessible to the public at large.

To address the court's ruling, the legislature amended ORS 646A.620 to add items one and four below to the OCITPA. Except as otherwise specifically provided by law, a person may not: 1) print a consumer's Social Security number on mail to the consumer that is material the consumer did not request or part of any documentation the consumer requested for a transaction or service, unless the Social Security number is redacted; 2) print a consumer's Social Security number on any card required for the consumer to access products or services provided by the person; 3) publicly post or publicly display a consumer's Social Security number unless the Social Security number is redacted; or 4) dispose of, or transfer to another person for disposal, material or media that display a consumer's Social Security number unless the person makes the Social Security number unreadable or unrecoverable or ensures that any person that ultimately disposes of the material or media makes the Social Security number unreadable or unrecoverable. As used above, "publicly post or publicly display" means to communicate or otherwise make available to the public.

Reference: Chapter 254
Statutory Changes: Amends ORS 646A.620.
Effective Date: January 1, 2018

Senate Bill 1027: ABLE Account Update

SB 1027 is a further refinement of the ABLE Account legislation that passed the legislature during the 2015 session. By way of background, in 2014 Congress passed the Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) that allows a 529 savings account to be opened for a person with a disability. Interest earned on the account is tax free and up to

$100,000 and can be accumulated before access to disability-related benefits is impacted. Although Congress passed this legislation, each state was required to create its own 529 ABLE Act plan.

SB 1027 provides that, except as required by federal law, the Department of Human Services and the Oregon Health Authority are prohibited from seeking payment from amounts in an ABLE account. Except as provided by federal law, upon the death of a designated beneficiary, amounts in an ABLE account may be transferred to the estate of the designated beneficiary or an ABLE account of another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary.

Section 2 of the bill provides that except as permitted in section 529A of the Internal Revenue Code, no person other than the Oregon 529 Savings Board ("Board") or a financial institution in which Oregon 529 Savings Network ("Network") moneys have been invested has the right to direct the investment of amounts held by the network in trust, or any earnings from those amounts. Nothing in Section 2(1) prohibits a designated beneficiary from directing the investment of contributions to the network or earnings from those contributions by selecting between investment options offered under the Network in accordance with rules adopted by the Board. The Network, the Board, a Board member, and the State of Oregon may not insure any account or guarantee any rate of return or any interest rate on any contribution. The Network, the Board, a Board member, and the State of Oregon are not liable for any loss incurred by any person as a result of participating in the network. The Board, in its sole discretion and without liability, may remove the Network's funds from any financial institution and reinvest the funds in a similar or different investment alternative at another financial institution pursuant to a contract, agreement, or arrangement.

The bill also provides that the Board may enter into agreements with other states to provide services related to ABLE programs. The bill declares an emergency and is effective on passage.

Reference: Chapter 367
Statutory Changes: Creates new provisions; amends ORS 178.315, 178.340, 178.375, 178.380, and 416.350.
Effective Date: June 14, 2017

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Estates and Trusts

The 2017 session brought about a variety of changes related to estate planning and trusts. OBA successfully passed House Bill 2623 which made changes to the Oregon Trust Code helpful to banks and trust companies. Those changes are summarized below. This OBA-sponsored bill moved quickly through the legislative process in 2017.

In addition to the passage of House Bill 2623, the OBA worked closely with our partners in the legal community and the Oregon Law Commission with respect to revisions to the Oregon Probate Code. This effort has been an ongoing enterprise over the last few years to update Oregon's probate code. Some initial changes were made in the last two sessions. Work continues this interim. It is anticipated that another probate code bill with further updates will be introduced in either the 2018 or 2019 sessions. Updates to the small estates process is likely to be included in the group's upcoming work plan.

The following are the important changes concerning estates and trusts that passed during the 2017 legislative session.

House Bill 2608: Clarifies Applicability of Certain Uniform Trust Act Provisions

HB 2608 clarifies several changes made during the 2015 session by House Bill 2331 (2015) related to the Uniform Trust Act. The bill clarifies that the 2015 changes to ORS 130.230 (combination and division of trusts), 130.232 (division of trust into separate shares or portions), 130.715 (discretionary powers; tax savings; inclusion of capital gains in income), and 130.730 (when interest of beneficiary vests; distribution upon termination) apply only to trusts executed on or after January 1, 2016 and to trust proceedings commenced on or after the effective date of HB 2608, regardless of when the trust at issue was executed. The bill declares an emergency and was effective upon passage.

Reference: Chapter 54
Statutory Changes: Amends Section 5, Chapter 126, Oregon Laws 2015.
Effective Date: May 15, 2017

House Bill 2623: Uniform Trust Code Updates

HB 2623 is a bill that was introduced at the request of the OBA. The bill makes two changes to the Oregon Trust Code. The first change allows a trustee, under the appropriate circumstances, to collect both the trustee's compensation and compensation paid to an investment advisor or custodian from the principal and income of the trust on a basis other than a 50/50 disbursement.

The second change narrows the scope of ORS 130.655 (4), which makes certain transactions between a trustee and a beneficiary voidable. ORS 130.655 (4) is amended to provide that unless a trustee can show that a transaction was fair to the beneficiary, a transaction between a trustee and a beneficiary is voidable by the beneficiary if: 1) the transaction does not concern trust property; 2) the trustee obtains an advantage from the transaction; 3) the transaction is outside the ordinary course of the trustee's business (or on terms substantially less favorable than those the trustee offers similarly situated customers); and 4) the transaction occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary. Subsection 3 is a new addition to the law. With this change, a trustee that is a financial institution can conduct ordinary banking business (i.e., holding deposits, making loans) with the trust beneficiary without worrying about those transactions being voidable by the beneficiary.

Reference: Chapter 81
Statutory Changes: Creates new provisions; amends ORS 129.400, 129.405, and 130.655.
Effective Date: January 1, 2018

House Bill 2986: Probate Code Modernization

HB 2986 is the 2017 edition of the ongoing Oregon Law Commission probate modernization project. OBA has been well represented throughout this project as OBA general counsel Ken Sherman and Linda Thomas-Bush of U.S. Bank have been active participants. Most of the bill's provisions are technical fixes that concern estate planners or administrators. The sections highlighted below, however, are items that should be of particular interest to OBA members.

Section 9 concerns ORS 116.173 which provides a general sliding scale formula under which personal representatives are compensated. While the bill includes amendments to ORS 116.173 (discussed below), Section 9 provides a mechanism under which a personal representative (PR) may be compensated differently from what is provided in 116.173(3) where compensation under the standard formula would be inadequate. This new Section 9 will be of particular interest to institutional PR's. It provides that the PR who wants additional compensation must include the request in the petition for appointment, and must set forth specific facts showing how the compensation under the standard formula would be inadequate. Notice of the request and opportunity for hearing and objection are included in Section 9 for distributees of the estate, the Department of Human Services ("DHS"), and the Oregon Health Authority ("OHA"). If the court allows the petitioner's request for a different method of compensation, the PR may, at any time prior to or at the time of the filing of the final account or the statement in lieu of the final account under ORS 116.083, elect to be compensated as provided in ORS 116.173(3). Failure by DHS, OHA or a distributee to object to a request for a different method of compensation does not preclude DHS, OHA, or a distributee from objecting to the amount of the PR's compensation set forth in the final account filed under ORS 116.083 on the basis that the compensation exceeds the reasonable value of the services actually provided by the PR.

Section 15 contains a new provision allowing the court to waive or reduce the requirement of a PR's bond where the PR provides written confirmation from a financial institution that property of the estate is held by the financial institution subject to withdrawal only by a court order. Subsection 5 provides that nothing in ORS 113.105 affects the provisions of ORS 709.240, relating to a trust company acting as a PR. ORS 709.240 provides that a bond or other security will not be required where a trust company is appointed as a fiduciary.

Section 17 provides that the time for the PR to file an inventory of the estate with the court is extended from 60 to 90 days, in recognition of the fact that 60 days is often too short a period for the PR to gather all the necessary information.

Section 24 modifies ORS 114.005, pertaining to the rights of a surviving spouse and dependent children of the decedent to continue occupying the decedent's principal dwelling after the decedent's death. An important addition to this rule is new subsection 2(e), expressly stating that during the period of continued occupancy, "the dwelling is subject to the rights of persons having a security interest in the dwelling." In other words, if the mortgage is not being paid, the mortgagee has the right to pursue its remedies (including foreclosure) during the period of continued occupancy.

Section 27 amends ORS 115.005, pertaining to the making of claims against the decedent's estate. New language is added to the effect that claims must be presented to the PR and that merely filing a claim with the court does not constitute presentation, which must be made by mail or personal delivery to the PR, or by email or facsimile if the PR authorizes these alternative methods of presentation.

Section 30 modifies ORS 115.125, pertaining to the order of the payment of claims where the estate assets are insufficient to cover all claims. The most important change is in subsection 1 (b) of the priority given to administrative expenses which will now include expenses of administration of any protective proceeding in which the decedent was the protected person.

Section 33 amends ORS 116.083(3) to establish the following new content requirements of a final account: 1) a statement that required estate tax returns have been filed; 2) any request to retain a reserve for additional taxes, interest, penalties, and related reasonable expenses; and 3) a statement describing the determination of the PR's compensation under either Section 9 of the bill (summarized above) or ORS 116.173. This section also revises subsection 4, authorizing the PR to file a statement in lieu of final account if the distributees, other than distributees whose only distribution is a cash or specific bequest that will be paid or satisfied in full, consent in writing and all creditors of the estate, other than creditors owed administrative expenses that require court approval, have been paid in full.

Section 36 adds a new definition of "property subject to the jurisdiction of the court" to ORS 116.173 (the statute that provides the standard formula for computing the compensation to be paid to a PR). This term is defined as: 1) all property owned by the decedent at death that is subject to administration; (2) all income received during administration; (3) all gains realized on

sale or disposition of assets during course of administration, "to the extent that the gain realized on each asset sold or disposed of exceeds the value of the asset as provided in subsection (2) of this section"; and (4) all unrealized gains on assets acquired during the course of administration of the estate. Section 36(2) provides that each asset is to be valued at its "highest value as reported in the inventory, any amended or supplemental inventory, any interim account, or the final account or statement in lieu … which may be based upon revaluation of the asset to reflect its then current fair market value."

Section 41 amends ORS 22.020 which generally allows the use of an irrevocable letter of credit as an alternative to a bond. Currently, that statute does not permit the use of letters of credit in place of the bonds required under the probate code. Section 41 amends this statute to delete the references to the probate code, with the result that PR's will be able to give security by means of a letter of credit as opposed to purchasing a bond.

Reference: Chapter 169
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: January 1, 2018

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Human Resources

Human resource issues continued to be front and center during the 2017 session. A multitude of anti-business and anti-employer bills were again introduced during the session. OBA's Human Resources Committee had its hands full reviewing many of these onerous bills. OBA's GR team worked throughout the session with its business community partners to try and stop many of these bills or, where necessary, amend out the most burdensome and costly provisions.

While many burdensome bills were stopped during the session, like a bill that would have created a paid family leave program, others passed. Two of the bills that did pass deal with predictive scheduling and pay equity. As noted below, OBA was successful in holding the line to make sure that the banking industry was not included amongst the industries subject to the predictive scheduling mandate. Additionally, some of the sharper edges were dulled down in relation to the pay equity bill.

Efforts were made to blunt the impact of the minimum wage increase that passed in 2016. These included bills that would have deferred the minimum wage increase for a period of time or offered employers tax credits to help offset the minimum wage increase or. Bills were also introduced to address concerns related to youth employment in light of the minimum increase. Unfortunately, these bills did not pass.

The following are some of the human resource measures that passed the legislature during the 2017 session.

House Bill 2005: Pay Equity Requirements

Passage of HB 2005 was one of the major priorities for the Democrat majority in 2017. The bill, as initially drafted, was particularly onerous for employers and narrowly passed the House on a party-line vote. In the Senate, it was made known by the Senate leadership that a bill concerning pay equity would pass the Senate and that interested parties should work together to find a compromise. The business community took the lead to blunt some of the burdensome provisions in the bill that passed the House. Eventually, a bill passed the Senate on a unanimous vote. While still creating liability concerns for employers, the amended Senate bill was an improvement over the version that initially passed the House.

The bill provides that it is an unlawful employment practice to discriminate in the payment of wages against an employee on the basis of a protected class, to screen job applicants based on salary history, or to base a salary decision on salary history. "Protected class" is defined as a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. An exception exists for internal hires. Employers may pay employees for work of a comparable character at different compensation levels if all of the difference in compensation is based on a bona fide factor related to the

position and is based on a seniority system, merit system, system that measures earnings by quantity or quality of production, workplace location, travel (if travel is necessary and regular for the employee), education, training, experience, or a combination of these factors if the combination of factor accounts for the entire compensation differential. An employer may not reduce the compensation level of an employee to comply with these provisions.

An employee who asserts a violation may file a complaint with the Bureau of Labor and Industries or file a civil action. The action must be commenced within one year of the unlawful practice. The bill extends the time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on an underlying pay equity violation actionable. The bill extends the tort claim notice requirement that must be given to public entities for pay equity claims from 180 days to 300 days.

It is an unlawful practice for an employer or prospective employer to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee. This section is not intended to prevent an employer from requesting from a prospective employee written authorization to confirm prior compensation after the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

If a person files a complaint under ORS 659A.820 alleging a violation of ORS 652.220 and the commissioner issues a final order in favor of the complainant, the commissioner shall require the employer to pay an award of back pay for the lesser of: 1) the two-year period immediately preceding the filing of the complaint, plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order; or 2) the period of time the complainant was subject to an unlawful wage differential by the employer plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order.

