

Senate Bill 744

Sponsored by Senator WOODS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows landlord and tenant to agree to assessment of charge in lieu of security deposit. Establishes requirements and form of agreement.

A BILL FOR AN ACT

1
2 Relating to charge in lieu of security deposit; creating new provisions; and amending ORS 90.100,
3 90.140, 90.300, 90.302, 90.392 and 90.510.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 90.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **“Charge in lieu of a security deposit” means a charge described under subsection (2)**
8 **of this section.**

9 (b) **“Security deposit” does not include a last month’s rent deposit or other prepaid rent.**

10 (2) **A landlord may allow a tenant to pay a recurring charge in addition to rent and in-**
11 **stead of paying any security deposit. The charge:**

12 (a) **Must be charged to the tenant in equal monthly charges.**

13 (b) **May not be charged in combination with a security deposit.**

14 (c) **May not exceed 1.2 times the landlord’s cost of obtaining insurance described in sub-**
15 **section (4) of this section.**

16 (d) **Is not a security deposit and not subject to ORS 90.300.**

17 (e) **May only be assessed, collected and used by the landlord as provided in this section.**

18 (3) **A landlord who collects a charge in lieu of a security deposit from a tenant:**

19 (a) **May not require any other tenant or applicant to pay a security deposit more than**
20 **1.5 times the amount of that tenant’s monthly rent at the beginning of the rental agreement.**

21 (b) **Shall allow all approved applicants the option to pay a charge in lieu of a security**
22 **deposit.**

23 (c) **May not condition approval of an application on the applicant’s choice between paying**
24 **a security deposit or the charge in lieu of a security deposit.**

25 (d) **Is not required to provide the tenant with a written invoice for the charge, unless the**
26 **landlord provides the tenant with a written invoice for rent, in which case the charge in lieu**
27 **of a security deposit must be stated separately on the invoice.**

28 (e) **May not increase the amount of the charge unless:**

29 (A) **The tenancy is a month-to-month tenancy;**

30 (B) **The landlord provides the tenant no less than 90 days’ written notice of the increase;**

31 **and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (C) The charge does not exceed the limit under subsection (2)(c) of this section.

2 (4)(a) A landlord assessing a charge in lieu of a security deposit shall purchase insurance
3 coverage from an insurer for a tenant's unpaid rent, property damages and other unpaid
4 charges.

5 (b) A landlord shall promptly give actual notice to the tenant if insurance coverage is
6 ever terminated or the amount of coverage is changed.

7 (5)(a) A charge in lieu of a security deposit is due on the first day of the rental period
8 without demand.

9 (b) A landlord may not give a termination notice under ORS 90.392 or charge a fee under
10 ORS 90.302 unless the payment is not received by the eighth day of the rental period.

11 (c) Nonpayment of a charge in lieu of a security deposit is not grounds for termination
12 of a rental agreement for nonpayment of rent under ORS 90.394.

13 (6)(a) Following the termination of the tenancy, a tenant who pays a charge in lieu of a
14 security deposit is not liable for any outstanding indebtedness to the landlord unless the
15 landlord provides the tenant with a written demand for repayment of the indebtedness within
16 30 days following the latter of:

17 (A) The date the tenancy terminated; and

18 (B) The date the landlord received possession of the dwelling unit.

19 (b) The demand under paragraph (a) of this subsection must separately itemize unpaid
20 rent, unpaid charges and fees and damages other than wear and tear and must include doc-
21 umentation that supports each claim for damages.

22 (c) A landlord may not submit a claim for payment to the insurance company earlier
23 than 30 days after delivering the demand under paragraph (a) of this subsection.

24 (d) Promptly after submitting a claim for payment to the insurance company under par-
25 agraph (c) of this subsection, a landlord must deliver a notice to the tenant that the claim
26 has been submitted. The notice must include the amount of the claim, the documentation
27 submitted to support the claim, the name of the insurance company and a phone number and
28 electronic mail address of the insurance company claims adjustment office that the tenant
29 may contact to dispute the basis of the claim.

30 (e) A landlord must withdraw the notice of indebtedness and any associated claim for
31 payment submitted to the insurance company under paragraph (d) of this subsection if the
32 landlord or a court determines that the notice of indebtedness is incorrect or the landlord
33 settles the indebtedness with the tenant for less than the full amount in the notice.

34 (f) The landlord must notify the tenant of any payment received from the insurance
35 company to satisfy the landlord's claim and that the insurance company may seek re-
36 imbursement of its payment from the tenant. For claims paid by the insurer to the landlord,
37 only the insurer may pursue recovery against the tenant.

38 (7) A landlord who materially violates this section is liable to the tenant in an amount
39 of twice the periodic monthly rent.

40 (8) Before a landlord may assess a charge in lieu of a security deposit, the tenant must
41 separately sign an agreement as a separate addendum to the rental agreement that includes
42 information in substantially the following form:

43 _____
44
45 • This agreement has been entered into voluntarily between

1 _____ (Tenant) and _____ (Landlord).

2 • Tenant agrees to pay Landlord a recurring monthly charge of \$_____ due in
 3 addition to Tenant’s rent on the first day of each rental period, instead of a single security
 4 deposit in the amount of \$_____.

5 • Tenant may freely choose whether to pay the recurring monthly charge in lieu of the
 6 security deposit under this agreement or a security deposit in the amount above. At any
 7 time, Tenant may pay the landlord the security deposit and stop paying the recurring charge.

8 • The charge is paid only to secure Tenant’s occupancy without a requirement of paying
 9 a security deposit.

10 • Landlord may collect a \$5 late fee for each month that Tenant does not pay the charge
 11 on time after an initial warning.

12 • The charge is not a security deposit and payment of the charge does not absolve Tenant
 13 of any obligations under the rental agreement, including the obligation to pay rent as it be-
 14 comes due and to pay Landlord for any damages to the rental unit beyond normal wear and
 15 tear.

16 • Tenant is aware that Landlord has purchased insurance that will pay claims made by
 17 Landlord up to a policy limit of \$_____. Landlord may make claims based on
 18 Tenant’s nonpayment of rent or the costs of repairing Tenant’s damages beyond wear and
 19 tear.

20 • Tenant further understands that Tenant is not insured under this policy, and that this
 21 insurance does not preclude the insurer or landlord from recovering from Tenant the unpaid
 22 rent, charges and damages for which Tenant is responsible, together with reasonable attor-
 23 ney fees and costs.

24 _____
 25
 26 **SECTION 3.** ORS 90.100 is amended to read:

27 90.100. As used in this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

3 (9) "Dealer" means any person in the business of selling, leasing or distributing new or used
4 manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling
5 or floating home for use as a residence.

6 (10) "Domestic violence" means:

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

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

9 (11) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

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

16 (13) "Essential service" means:

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

19 (A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior
20 doors, latches for windows and any cooking appliance or refrigerator supplied or required to be
21 supplied by the landlord; and

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (c) Is considered, by an arborist licensed as a landscape construction professional pursuant to

1 ORS 671.560 and certified by the International Society of Arboriculture, to pose an unreasonable
2 risk of causing serious physical harm or damage to individuals or property in the near future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (34) "Prefabricated structure" means a structure that is substantially constructed or assembled
38 using closed construction at an off-site location in compliance with the state building code and that
39 is sited and occupied by the owner in compliance with local codes.

40 (35) "Premises" means:

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

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

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

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

3 (37) "Recreational vehicle" has the meaning given that term in ORS 174.101.

4 (38)(a) "Rent" means any payment to be made to the landlord under the rental agreement, pe-
5 riodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling
6 unit to the exclusion of others and to use the premises.

7 (b) "Rent" does not include security deposits, fees or utility or service charges as described in
8 ORS 90.315 (4) and 90.562 **or a charge in lieu of a security deposit under section 2 of this 2023**
9 **Act.**

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

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

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

22 (42)(a) "Security deposit" means a refundable payment or deposit of money, however designated,
23 the primary function of which is to secure the performance of a rental agreement or any part of a
24 rental agreement.

25 (b) "Security deposit" does not include a fee.