HB 2005 adds additional remedies for pay equity and wage-related violations that include a right to a jury trial and a right to compensatory and punitive damages. A court may award punitive damages if: 1) it is proved by clear and convincing evidence that an employer has engage in fraud, acted with malice, or acted with willful or wanton misconduct; or 2) an employer was previously subject to a proceeding for pay equity or wage-related violations.

The bill provides that an employer may file a motion to disallow an award of compensatory or punitive damages. The court shall grant such a motion if the employer demonstrates that it: 1) completed an equal-pay analysis that meets certain criteria within three years before the employee filed the action; and 2) eliminated the wage differentials for the plaintiff and made reasonable and substantial progress toward eliminating wage differentials for other employees in the same protected class asserted by plaintiff. If the court grants the motion, the court may award back pay only for a two-year period immediately preceding the filing of the action and allow the prevailing plaintiff costs and attorney fees, but may not award compensatory or punitive damages.

Most of the provisions of HB 2005 become operative on January 1, 2019, although the bill itself is effective 91 days after adjournment of the legislative session. There are two exceptions. Section 4 of the bill, making it an unlawful employment practice for an employer or prospective employer to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee, is effective 91 days after the session adjourned. Section 10 making it a violation for seeking the salary history from a prospective or current employee prior to an offer of employment subject to compensatory and punitive damages, takes effect on January 1, 2024.

Reference: Chapters 197
Statutory Changes: Creates new provisions; amends ORS 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875, and 659A.885.
Effective Date: October 6, 2017

House Bill 2335: Workers' Compensation Claim and Appointment of Medical Arbiter Panel

HB 2335 permits the Director of the Department of Consumer and Business Services, at the request of a party to a proceeding to close a workers' compensation claim, to appoint as many as three members to a panel of medical arbiters in accordance with criteria the director sets by rule.

Reference: Chapters 68
Statutory Changes: Amends ORS 656.268.
Effective Date: January 1, 2018

House Bill 2336: Circumstances for DCBS Appointment of Claims Processing Agent

HB 2336 permits the Director of the Department of Consumer and Business Services ("DCBS") to appoint a claims processing agent for a self-insured employer or self-insured employer group that defaults or cancels an employer's or group's certification or that the director decertifies. The bill permits a claims processing agent that the director appoints, other than the State Accident Insurance Fund Corporation, to choose legal counsel to employ. HB 2336 also provides that a paying agency shall repay DCBS for any expenditures from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve, or the Workers' Benefit Fund that DCBS makes, together with the present value of any reasonably expected future expenditures from the funds or reserves that DCBS may make, to reimburse the paying agency for the paying agency's costs and to compensate or pay other costs of a worker's claim because of a self-insured employer's or self-insured employer group's insolvency, default, or decertification. The new provisions of the bill apply to determinations as to a claims processing agent for, and expenditures that occur to or on behalf of, any self-insured employer or self-insured employer group that is insolvent or

in default, that has canceled the employer's or group's certification under ORS 656.434 or that the Director of DCBS has decertified, regardless of the date on which the insolvency, default, cancellation or decertification occurred.

Reference: Chapters 69
Statutory Changes: Creates new provisions; amends ORS 656.443, 656.591, and 656.593.
Effective Date: January 1, 2018

House Bill 2337: Increase in Workers' Compensation Benefits for Permanent Disability

HB 2337 increases workers' compensation benefits in the case of a permanent total disability. If a permanent total disability results from a worker's injury, the worker shall receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages, no more than 133 percent of the average weekly wage, or no less than 33 percent of the average weekly wage. This change applies to injuries occurring on or after the effective date of the bill.

Reference: Chapters 70
Statutory Changes: Creates new provisions; amends ORS 656.206.
Effective Date: January 1, 2018

House Bill 3008: False Documents Related to Employee Hours Worked

HB 3008 prohibits an employer from compelling, coercing, or otherwise inducing an employee to create, file, or sign documents containing information that the employer knows is false related to hours worked or compensation received by the employee. The bill establishes a private cause of action for violations of this rule and authorizes the court to award actual damages or statutory damages of $1,000, whichever is greater, per violation, injunctive relief, attorney fees, and costs. The court shall count each pay period in which a violation occurs or continues as a separate violation. The bill also authorizes the Commissioner of the Bureau of Labor and Industries to assess a civil penalty up to $1,000 per violation.

Reference: Chapters 211
Statutory Changes: Creates new provisions.
Effective Date: January 1, 2018

House Bill 3391: Health Plans and Required Reproductive Health Benefits

HB 3391 requires health benefit plan ("Plan") coverage of specified health care services, drugs, devices, products, and procedures related to reproductive health (these items are found in Section 2 of the bill). A Plan may not impose on an enrollee a deductible, coinsurance, copayment, or any other cost-sharing requirement on the items related to reproductive health

found in Section 2. HB 3391 allows an exemption for plans sold to religious employers. An insurer may offer to a religious employer a Plan that does not include coverage for contraceptives or abortion procedures that are contrary to the religious employer's religious tenets only if the insurer notifies in writing all employees who may be enrolled in the Plan of the contraceptives and procedures the employer refuses to cover for religious reasons. No later than September 15, 2019, the Department of Consumer and Business Services ("DCBS") shall report to the interim committees of the legislature related to health on the degree of compliance by insurers with the mandate found in Section 2.

Section 5 requires the Oregon Health Authority ("OHA") to implement a program to reimburse the costs of services, drugs, devices, products, and procedures related to reproductive health, found in Section 2, provided to individuals who can become pregnant and who would be eligible for medical assistance if not for certain federal requirements. OHA shall collect data and analyze the cost-effectiveness of the services, drugs, devices, products, and procedures paid for under Section 5. No later than September 15, 2018, OHA shall report to the interim committees of the legislature related to health on the implementation of Section 5.

Section 7 provides that an individual may not, on the basis of actual or perceived race, color, national origin, sex, sexual orientation, gender identity, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any Plan issued or delivered in this state, in the receipt of medical assistance, or in the coverage of or payment of reproductive-related services, drugs, devices, products, and procedures described in Section 2 of the bill.

Section 9 states that the Health Evidence Review Commission shall review the coverage described in Section 2 and, no later than November 1 of each even-numbered year, report to the interim committees of the legislature related to health any recommended changes to the coverage based upon the latest clinical research.

Section 10 requires OHA, in consultation with DCBS, to design a program to provide statewide access to abortion coverage for Oregon residents enrolled in Plans that do not cover abortion. OHA, in consultation with DCBS, shall implement a program, to the extent authorized by state law, if funding is available. OHA must report to the Speaker of the House of Representatives, President of the Senate, and the interim committees of the legislature related to health on actions taken and recommendations for legislative changes to fully implement the program.

Section 12 provides that Section 2 of the bill applies to Plan policies or certificates issued, renewed, modified, or extended on or after January 1, 2019. Section 13 states that Sections 5 and 9 become operative on January 1, 2018. Section 14 sunsets Section 10 on January 2, 2019. The bill declares an emergency and is effective on passage.

Reference: Chapters 721
Statutory Changes: Creates new provisions.
Effective Date: August 15, 2017

Senate Bill 271: Definition of Small Employer and Group Health Plans

SB 271 modifies the definition of small employer for the purposes of group health benefit plans. A small employer is now defined as an employer who employed an average of at least one, but not more than 50 full-time equivalent employees, on business days during the preceding calendar year and who employs at least one full-time equivalent employee on the first day of the plan year, determined in accordance with a methodology prescribed by the Department of Consumer and Business Services by rule.

Reference: Chapter 142
Statutory Changes: Amends ORS 743B.005.
Effective Date: January 1, 2018

Senate Bill 299: Amendments to Oregon's Paid Sick Leave Law

SB 299 makes technical changes to Oregon's paid sick leave law. It provides that business owners and their families are exempt from the employee count for determining whether a business must provide paid sick time. A business owner must have a "substantial ownership interest" in the business. The bill defines that interest to be a percentage of ownership equal to or greater than the average percentage of ownership of all owners, but not less than 15 percent. The bill also provides that for an employee who is paid an hourly, weekly, or monthly wage and is also paid on a piece-rate or commission basis by an employer that employs 10 or more employees working in Oregon, the employer shall pay the employee for accrued sick time used at a rate equivalent to the employee's hourly, weekly, or monthly wage or equal to the minimum wage specified in ORS 653.025, whichever is greater. The bill further provides that an employer with a sick leave policy, paid vacation policy, paid personal time off policy, or other paid time off program that is substantially equivalent to or more generous to the employee than the minimum requirements of ORS 653.601 to 653.661 (Oregon's Sick Leave Law), must, at a minimum, comply with the requirements of ORS 653.601 to 653.661 for the first 40 hours that the employer's policy provides per year, but need not comply with the requirements of ORS 653.601 to 653.661 beyond the first 40 hours that the employer's policy provides per year. These changes apply to hours worked and sick time accrued or used on or after January 1, 2018. The bill declares an emergency, and is effective July 1, 2017.

Reference: Chapters 520
Statutory Changes: Creates new provisions; amends ORS 653.601, 653.606, and 653.611.
Effective Date: July 1, 2017

Senate Bill 398: Disclosures Regarding the Earned Income Tax Credits

SB 398 requires the Commissioner of the Bureau of Labor and Industries ("BOLI"), in collaboration with the business community and groups that advocate for low income people, to

adopt rules to require employers to provide written notice to employees about the state and federal earned income tax credits. It requires BOLI to include information about the earned income tax credits in posters regarding state minimum wage. The Employment Department is to provide information to recipients of unemployment insurance benefits about the earned income tax credits.

Reference: Chapters 333
Statutory Changes: Creates new provisions.
Effective Date: October 6, 2017

Senate Bill 828: Predictive Scheduling

Passage of SB 828 was another of the major priorities for the Democrat majority in 2017. As the name implies, the bill requires businesses in certain industries to provide greater predictability regarding employee work schedules or face penalties. OBA and the business community worked hard throughout the session to try to limit the negative impacts of the bill and, in particular, to keep the list of industries subject to the bill narrow. In the end, OBA was successful holding the line in keeping the banking industry out of SB 828's onerous requirements.

SB 828 requires employers of 500 or more employees in the retail, hospitality, and food services industries (as identified in the 2012 North American Industry Classification System under codes 44-45, 721110, 721120, and 722), to provide a new employee with a good faith estimate of the employee's work schedule and to provide a current employee with seven days' notice of the employee's work schedule. The seven-day requirement is set to be extended to fourteen days' notice effective July 1, 2020. The bill prohibits covered employers from scheduling work shifts that do not allow sufficient break time in between shifts unless the employee earns 1.5 times the scheduled rate of pay. With certain exceptions, employers covered by the bill are required to pay a penalty wage if the employer changes a scheduled shift with less than seven days' notice. SB 828 requires covered employers to maintain records relating to compliance with the bill for three years. Pursuant to the bill, it is an unlawful employment practice for a covered employer to interfere or retaliate against an employee for exercising his or her rights granted under SB 828 and provides employees administrative or a civil cause of action and statutory penalties for each violation. The primary provisions of the bill become operative on July 1, 2018, however the bill does contain an emergency clause and is effective upon passage to permit the Bureau of Labor and Industries time to conduct rulemaking prior to the bill's operative date.

From a business and banking point-of-view, SB 828 does include a positive element. The bill repeals the sunset of preemption of local government regulation of work schedules. In other words, local governments will continue to be preempted by the state from enacting their own requirements related to work schedules. Under current law, that preemption was set to sunset at the conclusion of the 2017 session.

Reference: Chapter 691
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 8, 2017

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Mortgage and Foreclosure

Unlike prior years in which foreclosure was front-and-center in the legislature, the issue has moved to the backburner. Less and less focus has been placed on devising new ways to "fix" foreclosure law in Oregon as the worst of the crisis is now in the rearview mirror.

Few bills were introduced during the session that dealt directly with foreclosure or the foreclosure facilitation program administered by the Oregon Department of Justice. The ones that passed are summarized below.

As noted in the opening summary of this digest, OBA introduced Senate Bill 968. While OBA was unsuccessful passing that bill, we will be introducing another bill in 2018 to address claims brought by counties for recording fees for unrecorded assignments. Stay tuned.

The following are the important legislative changes concerning foreclosure that passed the 2017 legislature.

House Bill 2359: AG Notice of Denial of Eligibility for Foreclosure Avoidance Measure

HB 2359 removes the requirement for a beneficiary in a trust deed to send, and the Attorney General to receive, a copy of the notice that the beneficiary is not qualified for or has not complied with the terms of a foreclosure avoidance measure.

Reference: Chapter 154
Statutory Changes: Amends ORS 86.741 and 86.748.
Effective Date: January 1, 2018

Senate Bill 79: DVA Exemption from Resolution Conference

SB 79 permits the Department of Veterans' Affairs ("DVA"), in seeking a judicial or nonjudicial foreclosure on a residential trust deed, to file an affidavit that states that the DVA is exempt from the requirement to request or participate in a resolution conference. The bill includes rulemaking authority for the DVA to exercise all duties and functions necessary to comply with the bill on or after its operative date (the bill becomes operative 91 days after the effective date of the bill). The bill declares an emergency and is effective on passage.

Reference: Chapter 236
Statutory Changes: Creates new provisions; amends ORS 86.752 and 88.010.
Effective Date: June 6, 2017

Senate Bill 98: Non-Bank Mortgage Service Licensure

SB 98 is a bill introduced by the Department of Consumer and Business Services ("DCBS") to license and regulate non-bank mortgage servicers. Different versions of this bill have been introduced by DCBS in past sessions. OBA has successfully killed these prior iterations given their overly broad scope and a variety of other deficiencies.