26 (43) "Sexual assault" has the meaning given that term in ORS 147.450.

27 (44)(a) "Squatter" means a person occupying a dwelling unit who is not so entitled under a
28 rental agreement or who is not authorized by the tenant to occupy that dwelling unit.

29 (b) "Squatter" does not include a tenant who holds over as described in ORS 90.427 (11).

30 (45) "Stalking" means the behavior described in ORS 163.732.

31 (46) "Statement of policy" means the summary explanation of information and facility policies
32 to be provided to prospective and existing tenants under ORS 90.510.

33 (47) "Surrender" means an agreement, express or implied, as described in ORS 90.148 between
34 a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a
35 dwelling unit.

36 (48) "Tenant":

37 (a) Except as provided in paragraph (b) of this subsection:

38 (A) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling
39 unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public
40 housing authority.

41 (B) Means a minor, as defined and provided for in ORS 109.697.

42 (b) For purposes of ORS 90.505 to 90.850, means only a person who owns and occupies as a
43 residence a manufactured dwelling or a floating home in a facility and persons residing with that
44 tenant under the terms of the rental agreement.

45 (c) Does not mean a guest or temporary occupant.

1 (49) “Transient lodging” means a room or a suite of rooms.

2 (50) “Transient occupancy” means occupancy in transient lodging that has all of the following
3 characteristics:

4 (a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

5 (b) The lodging operator provides maid and linen service daily or every two days as part of the
6 regularly charged cost of occupancy; and

7 (c) The period of occupancy does not exceed 30 days.

8 (51) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occu-
9 pancy in a hotel or motel, that has all of the following characteristics:

10 (a) The occupant rents the unit for vacation purposes only, not as a principal residence;

11 (b) The occupant has a principal residence other than at the unit; and

12 (c) The period of authorized occupancy does not exceed 45 days.

13 (52) “Victim” means:

14 (a) The person against whom an incident related to domestic violence, sexual assault or stalking
15 is perpetrated; or

16 (b) The parent or guardian of a minor household member against whom an incident related to
17 domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the
18 perpetrator.

19 (53) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

20 (a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven
21 days;

22 (b) There is a written rental agreement that defines the landlord’s and the tenant’s rights and
23 responsibilities under this chapter; and

24 (c) There are no fees, [or] security deposits **or charges in lieu of a security deposit under**
25 **section 2 of this 2023 Act**, although the landlord may require the payment of an applicant screen-
26 ing charge, as provided in ORS 90.295.

27 **SECTION 4.** ORS 90.140 is amended to read:

28 90.140. (1) A landlord may require or accept the following types of payments:

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

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

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

32 **(d) Charges in lieu of a security deposit, pursuant to section 2 of this 2023 Act;**

33 [(d)] **(e)** Fees, pursuant to ORS 90.302;

34 [(e)] **(f)** Rent[, *as defined in ORS 90.100*];

35 [(f)] **(g)** Prepaid rent[, *as defined in ORS 90.100*];

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

37 [(h)] **(i)** Late charges or fees, pursuant to ORS 90.260; and

38 [(i)] **(j)** Damages, for noncompliance with a rental agreement or ORS 90.325, under ORS 90.401
39 or as provided elsewhere in this chapter.

40 (2) A tenant who requests a writing that evidences the tenant’s payment is entitled to receive
41 that writing from the landlord as a condition for making the payment. The writing may be a receipt,
42 statement of the tenant’s account or other acknowledgment of the tenant’s payment. The writing
43 must include the amount paid, the date of payment and information identifying the landlord or the
44 rental property. If the tenant makes the payment by mail, deposit or a method other than in person
45 and requests the writing, the landlord shall within a reasonable time provide the tenant with the

1 writing in a manner consistent with ORS 90.150.

2 **SECTION 5.** ORS 90.300 is amended to read:

3 90.300. (1) As used in this section, “security deposit” includes any last month’s rent deposit.