SB 98 requires certain persons or entities that service residential mortgage loans in Oregon to obtain or renew a license. The bill specifies license application and renewal procedures, the duties of a licensee (including maintaining "in accordance with generally accepted accounting principles sufficient liquidity, operating reserves and net worth" to meet costs and expenses), the ability of DCBS to examine licensees and investigate complaints the Department receives, and the right for DCBS to take enforcement action if violations occur. The licensure requirements of the bill apply to service transactions for residential mortgage loans that occur on or after January 1, 2018. DCBS is authorized to perform rulemaking before the January 1, 2018 operative date. The bill declares an emergency and is effective on passage.

OBA secured an amendment and successfully fought to preserve other language in the bill that would exempt the following entities from the requirements of this new licensure program: 1) a financial institution as defined by ORS 706.008 (including banks, but not including free-standing trust companies); 2) an entity or an affiliate of the entity that in all operations within the United States during the calendar year services fewer than 5,000 residential mortgage loans, excluding loans that the entity or the entity's affiliate originates or owns; and 3) a financial holding company or bank holding company if the financial holding company or bank holding company, as defined under ORS 706.008, does not do more than control an affiliate or a subsidiary and does not engage in business as a residential mortgage loan services. Early in the session, we reached out to our members to survey who may be captured by the licensure requirements of the bill. Our members indicated they fell within the exemptions and would not be impacted by the bill.

Reference: Chapter 636
Statutory Changes: Creates new provisions.
Effective Date: August 2, 2017

Senate Bill 381: Mailing Requirements for Certain Real Estate Notices

SB 381 amends several statutes in ORS Chapter 86 concerning notices related to mortgages and trust deeds. Under SB 381, these notices must be mailed to all addresses on file for the recipient, including post office boxes. The changes apply to the following: ORS 86.157 related to payoff statements; ORS 86.720 notices of intention to record a release of trust deed; ORS 86.729 related to foreclosure resolution conferences; ORS 86.748 related to notices of ineligibility to qualify for a foreclosure avoidance measure; ORS 86.756 relating to notices of

default; ORS 86.764 related to notices of sale; and ORS 86.782 related to a trustee's sale. These changes would apply to notices mailed after the effective date of the bill.

Reference: Chapter 251
Statutory Changes: Creates new provisions; amends ORS 86.157, 86.720, 86.729, 86.748, 86.756, 86.764, and 86.782.
Effective Date: January 1, 2018

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REAL ESTATE

As is usual in most sessions, a variety of real estate related bills were introduced. Two issues, however, remained top of mind during the 2017 session.

A number of bills were introduced to help increase the availability of affordable housing around Oregon. While some passed, others that dealt with rent control or no-cause eviction failed to gain enough political support to reach the Governor's desk. It is unclear whether these concepts will rear their heads in the 2018 session.

Another area of interest concerned appraisals and issues related to the costs and timeliness of obtaining appraisals. Many of these concerns stem from a lack of appraisers in the marketplace. Unfortunately, the issue of appraiser supply is one driven largely by federal as opposed to state policy concerning appraisal qualifications. That said, OBA did add a provision to a bill that would have allowed banks to use non-Oregon licensed appraisers to perform evaluations in limited circumstances. Unfortunately, this bill, which also included provisions from the realtors related to appraiser fee caps, did not pass. OBA is continuing to explore the issue of appraisals and avenues to ease the challenges that bankers are facing related to obtaining timely and reasonably priced appraisals.

The following bills are real estate related matters, unrelated to foreclosure, that passed during the 2017 session.

House Bill 2002: Preservation of Publicly Supported Housing

HB 2002 expands the laws concerning the preservation of participating properties that are publicly supported housing. Participating properties are properties that are the subject of a contract by which the property becomes publicly supported housing subject to an affordability restriction. Publicly supported housing is defined as a multifamily rental housing development of five or more units that receives or benefits from government assistance pursuant to a variety of government programs.

Subject to some limited exceptions related to foreclosure and a local government's exercise of the power of eminent domain, HB 2002 requires the owner of a participating property to provide notice to the Oregon Housing and Community Services Department ("OHCS") and each local government two years prior to the expiration of the contract or withdrawal of the participating property from publicly supported housing. If the property owner does not comply with these notice requirements, the property owner shall extend the affordability restriction on the participating property by the number of months that the property owner is in noncompliance and immediately provide notice to OHCS and each local government that is entitled to notice of the extension of the affordability. A property owner shall provide notice to the OHCS and each local government of the opportunity to purchase a participating property at least 13 months prior to the occurrence of any of the following actions if the action will result in

withdrawal of the participating property from publicly supported housing: 1) refinancing of the primary mortgage; 2) recapitalizing for purposes of rehabilitation or repair; 3) entering into an agreement to sell the property to a new property owner; or 4) withdrawing the participating property from publicly supported housing. An owner of participating property is also required to provide OHCS and local governments with a right of first refusal to purchase participating property under certain circumstances. HB 2002 establishes the timelines and requirements for OHCS and local governments to exercise an opportunity to offer to purchase participating property as well as the right of first refusal to purchase participating property. The bill authorizes a civil action by a person who suffers ascertainable loss or damage as result of property owner's failure to comply with the provisions of the bill.

Reference: Chapter 608
Statutory Changes: Creates new provisions; amends ORS 456.250, 456.255, 456.260, 456.265, 456.559, and 456.574.
Effective Date: October 6, 2017

House Bill 2008: Manufactured Dwelling Park Conversions

HB 2008 updates the amounts a landlord must pay the tenants of a manufactured dwelling park ("MDP") upon the closure of the MDP to convert it to another use. The Office of Manufactured Dwelling Park Community Relations ("OMDPCR") is required to establish by rule a process to annually recalculate the amounts a landlord must pay tenants upon the closure of a MDP to "reflect inflation." The Owner of a MDP is required to give notice of the conveyance of an MDP to the OMDPCR upon any sale, transfer, exchange, or other conveyance. The new owner of manufactured dwelling that does not become a member of the park cooperative within six months after title transfer, must remove the manufactured dwelling from the MDP, with certain exceptions. The bill declares an emergency and is effective on passage.

Reference: Chapter 198
Statutory Changes: Creates new provisions; amends ORS 62.809, 62.813, 90.643, and 90.645.
Effective Date: June 6, 2017

House Bill 2132: Utility Improvement Financing

House Bill 2132 further expands the purposes for which improvements may be made under local government financing programs to include energy storage, smart electric vehicle charging stations, and water efficiencies. A local government may establish a program to assist owners of qualifying real property in financing cost-effective utility improvements to the property. "Qualifying real property" is defined as multi-family residential dwellings, commercial, or industrial buildings that the local government determines would be benefited by utilities improvements. A "utility improvement" means an improvement to qualifying real property for any of the following purposes: 1) energy efficiency; 2) renewable energy; 3) energy storage; 4)

smart electric vehicle charging stations; or 5) water efficiency. The utility improvements must be authorized by the local government implementing the program or through the Oregon Department of Energy that establishes a program in cooperation with a local government.

The local government implementing the program may secure a loan or financing with a lien on the benefited qualifying real property with the same priority, as determined under ORS 223.230(3), as a lien for assessments for local improvements. ORS 223.230(3) provides that "all unpaid final assessments together with accrued and unpaid interest and penalties are a lien on each lot or parcel ... in favor of the local government and the lien shall have priority over all other liens and encumbrances whatsoever." That said, the bill provides that the local government cannot enter into a loan agreement or facilitate financing unless the owner: 1) provides written notice to all mortgagees that the owner intends to enter into a loan agreement; and 2) the owner receives consent from the mortgagees stating that the loan agreement or financing agreement entered into will not constitute default or give rise to any remedies under the terms of the mortgage loan agreements.

In a similar fashion, the bill amends the law related to local government financing programs related to seismic upgrades. Like the utility improvements program, to utilize a local government financing program for seismic upgrades the owner must first give mortgagees notice and receive consent that the loan or financing will not constitute default or give rise to remedies under the mortgage agreements. Assuming the mortgagees are notified and give consent, the lien for the financing of seismic upgrades takes a super-priority status, as is the case with the utility improvement program.

Reference: Chapter 283
Statutory Changes: Amends ORS 223.001, 223.680, and 223.685.
Effective Date: October 6, 2017

House Bill 2140: Seismic Risk Disclosure

HB 2140 amends ORS 105.464 to require that the seller of real property disclose seismic risk to the property in the seller's property disclosure statement. Section 8 of the seller's property disclosure statement will now be entitled "Seismic" and will ask two questions: 1) was the house constructed before 1974; and 2) if yes, has the house been bolted to its foundation.

Reference: Chapter 147
Statutory Changes: Creates new provisions; amends ORS 105.464.
Effective Date: January 1, 2018

House Bill 2189: Statute of Repose for Appraisal Activity

HB 2189 establishes a statute of repose for actions arising out of real estate appraisal activity. An action arising out of real estate appraisal activity must be commenced before the earlier of the otherwise applicable period of limitation or six years after the act or omission giving rise to action, except in cases based on fraud or misrepresentation. The bill as originally drafted called for a five-year statute of repose.

Reference: Chapter 143
Statutory Changes: Creates a new provision.
Effective Date: January 1, 2018

House Bill 2279: Property Tax Appraisers and the Department of Revenue

House Bill 2279 was introduced at the request of the Department of Revenue (DOR) and makes changes to the statutes relating to publicly employed tax appraisers. The bill transfers to the DOR, from the Department of Administrative Services (DAS), authority for examining and registering the property appraisers, as well as setting education and experience requirements. The DOR, under the bill, could revoke the registration of an appraiser for fraud or deceit in securing registration, appraising or for incompetence. Section 2 of the bill eliminates the general knowledge examination requirements by the DAS Personnel Division.

Reference: Chapter 44
Statutory Changes: Amends ORS 182.425, 195.326, 308.010, and 308.015.
Effective Date: October 6, 2017

House Bill 2315: Housing Tax Credits and Tenant Housing Vouchers

HB 2315 was introduced at the request of the Oregon Housing and Community Services Department. It makes technical changes to the Oregon Affordable Housing Tax Credit program to clarify the way pass-through rent reductions are calculated. The bill clarifies that corporate excise tax credits allowed to lenders that finance affordable housing are not barred due to the receipt of housing vouchers by tenants.

Reference: Chapter 284
Statutory Changes: Amends ORS 317.097.
Effective Date: October 6, 2017

House Bill 2377: Property Tax Exemption for Eligible Rental Property
HB 2377 authorizes a city or county to adopt an ordinance or resolution granting a property tax exemption for “eligible rental property”, defined as newly rehabilitated or constructed multi-

unit rental housing. Eligible rental property may receive the exemption only once and only after the rehabilitation or construction is completed following the adoption of the ordinance or resolution. An ordinance or resolution must establish a schedule in which the number of consecutive property tax years for which the exemption is granted, up to a maximum of 10 years, increases directly with the percentage of units constituting the eligible rental property that are rented to households with an annual income at or below 120 percent of the area median income at monthly rates that are affordable to such households. The bill requires the city's or county's definition of "area median income" to be adjusted for size of household and requires the city or county to adopt a definition of "affordable."

An adopted ordinance or resolution may not take effect unless, upon the request of the city or county, the rates of taxation of the taxing districts whose governing bodies agree to grant the exemption, when combined with the rate of taxation of the city or county, equal 51 percent or more of the total combined rate of taxation on the eligible rental property. If the ordinance or resolution takes effect, the exemption shall apply to all property tax levies of all taxing districts in which eligible rental property is located. All eligible rental property shall be granted an exemption on the same terms provided in the ordinance or resolution adopted or amended by the city or county and in effect on the date the application is submitted. A city or county may amend an exemption, subject to the approval process of the taxing districts, or terminate the exemption. However, the qualified property granted an exemption continues to receive the exemption under the same terms in effect at the time the exemption was first granted. The bill provides that the governing body of the city or county shall establish an application process, including the contents of the application.

HB 2377 provides that if, after an exemption is granted, the county assessor determines that the eligible rental property does not meet the requirements of the ordinance, resolution, or the bill: 1) the exemption shall be terminated immediately, without right of notice or appeal; 2) the eligible rental property shall be assessed and taxed as other property similarly situated is assessed and taxed; and 3) notwithstanding ORS 311.235, there shall be added to the general property tax roll for the tax year next following the determination, to be collected and distributed in the same manner as other real property tax, an amount equal to the amount of tax that would have been due on the property had it not been exempt for each of the years during which the property was exempt, not to exceed 10 tax years.

HB 2377 sunsets on January 2, 2027. Eligible rental property that is granted an exemption under an ordinance or resolution before January 2, 2027 shall continue to receive the exemption under the provisions of the ordinance or resolution for the period of time for which the exemption was granted.

Reference: Chapter 624
Statutory Changes: Creates new provisions.
Effective Date: October 6, 2017

House Bill 2511: Residential Tenants and Electric Vehicle Charging Station

HB 2511 authorizes a residential tenant to install and use an electric vehicle charging station for personal, noncommercial use. A landlord may prohibit installation or use of a charging station installed and used in compliance with this section only if the premises does not have at least one parking space per dwelling unit. When a tenant complies or agrees to comply with the requirements of this the bill, the landlord shall approve a completed application within 60 days after the tenant submits the application unless the delay in approving the application is based on a reasonable request for additional information. A landlord may do the following: 1) require a tenant to submit an application before installing a charging station; 2) require the charging station to meet the architectural standards of the premises; 3) impose reasonable charges to recover costs of the review and permitting of a charging station; 4) impose reasonable restrictions on the installation and use of the charging station, provided the restrictions do not significantly increase the cost of the charging station or significantly decrease the efficiency or performance of the charging station. The tenant is responsible for all costs associated with installation and use of the charging station, including the cost of electricity associated with the charging station and the cost of damage to the premises that results from the installation, use, maintenance, repair, removal, or replacement of the charging station. If the landlord reasonably determines that the cumulative use of electricity on the premises attributable to the installation and use of charging stations requires the installation of additional infrastructure improvements to provide the premises with a sufficient supply of electricity, the landlord may assess the cost of the additional improvements to each tenant that has installed, or will install, a charging station. A charging station is deemed the personal property of a tenant unless a different result is negotiated between the parties. The bill declares an emergency and is effective on passage.

Reference: Chapter 198
Statutory Changes: Creates new provisions; amends ORS 62.809, 62.813, 90.643, and 90.645.
Effective Date: June 6, 2017

House Bill 2562: Reverse Mortgage Property Tax Notice

HB 2562 requires certain lenders that have a contract with a person for a reverse mortgage to send the person or their escrow agent, title insurance company, or other agent that pays property taxes on the person's behalf a notice that states that the title to the property that is subject to the reverse mortgage remains with the person and the person is responsible for paying property taxes and related taxes on the property. The lender must send the notice each year at least 60 days before property taxes are due on the property. OBA successfully amended the bill to provide that the yearly notice requirement does not apply to financial institutions defined in ORS 706.008 (including banks).

Reference: Chapter 161
Statutory Changes: Amends ORS 86A.196.

Effective Date: January 1, 2018.

House Bill 2722: Irrigation Limitations in Planned and Condominium Communities

HB 2722 prohibits the enforcement of a planned community or condominium community's irrigation requirements by an association or unit owners following a finding or declaration of existing or likely drought conditions or adoption of certain rules by the association. It permits an association of unit owners and a homeowners' association to adopt rules that require reduction or elimination of irrigation or that permit or require replacement of existing turf with xeriscape. The bill also defines terms and reorganizes certain provisions within each statutory scheme regarding condominium and planned communities. The bill declares an emergency and is effective on passage.

Reference: Chapter 423
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: June 22, 2017.

House Bill 2724: Rent Guarantee Program for Landlords

HB 2724 directs the Oregon Housing and Community Services Department ("OHCS") to develop and implement a Rent Guarantee Program ("RGP") to provide incentives and financial assistance to landlords that rent or lease to low income households by guaranteeing payments to landlords for unpaid rent and for eviction and property damage costs, within certain limits. OHCS administration of the RGP is subject to Oregon Housing Stability Council policy, rules, and standards. The bill authorizes OHCS to request proposals from, and contract with, program providers to administer the RGP. HB 2724 requires the collection of performance outcome measures and an annual report to interim committees of the legislature on housing no later than September 15 of each year.

Reference: Chapter 659
Statutory Changes: Creates new provisions.
Effective Date: January 1, 2018

House Bill 2855: Compelling Conveyance of Deed without Filing a Lawsuit

HB 2855 creates a procedure for a purchaser of real property to enforce a contractual requirement for delivery of a deed of conveyance ("Deed") without instituting a lawsuit. If a seller has received full payment and performance of a contract for the transfer or conveyance of an interest in real property, but fails or refuses to provide the purchaser with a proper Deed, the contract is deemed complete and the title held by the seller is conveyed to the purchaser, provided the purchaser: 1) has not instituted a suit or action to enforce the contract; 2) has

fulfilled all requirements of the purchaser under the contract; and 3) has given the seller written notice of the purchaser's wish to enforce a contractual requirement for delivery of a Deed.

A purchaser who wishes to enforce a contractual requirement for delivery of a Deed shall record a notice of intent to enforce the contractual requirement for delivery of a Deed in each county where the property is located and, after recording the notice, give written notice by service pursuant to Oregon Rule of Civil Procedure 7, or by both first class and certified mail, return receipt requested, to the last-known address of the seller, an occupant of the property, or any person holding title or other interest through the seller that was recorded prior to the recording of the notice. The bill specifies the items that must be included in the notice. A purchaser shall record an affidavit of service or mailing of the notice. If, after notice is properly given and recorded, a seller does not provide the purchaser with the Deed within 30 days of service or mailing, the purchaser may acquire the seller's interest in the property by: 1) publishing a notice that meets the requirements called for in the bill at least one time per week for three consecutive weeks in a newspaper of general circulation in each county in which the property is located, that the purchaser wishes to enforce a contractual requirement for delivery of a Deed from the seller; and 2) recording an affidavit of compliance with the publishing requirements within 15 days of the date of the last publication.

If a seller fails or refuses to provide a proper Deed after the purchaser completes the notice and recording procedures, the notice provided to the seller satisfies any notice required by the terms of the contract of sale. Notwithstanding this provision, the purchaser must give written notice as required by the contract if the contract requires that notice be provided to additional persons or sets forth a longer notice period than the period required by this bill.

In the alternative to this process, a seller may serve or mail an objection to the enforcement of a contractual requirement for delivery of a Deed to a purchaser that gives a notice. A seller that submits an objection to the purchaser must record the objection in each county in which the property is located within 30 days, along with an affidavit of the seller's objection that includes the name and contact information of the objecting seller and a copy of the notice or publishing notice. The purchaser may file suit to challenge the objection and enforce the contract. The prevailing party is entitled to damages and attorney fees in such a case.

If a seller does not submit an objection to the purchaser and the contract for conveyance of real property has been fulfilled under the notice and recording procedures, the purchaser shall record a declaration of fulfillment ("Declaration") in the deed records of each county in which the property is located. Contents of the Declaration are provided in the bill.

Except as otherwise provided in the statute or in the contract or other agreement with the seller, fulfillment of a contract for sale under this bill has the following effects: 1) except as provided in item 3 below, the seller and all persons claiming through the seller that were given the required notices, have no further rights in the contract or the property and no person has any right, by statute or otherwise, to redeem the property; 2) all rights, title, and interest in the

property held by the seller and any improvements made to the property at the time the Declaration is recorded are transferred to the purchaser as though the seller had delivered a fulfillment of deed to the purchaser; and 3) any claim of title or interest through the seller that was recorded prior to the recording of the contract for transfer or conveyance of an interest in real property or a memorandum of the contract shall maintain its priority and is not extinguished by the Declaration.

The procedures in the bill apply to enforcement of contractual delivery of a Deed commenced on or after the effective date of the bill.

Reference: Chapter 164
Statutory Changes: Creates new provisions.
Effective Date: January 1, 2018

House Bill 2912: Affordable Housing Land Acquisition Revolving Loan Program

HB 2912 establishes the Affordable Housing Land Acquisition Revolving Loan Program ("Program") within the Housing and Community Services Department ("OHCS"). The purpose of the Program is to provide loans to eligible organizations to purchase land for affordable housing development. Organizations that are eligible to participate in the Program include local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in this state, and regional or statewide nonprofit housing assistance organizations. The bill prescribes the application process for the program. Forty percent of loans made by the Program shall go to eligible organizations operating home ownership programs for low income households. If the entire 40 percent cannot be loaned to these types of eligible organizations, the remainder may be loaned to other eligible organizations. Within five years of receiving a loan, a loan recipient must present OHCS or the program administrator with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule that indicates completion of the development within eight years of receipt of the loan. Within eight years of receiving a loan under this section, a loan recipient must complete development of affordable housing on the property for which the loan was made and place the affordable housing into service. If a loan recipient does not place affordable housing into service on a property for which a loan was received within the eight-year period, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, the loan recipient must pay OHCS an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. A loan recipient must preserve the affordable housing developed on the property as affordable housing for a minimum of 30 years. The bill requires OHCS to develop performance measures and report to the interim committee of the legislature with subject matter jurisdiction for housing by December 1 of each year, beginning in 2018.

Reference: Chapter 666
Statutory Changes: Creates new provisions.
Effective Date: January 1, 2018.

House Bill 2920: Satisfaction of Judgment After an Execution Sale

HB 2920 concerns the filing of a satisfaction after an execution sale involving real property. OBA worked with other interested parties to narrow the bill from what was originally introduced. The original bill would have applied broadly to money judgments, rather than to execution sales involving real property. The original bill also would have required the payment of attorney fees if the judgment creditor failed to provide a satisfaction as required by ORS 18.225, regardless of the circumstances as to why the satisfaction was not filed.

As provided in the version of the bill that passed the legislature, after an execution sale of real property, the judgment debtor or other person with an interest in the real property may request, in writing, that the judgment creditor file a satisfaction document. If the judgment creditor does not file a satisfaction document within 10 days after receiving the request, the person making the request may file a motion under ORS 18.235. If the court finds that the judgment creditor failed to file a satisfaction document under ORS 18.225 within 10 days after receiving a written request, the court may render a supplemental judgment awarding reasonable attorney fees to the person making the motion unless the judgment creditor establishes that the failure to file the satisfaction document was not the fault of the judgment creditor. The bill applies only to satisfaction documents requested or filed on or after the bill becomes effective, January 1, 2018.

Reference: Chapter 270
Statutory Changes: Creates new provisions; amends ORS 18.950.
Effective Date: January 1, 2018.

House Bill 2944: Landlord Assistance Under Housing Choice Landlord Guarantee Program

HB 2944 limits landlord assistance under the Housing Choice Landlord Guarantee Program ("HCLGP") to damages awarded in a judgment following a hearing in which the landlord proves the amount of damages. The bill repeals the law requiring a tenant to repay the amount of assistance paid to a landlord under HCLGP. The bill declares an emergency and is effective on passage.

Reference: Chapter 271
Statutory Changes: Creates new provisions; amends ORS 456.378, 456.380, and 456.385.
Effective Date: June 8, 2017

House Bill 3056: Condominium and Planned Community Assessment Liens

HB 3056 modifies the rules concerning assessment liens in the planned community and condominium context. The bill prevents the extinguishment of an assessment lien upon entry of a judgment in an action to recover unpaid planned community or condominium assessments.

Reference: Chapter 110
Statutory Changes: Amends ORS 94.709 and 100.450.
Effective Date: January 1, 2018

House Bill 3063: Disbursal of Money from Housing for Mental Health Fund

HB 3063 requires the Housing and Community Services Department ("OHCS"), in collaboration with the Oregon Health Authority, to disburse moneys in the Housing for Mental Health Fund for development of community-based housing, crisis intervention services, rental subsidies, and other housing-related services for individuals with mental illness and individuals with substance use disorders. It requires OHCS to convene an advisory group for: 1) the allocation of moneys between different types of housing; 2) the financing of community-based housing; 3) the provision of crisis services including intervention services, rental subsidies, and other housing-related services for individuals with mental illness and individuals with substance use disorders; 4) soliciting funding proposals; and 5) processing applications for funding. The bill declares an emergency and is effective on passage.

Reference: Chapter 671
Statutory Changes: Creates new provisions; amends Section 9, Chapter 812, Oregon Laws 2015.
Effective Date: August 8, 2017

House Bill 3447: Prohibition on Restrict Related to Home Child Care

HB 3447 prohibits a provision in an instrument conveying real property that restricts the use of the property as a certified or registered family child care home or as the premises of an exempt family child care provider. The bill prohibits enforcement of a condominium or homeowners association prohibition or restriction related to the use of a unit as an exempt family child care provider or a certified or registered family child care home. This prohibition does not prohibit an association of unit owners or homeowners association from adopting or enforcing a provision in the governing documents that regulates parking, noise, odors, nuisance, use of common elements, or activities that impact the cost of insurance policies held by the condominium, provided the provision: 1) is reasonable; and 2) does not have the effect of prohibiting or restricting the use of a unit as the premises of an exempt family child care provider or as a certified or registered family child care home. Section 5 of the bill also makes provisions in a planned community's governing documents void or unenforceable that impose

irrigation requirements on an owner while: 1) a declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located; 2) a finding by the Water Resources Commission that a severe or continuing drought exists or is likely to occur in a political subdivision within which the planned community is located; or 3) an ordinance adopted by the governing body of a political subdivision within which the planned community is located that requires conservation or curtailment of water use. The language in Section 5 related to irrigation restrictions is similar to language found in House Bill 2722 (see above).

Reference: Chapter 221
Statutory Changes: Creates new provisions; amends ORS 93.270, 94.550, 94.630, and 100.005.
Effective Date: January 1, 2018

House Joint Memorial 3: Urging Congress to Change Appraiser Qualifications

HJM 3 urges Congress to support changes to the minimum appraiser qualifications criteria proposed by the Appraiser Qualifications Board of the Appraisal Foundation, including development of an alternative track for progressing from a State Licensed Appraiser to a State Certified Residential Appraiser, reducing the number of experience hours required to obtain each appraiser credential and the time period over which those experience hours must be obtained, and development of an enhanced practicum curriculum to assist in meeting the experience requirement of the qualification criteria.

Reference: Filed with the Secretary of State on May 22, 2017.

Senate Bill 277: Manufactured Dwelling Notices

SB 277 increases the notice period for termination of a rental agreement and removal of a manufactured dwelling or floating home from 30 days to 60 days and, in certain circumstances, permits an additional extension of 60 days. If disrepair or deterioration of a manufactured dwelling or floating home creates a risk of imminent and serious harm to dwellings, homes, or persons within a facility, defined as a manufactured dwelling park or marina, a landlord may terminate a rental agreement and require the removal of the dwelling or home by giving to the tenant not less than 30 days' written notice before the date designated in the notice for termination. The notice must include a description of the risk of harm and, if reasonably known by the landlord, describe specifically what repairs are required to correct the problem that is the cause of the termination.