4 (2)(a) Except as otherwise provided in this section **and section 2 of this 2023 Act**, a landlord
5 may require a tenant to pay a security deposit. The landlord shall provide the tenant with a receipt
6 for any security deposit the tenant pays. The landlord shall hold a security deposit or prepaid rent
7 for the tenant who is a party to the rental agreement. A tenant’s claim to the security deposit or
8 prepaid rent is prior to the claim of a creditor of the landlord, including a trustee in bankruptcy.

9 (b) Except as provided in ORS 86.782 (10), the holder of the landlord’s interest in the premises
10 at the time the tenancy terminates is responsible to the tenant for any security deposit or prepaid
11 rent and is bound by this section.

12 (3) A written rental agreement, if any, must list a security deposit paid by a tenant or required
13 by a landlord.

14 (4) A landlord may not charge a tenant a pet security deposit for keeping a service animal or
15 companion animal that a tenant with a disability requires as a reasonable accommodation under fair
16 housing laws.

17 (5)(a) Except as otherwise provided in this subsection, a landlord may not change the rental
18 agreement to require the tenant to pay a new or increased security deposit during the first year
19 after the tenancy has begun. Subject to subsection (4) of this section, the landlord may require an
20 additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental
21 agreement to permit a pet or for other cause and the additional deposit relates to the modification.
22 This paragraph does not prevent a landlord from collecting a security deposit that an initial rental
23 agreement provided for but that remained unpaid at the time the tenancy began.

24 (b) If a landlord requires a new or increased security deposit after the first year of the tenancy,
25 the landlord shall allow the tenant at least three months to pay the new or increased deposit.

26 (6) The landlord may claim all or part of the security deposit only if the landlord required the
27 security deposit for any or all of the purposes specified in subsection (7) of this section.

28 (7)(a) The landlord may claim from the security deposit only the amount reasonably necessary:

29 (A) To remedy the tenant’s defaults in the performance of the rental agreement including, but
30 not limited to, unpaid rent; and

31 (B) To repair damages to the premises caused by the tenant, not including ordinary wear and
32 tear.

33 (b) A landlord is not required to repair damage caused by the tenant in order for the landlord
34 to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses
35 under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-
36 lord may charge a reasonable hourly rate for the landlord’s own performance of cleaning or repair
37 work.

38 (c) Defaults and damages for which a landlord may recover under this subsection include, but
39 are not limited to:

40 (A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

41 (i) The cleaning is performed by use of a machine specifically designed for cleaning or
42 shampooing carpets;

43 (ii) The carpet was cleaned or replaced after the previous tenancy or the most recent significant
44 use of the carpet and before the tenant took possession; and

45 (iii) The written rental agreement provides that the landlord may deduct the cost of carpet

1 cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession
2 as described in ORS 90.147.

3 (B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs for
4 which the tenant is responsible under this subsection if the cleaning or repairs are performed in a
5 timely manner.

6 (8) A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent
7 to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in
8 a month-to-month tenancy.

9 (9) The landlord must apply any last month's rent deposit to the rent due for the last month of
10 the tenancy:

11 (a) When either the landlord or the tenant gives to the other a notice of termination, pursuant
12 to this chapter, other than a notice of termination under ORS 90.394;

13 (b) When the landlord and tenant agree to terminate the tenancy; or

14 (c) When the tenancy terminates in accordance with the provisions of a written rental agree-
15 ment for a term tenancy.

16 (10) A landlord shall account for and refund as provided in subsections (12) to (14) of this section
17 any portion of a last month's rent deposit the landlord does not apply as provided under subsection
18 (9) of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the
19 landlord to apply a last month's rent deposit to rent due for any period other than the last month
20 of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a
21 written rental agreement provides otherwise.

22 (11) When the tenancy terminates, a landlord shall account for and refund to the tenant, in the
23 same manner this section requires for security deposits, the unused balance of any prepaid rent the
24 landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other
25 provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount
26 reasonably necessary to pay the tenant's unpaid rent.

27 (12) In order to claim all or part of any prepaid rent or security deposit, within 31 days after
28 the tenancy terminates and the tenant delivers possession the landlord shall give to the tenant a
29 written accounting that states specifically the basis or bases of the claim. The landlord shall give
30 a separate accounting for security deposits and for prepaid rent.