A landlord who requires an application for occupancy as a tenant from a prospective purchaser of a manufactured dwelling or floating home must provide a prospective purchaser with: 1) copies of the statement of policy, the rental agreement, and the facility rules and regulations, including any conditions imposed on a subsequent sale (as provided by ORS 90.510); 2) copies

of any outstanding notices given to the tenant under ORS 90.632; 3) a list of any disrepair or deterioration of the manufactured dwelling or floating home; 4) a list of any failures to maintain the space or to comply with any other provisions of the rental agreement, including aesthetic or cosmetic improvements; and 5) a statement that the landlord may require a prospective purchaser to complete repairs, maintenance, and improvements as described in the notices and lists provided above. The bill declares an emergency and is effective on passage.

Reference: Chapter 324
Statutory Changes: Amends ORS 90.505, 90.632, 90.680, and 105.124.
Effective Date: June 14, 2017

Senate Bill 1051: Affordable Housing Development

SB 1051 requires cities with a population greater than 5,000, or counties with populations greater than 25,000, to review and decide on applications for certain housing developments containing affordable housing units within 100 days. "Affordable housing" is defined as housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater.

The bill establishes standards of review for a city or county decision on an application for certain housing developments located within an urban growth boundary. These standards include standards related to design standards, density, and height and become operative on July 1, 2018.

The definition of "needed housing" under ORS 197.303 was amended. "Needed housing" is now defined as all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to, households with low incomes, very low incomes, and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 USC 1437(a). This definition does not apply to a city with a population of less than 2,500 or a county with a population of less than 15,000.

A city with a population greater than 2,500 or county with a population greater than 15,000 shall allow the building of an accessory dwelling unit in an area zoned for single-family dwellings. This change becomes operative July 1, 2018.

The bill requires cities and counties to allow a nonresidential place of worship to use real property for affordable housing. Local governments must report annually to the Department of Land Conservation and Development certain information relating to applications received for

development of housing containing one or more units sold or rented below market rate as part of a local, state, or federal housing program. The bill declares emergency and is effective on passage.

Reference: Chapter 745
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 15, 2017

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TAX AND FEE RELATED MEASURES

A variety of tax measures were introduced during the 2017 legislative session, many of which were designed to fill a budget "shortfall" of approximately $1.8 billion created by increased public employee retirement costs, decreased Medicaid reimbursement from the federal government, and ballot measures passed in November, 2016. These different tax bills included concepts such as increasing individual and corporate tax rates, changing tax apportionment rules for out-of-state entities, requiring corporations to make public disclosures about their taxes, repealing a variety of tax expenditures (i.e., deductions) including the mortgage interest deduction, and instituting a gross receipts tax. While many of these bills did not gain traction, let alone pass, the business community, including the OBA, spent a great deal of time and energy working to stop these proposals.

It is worth noting that the fight over tax increases is not likely over. In light of the legislature's decision not to pass a gross receipts tax during the session, public employee unions and their allies are now turning their attention to the 2018 ballot.

The following are some of the tax related measures that passed the legislature during the 2017 session.

House Bill 2273: Modifies Standard of Apportionment of Business Income

HB 2273 removes the functional test for purposes of apportionment of business income of a corporate excise taxpayer by defining "sales" to exclude amounts that are received by a taxpayer from certain transactions, received in their role as agent, or held in trust. HB 2273 authorizes the Department of Revenue to designate other exceptions by rule. The bill applies to tax years beginning on or after January 1, 2018.

In light of concerns raised by our banks concerning this change, OBA successfully amended the bill to provide that these changes do not apply to taxpayers that are required to apportion income under ORS 314.280 (which provides for the allocation of income of financial institutions).

Reference: Chapter 622
Statutory Changes: Creates new provisions; amends ORS 314.610 and 314.665.
Effective Date: October 6, 2017

House Bill 2275: Redefines Income Subject to Apportionment to Align with MTC

HB 2275 provides that for purposes of corporate tax apportionment, income subject to apportionment is defined to align with the Multistate Tax Commission model. "Apportionable income" means: 1) income arising from transactions and activity in the regular course of the

taxpayer's trade or business; (2) income arising from the acquisition, management, employment, development, or disposition of tangible and intangible property if the acquisition, management, employment, development, or disposition is related to the operation of the taxpayer's trade or business; and 3) any other income that is apportionable under the Constitution of the United States and not allocated under the laws of this state. Apportionable income also includes any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of Oregon. This change applies to tax years beginning on or after January 1, 2018.

Reference: Chapter 43
Statutory Changes: Creates new provisions; amends numerous ORS provisions in Chapters 314 and 317.
Effective Date: October 6, 2017

House Bill 2277: Application of Property Tax Refund

HB 2277 requires a county governing body to apply a property tax refund first as a credit against the amount due for a total tax liability account on which the tax was assessed, except in certain cases. These exception include: 1) except as provided in ORS 311.808 (when a refund on real property, manufactured structure, or floating home is prohibited), to the payer of the tax whenever any person pays taxes on the property of another by mistake of any kind; or 2) to the applicant entitled to proration of taxes under ORS 308.425 (taxes on destroyed or damaged property) resulting in an overpayment of taxes paid. In such cases, the bill authorizes the county governing body to apply the refund first as a credit against the total tax liability account upon request of the property owner. It authorizes the amount remaining after the refund has been applied as a credit against the total tax liability account on which the tax was assessed to be applied, upon request, to any other total tax liability account. The bill defines a "total tax liability account" as the total amount of tax that has been extended or charged against a particular property tax account as limited by Article XI, Section 11(b) of the Oregon Constitution. The bill applies to refunds payable on or after the effective date of the bill.

Reference: Chapter 27
Statutory Changes: Creates new provisions, amends ORS 311.806.
Effective Date: October 6, 2017

House Bill 2283: Application of Overpayment of Estimated Tax

HB 2283 amends ORS 316.583 and provides that if a taxpayer elects to apply an overpayment of tax to a subsequent year's estimated tax installment, the amount paid: 1) is credited as an estimated tax on the later of the first estimated tax due date or the date payment is made, if elected on a timely filed return, or 2) is credited as an estimated tax on the later of the date the return is filed or date payment is made, if elected on a return filed late. The requirements of

HB 2283 apply to estimated tax payments made in tax years beginning on or after January 1, 2018.

Reference: Chapter 24
Statutory Changes: Creates new provisions; amends ORS 316.583.
Effective Date: October 6, 2017

House Bill 2285: Treatment of Tax Payments of Less Than the Amount Owing

HB 2285 provides that for purposes of ORS 314.407 and ORS 314.417 to 314.423, in the case of a return submitted to the Department of Revenue ("DOR") with payment of less than the amount of tax computed to be due, the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as assessed on the due date of the original return (determined without regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later. HB 2285 applies to reports or returns originally due on or after January 1, 2018.

Reference: Chapter 23
Statutory Changes: Creates new provisions; amends ORS 305.265 and 314.407.
Effective Date: October 6, 2017

House Bill 2407: Property Tax Potential Refund Credit

HB 2407 amends ORS 305.286 and replaces the authority of a county assessor to issue a deferred billing credit, in cases of a high-value property tax appeal (in excess of $1 million), with authority to issue a potential refund credit. The bill requires timely payment in full of property taxes assessed on property to which a potential refund credit relates. The county assessor may order issuance of a potential refund credit at any time during a tax year to which an appeal relates and any tax year during the pendency of the appeal. Within 10 days after issuing a potential refund credit, the county assessor shall notify the county treasurer of the amount of taxes included in the potential refund credit and the taxpayer of the amount of taxes included in the potential refund credit. The county treasurer is required to deposit an amount of taxes included in a potential refund credit in a trust fund administered by the county treasurer. Upon final resolution of an appeal to which a potential refund credit relates, the amount of potential refund credit, plus interest earned in the trust fund, is to be paid as directed by a court order. The bill grandfathers existing provisions of the amended statute with respect to outstanding deferred billing credits.

Reference: Chapter 541
Statutory Changes: Creates new provisions; amends ORS 305.286.
Effective Date: October 6, 2017

House Bill 2964: Property Tax Exemption for Qualified Dwelling Units

HB 2964 extends the ad valorem property tax exemption to existing qualified dwelling units of single-unit housing purchased by taxpayers seeking the exemption. A "qualified dwelling unit" is a dwelling unit that, at the time an application is filed, has a market value for the land and improvements of no more than 120 percent, or a lesser percentage as adopted by the governing body by resolution, of the median sales price of dwelling units located within the city. The bill sunsets the authority of a city to approve applications for an exemption on January 1, 2025. A qualified dwelling unit of single-unit housing granted an exemption pursuant to an application approved before the sunset date continues to receive the exemption for the period of time for which the exemption was granted.

Reference: Chapter 294
Statutory Changes: Creates new provisions; amends ORS 307.651, 307.654, 307.671, and 307.677.
Effective Date: October 6, 2017

Senate Bill 28: Transitions Non-Banks to Market Sourcing Standard

SB 28 replaces the standard of using cost of performance with a market-sourcing standard for purposes of determining the sales factor applicable to intangible property and services, as used in the corporate excise tax apportionment calculation. This change applies to tax years beginning on or after January 1, 2018.

In light of concerns raised by our banks concerning this change, OBA successfully amended the bill, in a similar fashion to HB 2273, to provide that these changes do not apply to taxpayers that are required to allocate and apportion income under ORS 314.280 (which provides for the allocation of income of financial institutions).

Reference: Chapter 549
Statutory Changes: Creates new provisions; amends ORS 314.605.
Effective Date: October 6, 2017

Senate Bill 30: Corporate Affiliates and Unitary Businesses

SB 30 provides that whether two or more corporate affiliates included in the same consolidated federal return are engaged in a unitary business may be determined by making reference to any corporation that is owned or controlled directly or indirectly by the same interests. This change applies to tax years beginning on or after January 1, 2018.

Reference: Chapter 181
Statutory Changes: Creates new provisions; amends ORS 317.705.

Effective Date: October 6, 2017

Senate Bill 32: Failure to File Estate Tax Return or Pay Estate Tax When Due

SB 32 amends ORS 118.260 and provides for the imposition of either a penalty for failure to pay estate tax when due or a penalty for the initial failure to file an estate tax return when due. These changes apply to estate tax returns due on or after January 1, 2018.

Reference: Chapter 182
Statutory Changes: Creates new provisions; amends ORS 118.260.
Effective Date: October 6, 2017

Senate Bill 33: Computation of Interest

In computing the interest due on a tax deficiency owed to the Department of Revenue ("DOR") or refunds of tax owed by the DOR, SB 33 replaces the rate based on a month or partial month with an annual percentage rate computed daily. ORS 305.220(1), as amended by SB 33 provides that, unless specifically provided otherwise by statute or by rule of the Director of the DOR adopted pursuant ORS 305.220(3), every deficiency or delinquency arising under any law administered by the Department of Revenue shall bear simple interest at the rate of 10 percent per annum, to be computed on a daily basis. ORS 305.220(2), as amended by SB 33, provides, unless specifically provided otherwise by statute or by rule of the Director or DOR adopted pursuant to 305.220(3), every refund arising under any law administered by the DOR shall, subject to subsections (3) and (5) of ORS 305.220 and ORS 305.222, bear simple interest at the rate of 10 percent per annum, to be computed on a daily basis. SB 33 applies to tax deficiencies or refunds owing as of January 1, 2018.

Reference: Chapter 278
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: October 6, 2017

Senate Bill 153: Dividend Payments from an Insurer

For purposes of determining taxable income for the corporate excise tax, SB 153 provides a 100 percent deduction of dividend payments made by an insurer member of an affiliated group to the parent company. This change applies to all tax years for which a return is subject to an audit, adjustment, or appeal or for which a claim of refund may be made after the effective date of bill.

Reference: Chapter 316
Statutory Changes: Creates new provisions; amends ORS 317.267, 317.710, and 317.715.

Effective Date: October 6, 2017

Senate Bill 162: Modifies Definition of Business Tax Credit for S-Corps

SB 162 modifies the definition of "business tax credit," as allowed to shareholders of an S corporation, and removes the Department of Revenue's rulemaking authority concerning these credits. In its place, the bill maintains a variety of existing business tax credits and updates the list with additional eligible credits. The updated list of credits now includes, but is not limited to, a credit for individual development accounts (ORS 315.271), a credit for loans for affordable housing (ORS 317.097), and a credit for loans for agriculture workforce housing (ORS 317.147). The bill modifies the tax credit allowed for employment-related dependent care expenses. It prohibits payment of interest for the refundable portion of the credit. SB 162 applies to tax years beginning on or after January 1, 2018.

Reference: Chapter 638
Statutory Changes: Creates new provisions; amends ORS 314.752 and 314.264.
Effective Date: October 6, 2017

Senate Bill 701: Connection Update to Federal Tax Code

SB 701 updates the connection date to the federal Internal Revenue Code and other provisions of federal tax law with respect to a number of provisions of Oregon tax law. The bill updates these provisions to reflect provisions in effect on December 31, 2016.

Reference: Chapter 527
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: October 6, 2017

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General Issues

As mentioned previously, more than 2800 bills were introduced during the 2017 session. These bills dealt with everything from taxes and the environment, to worker rights, veteran's affairs, and crime. While it is difficult to include every possible bill that could be captured in a "general issues" section, the following represent bills having an impact on the banking industry that do not necessarily fit neatly into the other sections of this digest.