31 (13) The landlord shall return to the tenant the security deposit or prepaid rent or the portion
32 of the security deposit or prepaid rent that the landlord does not claim in the manner provided by
33 subsections (11) and (12) of this section not later than 31 days after the tenancy terminates and the
34 tenant delivers possession to the landlord.

35 (14) The landlord shall give the written accounting required under subsection (12) of this section
36 or shall return the security deposit or prepaid rent as required by subsection (13) of this section by
37 personal delivery or by first class mail.

38 (15) If a security deposit or prepaid rent secures a tenancy for a space for a manufactured
39 dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the
40 dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period de-
41 scribed in subsections (12) and (13) of this section commences on the earliest of:

42 (a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (24);

43 (b) Removal of the manufactured dwelling or floating home from the rented space;

44 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
45 90.425 (10)(b) or 90.675 (10)(b); or

1 (d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675
2 (10)(a).

3 (16) If the landlord fails to comply with subsection (13) of this section or if the landlord in bad
4 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
5 under this chapter or the rental agreement, the tenant may recover the money due in an amount
6 equal to twice the amount:

7 (a) Withheld without a written accounting under subsection (12) of this section; or

8 (b) Withheld in bad faith.

9 (17)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable
10 property, as provided in ORS 18.618.

11 (b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS
12 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
13 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
14 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
15 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
16 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
17 tenant after the garnishment, the landlord is not required to refund or account for the security de-
18 posit or prepaid rent under subsection (11) of this section.

19 (18) This section does not preclude the landlord or tenant from recovering other damages under
20 this chapter.

21 **SECTION 6.** ORS 90.302 is amended to read:

22 90.302. (1) A landlord may not charge a fee at the beginning of the tenancy for an anticipated
23 landlord expense and may not require the payment of any fee except as provided in this section.
24 A fee must be described in a written rental agreement.

25 (2) A landlord may charge a tenant a fee for each occurrence of the following:

26 (a) A late rent payment, pursuant to ORS 90.260.

27 (b) A dishonored check, pursuant to ORS 30.701 (5). The amount of the fee may not exceed the
28 amount described in ORS 30.701 (5) plus any amount that a bank has charged the landlord for pro-
29 cessing the dishonored check.

30 (c) Removal or tampering with a properly functioning smoke alarm, smoke detector or carbon
31 monoxide alarm, as provided in ORS 90.325 (2). The landlord may charge a fee of up to \$250 unless
32 the State Fire Marshal assesses the tenant a civil penalty for the conduct under ORS 479.990 or
33 under ORS 105.836 to 105.842 and 476.725.

34 (d) The violation of a written pet agreement or of a rule relating to pets in a facility, pursuant
35 to ORS 90.530.

36 (e) The abandonment or relinquishment of a dwelling unit during a fixed term tenancy without
37 cause. The fee may not exceed one and one-half times the monthly rent. A landlord may not assess
38 a fee under this paragraph if the abandonment or relinquishment is pursuant to ORS 90.453 (2),
39 90.472 or 90.475. If the landlord assesses a fee under this paragraph:

40 (A) The landlord may not recover unpaid rent for any period of the fixed term tenancy beyond
41 the date that the landlord knew or reasonably should have known of the abandonment or
42 relinquishment;

43 (B) The landlord may not recover damages related to the cost of renting the dwelling unit to a
44 new tenant; and

45 (C) ORS 90.410 (3) does not apply to the abandonment or relinquishment.

1 (3)(a) A landlord may charge a tenant a fee under this subsection for a second noncompliance
2 or for a subsequent noncompliance with written rules or policies that describe the prohibited con-
3 duct and the fee for a second noncompliance, and for any third or subsequent noncompliance, that
4 occurs within one year after a written warning notice described in subparagraph (A) of this para-
5 graph. Except as provided in paragraph (b)(G) or (H) of this subsection, the fee may not exceed \$50
6 for the second noncompliance within one year after the warning notice for the same or a similar
7 noncompliance or \$50 plus five percent of the rent payment for the current rental period for a third
8 or subsequent noncompliance within one year after the warning notice for the same or a similar
9 noncompliance. The landlord:

10 (A) Shall give a tenant a written warning notice that describes:

11 (i) A specific noncompliance before charging a fee for a second or subsequent noncompliance for
12 the same or similar conduct; and

13 (ii) The amount of the fee for a second noncompliance, and for any subsequent noncompliance,
14 that occurs within one year after the warning notice.