House Bill 2012: Eastern Oregon Boarder Economic Development Region

HB 2012 is an economic development program for Oregon's eastern border. The Eastern Oregon Border Economic Development Region ("Region"), defined in rules adopted by the Eastern Oregon Border Economic Development Board ("Board") in consultation with the Oregon Business Development Department (Business Oregon), means that part of the state that is: 1) within 20 miles of the Oregon border with the State of Idaho, and that includes, but is not limited to, the cities of Ontario, Vale and Nyssa; 2) includes Willow Creek and Brogan; 3) is an area in Oregon that is across the Oregon border from Weiser, Idaho; and 4) is an area southwest of Vale for a distance of 10 miles. The bill establishes the Board, in collaboration with Business Oregon, and directs it to formulate and implement strategies and practices for strategic investment in workforce development and economic development in the region and to make grants or loans to eligible applicants to encourage workforce development and economic development in the region. The bill outlines the duties, functions, and responsibilities of Business Oregon and the Board. The Board must report annually to the legislature regarding the efforts of the Board, economic development in the region, and recommendations regarding proposed legislation and strategies to improve workforce development and economic development in the Region. The bill establishes the Eastern Oregon Border Economic Development Board Fund and continuously appropriates moneys to Business Oregon for Board purposes set forth in the Act. The bill declares an emergency and is effective on passage.

Reference: Chapter 703
Statutory Changes: Creates new provisions.
Effective Date: August 15, 2017

House Bill 2101: Public Records Exemption

HB 2101 requires Legislative Counsel to prepare an open government impact statement for measures that affect disclosure, or exemption from disclosure, of public records. The bill creates the Oregon Sunshine Committee ("Committee") to establish a schedule of review for exemptions from disclosure of public records with certain enumerated exceptions. It directs the Committee to submit a report to the Legislative Counsel Committee subcommittee on public records and to include in the report recommended changes to the public records process and recommendations to amend or repeal exemptions from disclosure. The Legislative Counsel

Committee public records subcommittee is tasked with submitting a report to the Legislative Counsel Committee.

Reference: Chapter 654
Statutory Changes: Creates new provisions.
Effective Date: October 6, 2017

House Bill 2152: Funding and Small Business Collaboration with SBDC's

HB 2152 permits small business development centers ("SBDC") to use grant funds for outreach and marketing. The bill directs the statewide network of SBDC's to collaborate with state agencies, state-supported organizations, and private sector entities, whenever practicable, to accomplish certain objectives to improve the operation and usefulness of SBDC's for small businesses. These objectives include: 1) referring small businesses that could benefit from the services offered by the SBDC network to SBDC's in the counties or regions where the SBDC's are located; (2) using SBDC's for training and business outreach to small businesses; (3) coordinating trainings to reduce multiple and repeat stops and inquiries for small businesses with common interests; (4) informing small businesses of training opportunities that would not otherwise have been accessed or available; and (5) reaching target populations by advertising or otherwise distributing information through SBDC's.

Reference: Chapter 201
Statutory Changes: Creates new provisions; amends ORS 285B.168.
Effective Date: January 1, 2018

House Bill 2161: Credit Union Code Update

HB 2161 is the biennial credit union bill. This session's version makes several changes to the credit union laws. It provides that amendments to the bylaws of a credit union are automatically effective 30 days after submission unless disapproved by the Director of Department of Consumer and Business Services ("DCBS"). Amendments to a credit union's articles of incorporation are effective upon written approval by the director. The bill provides that a credit union may expel a member who creates an undue risk of loss to the credit union, as determined by the bylaws of the credit union. The requirement that the board of directors of a credit union meet at least 10 times each calendar year is repealed. The minimum frequency of board meetings is to be set by rule. The bill also changes the date, to January 1, 2017 from January 1, 2013, for state credit unions to exercise those powers available to federal credit unions without director approval to.

Reference: Chapter 35
Statutory Changes: Amends ORS 723.022, 723.156, 723.202, and 723.292.
Effective Date: January 1, 2018

House Bill 2191: Fraudulent Business Shell Entities

HB 2191 is a bill that was introduced to crack down on money laundering, tax evasion, and other crimes related to fraudulent shell corporations. It amends a variety of statutes related to business entities including corporations (ORS Chapter 60), cooperatives (ORS Chapter 62), limited liability companies (ORS Chapter 63), non-profit corporations (ORS Chapter 65), limited partnerships (ORS Chapter 70), trusts (ORS Chapter 128), and corporations related to irrigation, drainage, water supply, and flood control (ORS Chapter 554). The statutes in the Oregon Bank Act were not modified by HB 2191. The bill went through a number of versions during the course of the session as the broader business community attempted to avoid unintended consequences.

Section 2 provides that the Secretary of State may investigate an alleged violation of ORS Chapter 60. In the course of that investigation or in response to a request from a law enforcement agency, the Secretary of State may order a corporation to, within 30 days, perform the following: 1) submit to the Secretary of State a list of shareholders; and 2) answer interrogatories related to an alleged violation of ORS Chapter 60. The information provided is not subject to public disclosure, but may be given to law enforcement. If a corporation fails to comply, the Secretary of State may: 1) impose a civil penalty on the corporation; 2) cancel or revoke an incorporation or revoke a foreign corporation's authorization to transact business in this state after conducting a hearing; or 3) administratively dissolve the corporation. The Department of Revenue ("DOR") may recommend that the Secretary of State administratively dissolve a corporation for failure to comply with the tax laws of the state, but the DOR may not recommend administrative dissolution if it has allowed an appeal of the corporation's tax liability or another action related to the corporation's failure to comply with Oregon tax law if an appeal is pending. If the Secretary of State agrees with the DOR, the Secretary of State may dissolve the corporation. The Secretary of State may not reinstate a corporation that was administratively or judicially dissolved unless: 1) the corporation complies with the Secretary of State's order; 2) a law enforcement agency recommends incorporation or reinstatement after its investigation; 3) a court order compels reinstatement; or 4) the DOR recommends a reinstatement. A corporation may appeal an order or action the Secretary of State has taken under these new provisions.

Section 3 also amends ORS Chapter 60 and provides that an officer, director, employee, or agent (collectively "Individual") of a shell entity is liable for damages to a person that suffers an ascertainable loss of money or property as a result of the Individual: 1) making, issuing, delivering, or publishing a prospectus, report, circular, certificate, financial statement, balance sheet, public notice, or document concerning the shell entity or the shell entity's shares, assets, liabilities, capital, dividends, earnings, accounts, or business operations that the Individual knows is false in any material respect; 2) making an entry or causing another person to make an entry in a shell entity's books, records, minutes, or accounts that the Individual knows is false in any material respect; or 3) removing, erasing, altering, or canceling, or causing another person to remove, erase, alter, or cancel an entry in a shell entity's books, records, minutes, or accounts if by means of the removal, erasure, alteration, or cancellation the Individual intends

to deceive another person. An Individual of a shell entity that engages in any of the actions above in a submission to, or an interaction with, a public agency, makes a false claim and is subject to a civil action.

Sections 5 and Section 6 are added to ORS Chapter 63 concerning limited liability companies. Section 5 and 6 utilize similar provisions to the ones provided for in Sections 2 and 3 above.

Section 7 amends ORS 56.035(3) and provides that the Secretary of State, before filing a document that a person submits for filing, may verify that the principal office address, the registered office address, the records office for a limited partnership, or the principal address for an entity that has an assumed business name, as listed in the document, is a physical street address and not a commercial mail receiving agency, a mail forwarding business, or a virtual office.

Section 10 specifies additional information concerning the street address of a business entity and the name and address of a director, controlling shareholder, member, or manager that must appear in the articles of incorporation or articles of organization. Section 11 amends ORS 60.074 to provide that a person may not incorporate an entity for any illegal purpose or with an intent to fraudulently conceal any business activity from another person or a governmental agency. Section 13 provides that a corporation may not issue a document that entitles an unidentified individual or entity that possesses the document to a share in the corporation.

Section 15 amends ORS 60.661 and permits a court to dissolve a business entity that the court finds was a shell entity that was used, incorporated, or organized for an illegal purpose, to defraud, or deceive another person or to conceal business activity from another person or governmental agency. The bill permits the Attorney General to bring an action for dissolution and specifies the elements of a prima facie showing. Section 15(2) specifies the effects of a finding that a business entity is a shell entity. The bill establishes criteria by which an entity may affirmatively defend itself against an allegation that it is a shell entity.

Section 32 of the bill permits the DOR to disclose certain information from taxpayer returns to the Secretary of State for purposes of initiating or supporting a recommendation for administrative dissolution of a business entity that fails to comply with the applicable tax laws of the state.

Most of the remaining sections of the bill make similar changes to the kinds of business entities referenced in the first paragraph of this bill summary. Given the different kinds of business entities, their purposes, and their formation requirements, not all of the changes above are applicable to the other kinds of entities. Many of the changes that are made to these other entity types are predominately designed to confirm that the entities are legitimate and lawful businesses and that they have a physical address and are not simply a mail forwarding business or a virtual office.

HB 2191 becomes operative January 1, 2018. However, it includes an emergency clause so that the Secretary of State and DOR may conduct rulemaking prior to the operative date.

Reference: Chapter 705
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 15, 2017

House Bill 2198: Establishment of the Oregon Cannabis Commission for Medical Cannabis

HB 2198 is a bill that primarily makes technical changes to Oregon law related to the regulation of medical cannabis and is not likely to directly concern banks (e.g., the transfer of plants to a cannabis processor or wholesaler, the number of plants that a medical cannabis grow site may possess). The bill does, however, create the Oregon Cannabis Commission ("OCC") that will be tasked with the following: 1) determining a possible framework for future governance of the Oregon Medical Marijuana Program; and 2) steps the state must take, whether administrative or legislative in nature, to ensure that research on cannabis and cannabis-derived products is being conducted for public purposes, including the advancement of public health and safety policy, agronomic and horticultural best practices, and medical and pharmacopoeia best practices. On or before December 15, 2017, the OCC shall submit a report to the legislature's interim committees related to health and the judiciary on the OCC's findings. In addition to the above, the OCC shall provide advice on the administration of the medical marijuana program, develop long-term strategies related to ensuring that cannabis remains an affordable, therapeutic option, and to monitor and study federal laws, regulations, and policies regarding cannabis.

Reference: Chapter 613
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 2, 2017

House Bill 2229: Financial Literacy in Schools

HB 2229 encourages school districts and public charter schools to offer students courses or other educational opportunities in financial literacy.

Reference: Chapter 133
Statutory Changes: Amends ORS 329.045.
Effective Date: January 1, 2018

House Bill 2242: Redefines Business Development Projects

HB 2242 is a bill that was introduced at the request of Business Oregon and redefines what constitutes a "business development project" in ORS 285B.050. The bill restricts business development projects to those projects that result in, aid, promote, or facilitate development of traded sector activities ("traded sector", as defined in ORS 285B.280, are industries in which member firms sell their goods or services into markets for which national or international competition exists). The bill specifies that a business development project includes, but is not limited to, convention facilities, destination facilities, and office buildings, including corporate headquarters; and is a project that: 1) is located in Oregon and in a traded sector or that supports traded sector activities; or 2) if engaged in by a nonprofit organization, will not compete with local for-profit businesses and need not be in the traded sector nor support traded sector activities. A business development project does not include shopping centers, food service facilities or activities that are engaged in by retail and service businesses that are not in the traded sector, unless otherwise allowed under ORS 285B.059(5). The bill creates a separate definition of "traded sector activities", which means activities that produce goods or services for the traded sector. The bill also provides an exception for business development projects of nontraded sector service and retail businesses operated by emerging small business enterprises in rural or distressed areas.

Reference: Chapter 37
Statutory Changes: Amends ORS 285B.050 and 285B.059.
Effective Date: January 1, 2018

House Bill 2356: Debt Buyer Regulation

HB 2356 establishes requirements under which a debt buyer or a debt collector that acts on a debt buyer's behalf may bring legal action to collect a debt. A debt buyer is defined as a person that regularly engages in the business of purchasing charged-off debt for the purpose of collecting the charged-off debt or hiring another person to collect or bring legal action to collect the charged-off debt. OBA successfully amended the bill to provide that a "debt buyer does not include a person that acquires charged-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged-off debt", such as a bank. The bill specifies the notice that a debt buyer must give to a debtor and the documents that a debt buyer must give to a debtor at the debtor's request. A violation of the requirements of the bill is an unlawful collection practice.

The bill also requires that a person that engages in debt buying in Oregon to obtain or renew a license from the Director of the Department of Consumer and Business Services and specifies the requirements for applying for, issuing, and renewing a license as well as the conditions under which the Director may deny, suspend, revoke, or decline to renew a license. The bill specifies the duties and prohibited conduct for a licensee and permits the Director to order a licensee or person that engages in debt buying to cease and desist from violating the provisions

in the bill, impose a civil penalty for a violation, or take other action to remedy a violation. OBA amended the licensure requirements in the bill to provide that financial institutions, as defined under ORS 706.008 (including banks and trust companies), need not obtain or renew a debt buyer license that is created by the bill. HB 2356 becomes operative January 1, 2018, but takes effect on the 91st day following adjournment of the session.

Reference: Chapter 625
Statutory Changes: Creates new provisions; amends ORS 646.639.
Effective Date: October 6, 2017

House Bill 2610: Electronic Transfer of Corporate Documents

HB 2610 amends ORS Chapter 60 and specifies the methods by which persons may sign and transfer a corporation's documents in electronic form. It specifies the circumstances, dates, and times under which a corporation's documents are delivered and effective. ORS chapter 60 is not applicable to state chartered Oregon banks or to national banks, which are governed by the Oregon and National Bank Acts respectively. However, these ORS Chapter 60 revisions will apply to Oregon subsidiaries and non-bank affiliates.

Section 4 of the bill amends ORS 60.034 to provide that a notice under ORS Chapter 60 must be written unless oral notice is reasonable in the circumstances in which the notice is given. A notice or other communication may be given or sent by any method of delivery, except that an electronic transmission must use a method of delivery that complies with Section 4(4) of the bill. If delivery is impracticable, a notice or other communication may be published in a newspaper of general circulation in the area where the newspaper is published, or by radio, television, or another form of public broadcast communication. Section 4(4) provides that a notice or communication, including a notice of a meeting of a domestic corporation's board of directors or shareholders or a director's or shareholder's written consent, may be delivered by electronic transmission unless: 1) the articles of incorporation or bylaws of a domestic corporation prohibit delivery by electronic consent; 2) the intended recipient of the notice or communication delivers an electronic notice revocation at least 30 days before the notice or communication is sent; or 3) the notice or communication is related to a revocation of dissolution. A notice or communication delivered by electronic transmission need not be in a form that a recipient may retain, retrieve, and reproduce in tangible form by means of an automated process that is used in conventional commercial practice, if the recipient can retrieve the notice or communication in a perceivable form and the recipient agrees to a form of electronic transmission that does not permit retention, retrieval, and reproduction in tangible form.

Section 4(5) provides that a person who delivered an electronic notice revocation may rescind the electronic notice revocation by notifying the recipient of the electronic notice revocation of the person's intent to rescind. A person has constructively delivered an electronic notice revocation if an electronic transmission of a notice or communication intended for the person

fails after two successive delivery attempts and an individual with responsibility for delivering notices or communications from the corporation has actual knowledge of the failure. A corporation that continues to deliver notices or communications by electronic transmission after an individual with responsibility for delivering the notices or communications received an electronic notice revocation or has actual knowledge of the failure does not by that continuation invalidate a meeting or action. If an electronic transmission of a notice or communication fails as provided above, the corporation that sent the notice or communication shall promptly use a method other than electronic transmission to deliver the notice or communication. A corporation's failure to use a method of delivery other than electronic transmission does not, by that failure, invalidate a meeting or action.

Section 4(6) discusses when a notice or communication is received. It provides that unless a domestic corporation's articles of incorporation or bylaws provide otherwise, or unless a person who sends a notice or communication and the intended recipient of the notice or communication agree otherwise, the recipient receives the notice or communication by electronic transmission: 1) when the notice or communication enters an information processing system that the recipient uses to receive notices or communications; 2) if the recipient can retrieve the notice or communication; 3) if the notice or communication is in a form that the information processing system can process; and 4) even if the recipient or an employee or agent of the recipient is not aware of the electronic transmission. An acknowledgment of an electronic transmission establishes that the information processing system received the transmission, but does not alone establish that the content of the electronic transmission sent corresponds to the content of the electronic transmission that the information processing system received.

Section 4(7) provides that a notice is effective only if the notice is communicated in a comprehensible form. Unless a domestic or foreign corporation's articles of incorporation or bylaws provide otherwise, or unless a person who sends a notice or communication and the intended recipient of the notice or communication agree otherwise, the notice or communication is delivered and effective on the earliest of the following dates or times: 1) on the date and time the recipient actually receives a tangible copy of the notice or communication, on the date and time the person that sends the notice or communication, or an agent of the person, leaves a tangible copy of the notice or communication at a shareholder's address, a director's residence address or business address, or the domestic or foreign corporation's principal place of business; (2) on the day the person that sends the notice or communication, or an agent of the person, deposits the notice or communication in the United States mail, if the notice or communication is postage prepaid and correctly addressed to a shareholder; (3) five days after the person that sends the notice or communication deposits the notice or communication in the mail, if the notice or communication is postage prepaid and correctly addressed to a recipient who is not a shareholder, except that if a person sends a notice or communication by registered or certified mail, return receipt requested, the notice or communication is delivered and effective on the date on which the recipient actually received the notice or communication or on the date shown on the return receipt signed by the recipient or an agent of the recipient; (4) as provided

for electronic transmission (see above); or (5) on the date and time a person delivers the notice or communication to the recipient orally.

If ORS Chapter 60 requires a notice or communication in particular circumstances, the requirements in the chapter govern. If articles of incorporation or bylaws prescribe requirements for notices or communications that are consistent with this section or other provisions of ORS Chapter 60 the requirements in the articles of incorporation or bylaws govern.

If a provision of ORS Chapter 60 has the effect of modifying, limiting, or superseding the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., the provision of ORS Chapter 60 controls to the maximum extent permitted under 15 USC 7002(a)(2).

One side note to consider. HB 2191 Sections 8(a) and 9(a), which passed after HB 2610, repealed the changes to Section 1 (definitions) and 2 (document types) of HB 2610.

Reference: Chapter 55
Statutory Changes: Amends numerous provisions of ORS Chapter 60.
Effective Date: January 1, 2018

House Bill 2748: DEQ Subsidies for Clean Air Program

HB 2748 allows money in the Residential Solid Fuel Heating Air Quality Improvement Fund to be used for funding programs for replacing or removing solid fuel burning devices that are not certified by Department of Environmental Quality ("DEQ"). The bill requires DEQ to establish a program for providing grants, loans, rebates, or other subsidies to make dry wood or cleaner fuel available to communities or individuals. DEQ must prioritize allocation of these grants, loans, rebates, or other subsidies to be used in nonattainment areas for particulate matter or areas at substantial risk of being designated nonattainment areas for particulate matter. The bill declares an emergency and is effective July 1, 2017.

Reference: Chapter 122
Statutory Changes: Amends ORS 468A.490.
Effective Date: July 1, 2017

House Bill 2779: Technical Updates to the Public Funds Laws

House Bill 2779 is a bill brought forward on behalf of the Oregon State Treasurer ("Treasurer") and makes several housekeeping changes to the public funds statutes. The following are the major changes in the bill.

Section 1 amends ORS 293.265 and establishes conditions under which a person or agent collecting moneys for a state agency may take more than one business day to transmit those moneys to the Treasurer. In addition to current requirements, any person or agent collecting state moneys or other funds on account of the state agency must also certify that they have complied with any applicable procedures, principles, standards, or requirements for cash management prescribed by the Treasurer under ORS 293.875.

Section 2 (1) of the bill pertains to the actions of a custodian when it receives a pledge or release of securities from a depository. The amendment would require a custodian to obtain the approval of the Treasurer before issuing a custodian's receipt describing the securities. The custodian shall issue a copy of the receipt to the depository. Section 2 (2) deletes the following duties of custodians: 1) to give the Treasurer monthly reports listing and valuing each depository's pledged securities; 2) to notify a depository within one business day after the custodian determines that the value of its pledged securities is less than the minimum collateral requirement; 3) to notify the Treasurer within one business day after the custodian learns that a depository failed to increase the value of the depository's securities within the time required under ORS 295.015 (3)(b); 4) to notify the Treasurer in writing if a depository increases the value of the depository's securities to an adequate amount after the depository receives notice that the value of the securities is less than the minimum collateral requirement for the depository; and 5) to notify the Treasurer within one business day after the custodian determines that a bond in the inventory of a depository no longer meets the rating requirements described in ORS 295.001 (19)(c) or (d). In place of these specific duties, the custodian would be required to give the Treasurer reports describing the type and value of each security pledged by each depository, plus additional information required by the Treasurer. The Treasurer, by rule or through individual pledge agreements, may specify: 1) additional information that must be reported related to the securities pledged; 2) the frequency with which required reports must be provided; and 3) requirements for distribution of reports to depositories or other persons. OBA will closely monitor potential rulemakings relating to these items.

Section 4 (5) pertains to situations where the Treasurer requires a depository to increase its collateral. Section 4 (5)(b) currently requires the depository to notify the Treasurer and Department of Consumer and Business Services that it has complied with an order to increase collateral. HB 2779 removes this notice provision.

Section 7 (1) amends ORS 295.061 to eliminate the requirement that the depository send a copy of its treasurer report to the custodian. It would also allow the Treasurer to develop reporting systems and processes, either in individual pledge agreements or by rule. Under Section 7 (3), depositories would be required to report using systems and processes prescribed by the Treasurer in individual pledge agreements or by rule. As with the other rulemaking provisions in the bill, the new rulemaking process will be closely monitored by OBA.

Sections 8 and 9 requires the Treasurer to convene a work group to study and develop a report on the provisions of state law related to depositories of public funds and to consider changes to

state law to improve processes for the transfer and deposit of public funds or to better protect public funds against loss. The group must include representatives of depositories. A report is due to the interim committees of the legislature concerning revenue on or before February 1, 2019. The authority for the work group sunsets on January 2, 2020.

The bill includes an emergency clause and is effective upon passage.

Reference: Chapter 500
Statutory Changes: Creates new provisions; amends ORS 293.265, 295.013, 295.015, 295.018, 295.031, 295.048, and 295.061.
Effective Date: June 29, 2017

House Bill 2795: Court Filing Fee Increases

HB 2795 increases a variety of legal filing fees. Included in these changes are increases to filing an appeal in the Oregon Court of Appeals or Supreme Court, filing a complaint or answer in circuit court, the fee for filing a probate, and small claims filings. These changes apply to filings made on or after October 1, 2017. If a civil action or proceeding is filed before October 1, 2017, and an answer or other first appearance is not filed in the proceeding until on or after October 1, 2017, the person filing the answer or other first appearance must pay the appropriate fee in effect on October 1, 2017. The bill also increases certain motions fees which are filed on or after October 1, 2017, as well as settlement fees, trial fees, fees related to marriage solemnization, and prevailing party fees. ORS 18.999 relating to garnishments is also amended to increase the statutorily provided fee allowable for attorneys issuing a garnishment. The bill also increases the percentage of fees that the State Court Administrator shall transfer to the State Court Technology fund from 4.75 percent to 8.85 percent. The bill contains an emergency clause and is effective upon passage.

Reference: Chapter 663
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 8, 2017

House Bill 2933: Removal of Limitation on OIFA Emergency Projects

HB 2933 removes the limitation on the amount the Oregon Infrastructure Finance Authority may grant for emergency projects. The previous limit was $2.5 million in any biennium for emergency grants. The bill also specifies that emergency project grants include grants for essential community facilities, as defined by the Oregon Business Development Department, also known as Business Oregon, by rule after consultation with the League of Oregon Cities, the Association of Oregon Counties, the Oregon Ports Representation Group and the Special Districts Association of Oregon.

Reference: Chapter 398
Statutory Changes: Creates new provisions; amends ORS 285B.440 and 285B.462.
Effective Date: January 1, 2018

House Bill 3184: DCBS Consumer Counseling Program

HB 3184 permits the Director of the Department of Consumer and Business Services ("DCBS") to develop and implement a loan counseling program for consumers who borrow from payday loan lenders and title loan lenders. The bill prohibits a payday loan lender or a title loan lender from charging a consumer to compensate for the cost of the fee DCBS charges for the system. The bill becomes operative on July 1, 2018. The bill also declares an emergency and is effective on passage so that DCBS can conduct rulemaking in anticipation of the July 1, 2018 operative date. The bill as originally drafted was much broader in scope with additional mandates related to the loan counseling program.

Reference: Chapter 215
Statutory Changes: Creates new provisions; amends ORS 725A.090.
Effective Date: June 6, 2017

House Bill 3377: Business Oregon Report to Legislature

HB 3377 directs the Oregon Business Development Department ("Business Oregon") to report to the legislature on its responses to recommendations in the audit conducted by the Secretary of State in December, 2016 entitled "Report Number 2016-34: Business Oregon Can Improve the Evaluation and Transparency of Economic Development Incentives and Loan Programs." The bill specifies the information to be addressed in the report including: 1) the status of any updated work plans or process strategies developed and implemented by Business Oregon regarding incentive and loan programs; 2) any steps taken to increase transparency of incentive and loan programs; 3) any improvements made to the selection process for programs and awards supported by the Strategic Reserve Fund; 4) whether opportunities exist for Business Oregon to participate in tax expenditure sunset reviews; and 5) the status of any technological updates that contributed to increased efficiency and transparency of incentive and loan programs. HB 3377 requires submission of the report to the legislature no later than January 1, 2018. The bill sunsets on January 2, 2019. HB 3377 declares an emergency and is effective on passage.

Reference: Chapter 298
Statutory Changes: Creates new provisions.
Effective Date: June 14, 2017

Senate Bill 56: Cannabis Statutes Update

SB 56 makes a variety of changes to the Oregon Liquor Control Commission ("OLCC") statutes pertaining to the regulation of the cannabis industry. While most changes in the bill do not concern banking either directly or indirectly, one change permits OLCC to restrict, suspend, or refuse to renew a cannabis-related license if probable cause exists for OLCC to conclude that the licensee engaged in cannabis-related activity in manner not permitted by licensee's license. Another change provides that a cannabis retailer may not record and retain any information that may be used to identify a consumer except as necessary to make deliveries to consumer pursuant to ORS 475B.160(3). This provision was in response to concerns that the Trump administration would be cracking down on states that have legalized the use of cannabis. The bill declares an emergency and is effective upon passage.

Reference: Chapter 476
Statutory Changes: Creates new provisions; amends several ORS provisions.
Effective Date: June 23, 2017

Senate Bill 134: Installment Contract and Lease Agreement for Motor Vehicles

SB 134 provides that a seller may offer to sell or lease a motor vehicle to a buyer under a retail installment contract or lease agreement that is subject to a lender's agreement to purchase the retail installment contract or lease agreement into which the buyer enters. If, within 14 days after a buyer takes possession of a motor vehicle, a lender does not agree to purchase a retail installment contract or lease agreement on the exact terms that the seller and the buyer negotiate and the seller does not receive final approval of funding from the lender, the seller shall: 1) return to the buyer all items of value the seller received from the buyer as part of the transaction; and 2) if the seller has accepted a trade-in motor vehicle from the buyer, the seller may not sell or lease the buyer's trade-in motor vehicle before the seller receives final approval of funding from the lender. If the buyer has accepted a motor vehicle from the seller that is subject to a retail installment contract or lease agreement, and a lender does not agree to purchase the retail installment contract or lease agreement on the exact terms the seller and the buyer negotiated, the buyer shall return to the seller all items of value the buyer received from the seller as part of the transaction. The seller may charge the buyer only for amounts that the retail installment contract or lease agreement provides in writing that the seller may charge. The retail installment contract or lease agreement may provide only for the enumerated items in the bill. The bill applies to retail installment contracts and lease agreements entered into between a buyer and seller on or after the effective date of the bill.

Reference: Chapter 241
Statutory Changes: Creates new provisions; amends ORS 646.608 and 646A.090.
Effective Date: January 1, 2018

Senate Bill 253: Federal Student Loan Disclosures

SB 253 requires institutions of higher education to provide to each student enrolled at the institution, for whom the institution receives federal education loans, information detailing: 1) the total amount of the federal education loans received; 2) the amount of tuition and fees the student has paid to the institution; 3) an estimate of the total payoff amount of the federal education loans the student has received; 4) an estimate of the amount the student will have to pay each month to service the federal education loans; 5) the percentage of the borrowing limit the student has reached for each type of federal education loan; and 6) a statement that the information provided does not include private loans or credit card debt. The bill requires information to be provided on an annual basis, in a unified and comprehensive manner, and in plain language that is easy to understand. The bill as originally drafted would have applied to all student loans. It was successfully amended to apply only to federal education loans and not private loans. The provisions in the bill are applicable starting with the 2018-2019 academic year.

Reference: Chapter 320
Statutory Changes: Creates new provisions.
Effective Date: January 1, 2018

Senate Bill 302: Cannabis Related Crimes

SB 302 is a lengthy, largely technical bill that makes a variety of updates to the criminal laws of Oregon regarding cannabis. It removes provisions related to marijuana offenses from the Uniform Controlled Substances Act (ORS Chapter 475) ("UCSA") and moves the crimes, penalties, defenses to crimes, and procedural provisions in the UCSA that apply to marijuana offenses to the Control and Regulation of Marijuana Act (ORS 475B.010 to 475B.395). The bill makes corresponding changes to statutes referencing controlled substances to clarify their applicability to cannabis and cannabis-derived products. The bill declares an emergency, and was effective on passage.

Reference: Chapter 21
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: April 21, 2017

Senate Bill 333: Tax Information Regarding Or. Industrial Site Readiness Program

SB 333 requires the Oregon Business Development Department ("Business Oregon") to consult with the Department of Revenue in establishing and administering the Oregon Industrial Site Readiness Program ("OISRP"). Business Oregon must obtain employment and wage information for eligible employers at regionally significant industrial sites and determine the annual amount of estimated incremental income tax revenues generated by eligible employers per tax year.

"Estimated incremental income tax revenues" is defined as the Oregon personal income tax revenues that are equivalent to the amount of tax that employees of an eligible employer who are hired by the eligible employer on a designated regionally significant industrial site have paid under ORS chapter 316 in the tax years following the first tax year in which the eligible employer begins conducting a traded sector business on the designated regionally significant industrial site. Business Oregon is required to request that the Oregon Department of Administrative Services certify amounts determined to be estimated incremental income tax revenues. The bill permits the Employment Department to disclose to Business Oregon the information Business Oregon requires in performing its duties with respect to OISRP. No later than September 15, 2018, Business Oregon shall submit a report to the interim legislative committees on economic development regarding the OISRP.

Reference: Chapter 561
Statutory Changes: Creates new provisions; amends ORS 285B.625, 285B.626, 285B.627, 285B. 630, and 657.665.
Effective Date: October 6, 2017

Senate Bill 338: Guaranteed Asset Protection Waivers

The laws that govern guaranteed asset protection waivers do not apply to an addendum to a finance agreement that is sold to a consumer finance licensee and that is secured by a motor vehicle under terms of which the creditor agrees to waive the creditor's right to collect all or part of an amount due from the borrower under a finance agreement or to release a borrower from an obligation to pay an amount if the motor vehicle is a total loss or is stolen and not recovered. The bill provides that an addendum to finance an agreement described in the bill is not insurance and is not subject to the Insurance Code.

Reference: Chapter 451
Statutory Changes: Amends Section 2, Chapter 523, Oregon Laws 2015.
Effective Date: January 1, 2018

Senate Bill 374: REAL ID Act Compliant Licenses

SB 374 amends the Oregon Vehicle Code and authorizes the Oregon Department of Transportation ("DOT") to issue driver licenses, driver permits, and identification cards that meet the requirements of the federal Real ID Act of 2005. Real ID compliant documents shall be known as Real IDs. A Real ID is defined as a driver license, driver permit, or identification card that complies with the Real ID Act of 2005, P.L. 109-13, that is issued by this state, and is marked with a distinguishing feature, which is undefined. In addition to current required fees, the DOT may charge an additional fee when a Real ID is issued, renewed, or replaced for the purpose of covering the additional costs to the DOT related to the issuance of Real ID's.

The bill requires additional information for those seeking a driver license. The new requirement provides that a person must present acceptable documents to prove identity, date of birth, and address. The DOT shall determine by rule which documents are acceptable to prove these items. If the application is for a Real ID, the person must comply with the requirements under the vehicle code for issuance of Real IDs.

The bill declares an emergency and is effective on passage.

Reference: Chapter 568
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: July 7, 2017

Senate Bill 488: Interests in Stolen and Totaled Vehicles

Senate Bill 488 requires a law enforcement agency that recovers a vehicle reported as stolen to share the owner's contact information with the tower that assumes control of the vehicle. The bill requires the tower to attempt to provide notice to the owner, as soon as practicable, that the stolen vehicle has been recovered and the current location of the vehicle. The bill allows a person who owns a stolen vehicle that is recovered by a tower to transfer, if the vehicle is totaled and has no applicable insurance coverage, the person's interest in the vehicle to the tower in payment or partial payment of the tower's fees. The bill prohibits the tower from assessing additional fees after the person transfers their interest in the vehicle to the tower and prohibits the tower from engaging in certain collections activities against the person who transfers interest in the vehicle within 14 days of the date the person receives notice that the stolen, totaled vehicle was recovered by the tower. The bill requires the tower in physical possession of a vehicle to permit the owner or person in lawful possession of the vehicle to inspect the vehicle during certain hours.

Reference: Chapter 523
Statutory Changes: Creates new provisions; amends ORS 98.852, 98.858, 819.012, and 822.015.
Effective Date: January 1, 2018

Senate Bill 812: On-Site Septic System Grants

The bill modifies the grant agreement requirements for Department of Environmental Quality ("DEQ") grants to low-interest loan programs for on-site septic system repairs, replacements, upgrades, and evaluations. The DEQ may not disburse grant funds unless the DEQ and the intended grant award recipient first enter into a grant agreement. The bill includes the following new requirements for grant agreements: 1) a grant agreement can allow for a loan program for a regional evaluation of a community, residential, or small business onsite septic systems to determine whether a repair or replacement is necessary; 2) require that, if a

residence or small business with a damaged, malfunctioning, or inoperable on-site septic system is located within the territory of an available sewer, and is required to connect to the available sewer, a loan provided under a loan program to address the damaged, malfunctioning, or inoperable on-site septic system must be used to install a connection to the sewer and to properly discontinue use of the on-site septic system; and 3) require that a loan provided under a loan program must be in an amount that covers 100 percent of the costs associated with the purposes for which the loan is provided, unless the borrower requests and consents to a loan that covers a lower percentage of the costs. The bill declares an emergency and is effective on passage.

Reference: Chapter 255
Statutory Changes: Amends Section 2, Chapter 87, Oregon Laws 2016.
Effective Date: June 6, 2017

Senate Bill 863: Cannabis Retailers Retaining Customer Information

In response to concerns of possible federal action that may be taken with regard to the cannabis industry given a change in administrations, the legislature passed SB 863 to attempt to protect customers of cannabis retailers. SB 863 prohibits cannabis retailers from recording, retaining, and transferring information contained on a passport, driver license, military identification card, or other identification card that bears a picture of person with certain limited exceptions. Cannabis retailers are required to destroy information contained on a passport, driver license, military identification card, or other identification card that bears the picture of a person that is in the retailer's possession on the effective date of bill not later than 30 days after the bill goes into effect. The bill declares an emergency and was effective on passage.

Reference: Chapter 18
Statutory Changes: Creates new provisions.
Effective Date: April 17, 2017

Senate Bill 899: Uniform Receivership Provisions

SB 899 is the product of the Oregon Law Commission work group on receiverships in which OBA participated. The bill establishes the Oregon Receivership Code which constitutes the uniform procedures for receiverships initiated in Oregon courts. These procedures control over conflicting provisions of ORCP 80 with respect to receiverships that are governed by the Act.

The bill addresses and codifies the receivership process including, but not limited to, the following items: the appointment of a receiver; the qualifications of a receiver; requirements for a receiver's bond; the receiver's powers and duties; the treatment of property subject to

receivership; the duties of an owner; receivership notices and reports; stays; financing and costs; claims procedures and priorities; and the termination of the receivership.

Reference: Chapter 358
Statutory Changes: Creates new provisions; amends ORS 60.667, 62.702, 65.667, 86.752, 93.915, 94.642, 100.418, 465.255, and ORCP 80A.
Effective Date: January 1, 2018

Senate Bill 974: Claims Against a Vehicle Dealer's Bond or Letter of Credit

SB 974 prohibits persons other than a retail customer of a vehicle dealer from making a claim against the surety on the vehicle dealer's bond, or against the vehicle dealer's letter of credit, if the vehicle dealer holds a vehicle dealer certificate to deal exclusively in motorcycles, mopeds, Class I all-terrain vehicles, or snowmobiles or any combination of those vehicles.

Reference: Chapter 530
Statutory Changes: Creates new provisions; amends ORS 822.020 and 822.030.
Effective Date: January 1, 2018

Senate Bill 1008: Clean Diesel Engine Fund

SB 1008 expanded the uses of the Department of Environmental Quality's ("DEQ") Clean Diesel Fund to permit the award of grants and loans to the owners and operators of motor vehicles powered by diesel engines and equipment powered by nonroad diesel engines for up to 25 percent of the certified costs of qualifying replacements as described in ORS 468A.797 and 468A.799 (related to standards for diesel engines). DEQ has rulemaking authority concerning this grant and loan program. The bill also provides that DEQ may not award a grant or loan for a replacement, repower, or retrofit unless the grant or loan applicant demonstrates to DEQ's satisfaction that the resulting equivalent motor vehicle, equivalent equipment, repowered nonroad diesel engine, or retrofitted diesel engine will undergo at least 50 percent of its use in Oregon, as measured by miles driven or hours operated, for the three years following the replacement, repower or retrofit.

Reference: Chapter 742
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: August 15, 2017

Senate Bill 1057: General Cannabis Industry Regulation

SB 1057 is another cannabis-related bill, introduced late in the session, that makes a variety of changes related primarily to ORS Chapter 475B (cannabis regulation statutes). The majority of

changes in the bill do not impact banking, and none of the changes impact the industry directly. The following are some of the general changes: granting the Oregon Liquor Control Commission ("OLCC") with additional power to enforce state marijuana laws; providing that an OLCC licensee may be designated by OLCC as an exclusively medical licensee; transferring the duty to adopt labeling standards from the Oregon Health Authority to OLCC; requiring propagation, production, processing, and transfer of marijuana, and marijuana-derived products by marijuana grow sites, marijuana processing sites, and medical marijuana dispensaries to be tracked by a system developed and maintained by OLCC for tracking similar activities conducted by licensees of OLCC; and other items of that nature.

The following are some other items of note. Section 3 provides that a license issued under ORS 475B.010 to 475B.395 (the recreational cannabis statutes) is issued for both recreational purposes and medical use purposes. This license also serves the purpose of exempting the person that holds the license from the criminal laws of this state for possession, delivery, or manufacture of marijuana items, provided that the person complies with all state laws and rules applicable to licensees.

Section 4 provides that the OLCC has any power, and may perform any function, necessary for the commission to prevent the diversion of marijuana from licensees to a source that is not operating legally under the laws of Oregon.

Section 7 of the bill discusses financial disclosure. The OLCC may require a licensee or applicant for a license under the recreational cannabis laws to submit to the OLCC a sworn statement showing: 1) the name and address of each person that has a financial interest in the business operating or to be operated under the license; and 2) the nature and extent of the financial interest of each person that has a financial interest in the business operating or to be operated under the license. The OLCC may refuse to issue, or may suspend, revoke, or refuse to renew, a license if the OLCC determines that a person that has a financial interest in the business operating or to be operated under the license committed or failed to commit an act that would constitute grounds for the OLCC to refuse to issue, or to suspend, revoke, or refuse to renew, the license if the person were the licensee or applicant for the license.

The bill includes a variety of technical amendments the cannabis regulation statutes as well. The bill declares an emergency and is effective on passage.

Reference: Chapter 183
Statutory Changes: Creates new provisions; amends numerous ORS provisions.
Effective Date: May 30, 2017

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