15 (B) Shall give a tenant a written notice describing the noncompliance when assessing a fee for
16 a second or subsequent noncompliance that occurs within one year after the warning notice.

17 (C) Shall give a warning notice for a noncompliance or assess a fee for a second or subsequent
18 noncompliance within 30 days after the act constituting noncompliance.

19 (D) May terminate a tenancy for a noncompliance consistent with this chapter instead of as-
20 sessing a fee under this subsection, but may not assess a fee and terminate a tenancy for the same
21 noncompliance.

22 (E) May not deduct a fee assessed pursuant to this subsection from a rent payment for the
23 current or a subsequent rental period.

24 (b) A landlord may charge a tenant a fee for occurrences of noncompliance with written rules
25 or policies as provided in paragraph (a) of this subsection for the following types of noncompliance:

26 (A) The late payment of a utility or service charge that the tenant owes the landlord as de-
27 scribed in ORS 90.315.

28 (B) Failure to clean up pet waste from a part of the premises other than the dwelling unit.

29 (C) Failure to clean up the waste of a service animal or a companion animal from a part of the
30 premises other than the dwelling unit.

31 (D) Failure to clean up garbage, rubbish and other waste from a part of the premises other than
32 the dwelling unit.

33 (E) Parking violations.

34 (F) The improper use of vehicles within the premises.

35 (G) Smoking in a clearly designated nonsmoking unit or area of the premises. The fee for a
36 second or any subsequent noncompliance under this subparagraph may not exceed \$250. A landlord
37 may not assess this fee before 24 hours after the required warning notice to the tenant.

38 (H) Keeping on the premises an unauthorized pet capable of causing damage to persons or
39 property, as described in ORS 90.405. The fee for a second or any subsequent noncompliance under
40 this subparagraph may not exceed \$250. A landlord may not assess this fee before 48 hours after the
41 required warning notice to the tenant.

42 **(I) The late payment of a charge in lieu of a security deposit under section 2 of this 2023**
43 **Act. The maximum fee for a second or subsequent late payment under this subparagraph**
44 **may not exceed \$5.**

45 (4) A landlord may not be required to account for or return to the tenant any fee.

1 (5) Except as provided in subsection (2)(e) of this section, a landlord may not charge a tenant
2 any form of liquidated damages, however designated.

3 (6) Nonpayment of a fee is not grounds for termination of a rental agreement for nonpayment
4 of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS
5 90.392 or 90.630 (1).

6 (7) This section does not apply to:

7 (a) Attorney fees awarded pursuant to ORS 90.255;

8 (b) Applicant screening charges paid pursuant to ORS 90.295;

9 (c) Charges for improvements or other actions that are requested by the tenant and are not re-
10 quired of the landlord by the rental agreement or by law, including the cost to replace a key lost
11 by a tenant;

12 (d) Processing fees charged to the landlord by a credit card company and passed through to the
13 tenant for the use of a credit card by the tenant to make a payment when:

14 (A) The credit card company allows processing fees to be passed through to the credit card
15 holder; and

16 (B) The landlord allows the tenant to pay in cash or by check;

17 (e) A requirement by a landlord in a written rental agreement that a tenant obtain and maintain
18 renter's liability insurance pursuant to ORS 90.222; or

19 (f) Assessments, as defined in ORS 94.550 and 100.005, for a dwelling unit that is within a
20 homeowners association organized under ORS 94.625 or an association of unit owners organized
21 under ORS 100.405, respectively, if:

22 (A) The assessments are imposed by the association on a landlord who owns a dwelling unit
23 within the association and the landlord passes the assessments through to a tenant of the unit;

24 (B) The assessments are imposed by the association on any person for expenses related to
25 moving into or out of a unit located within the association;

26 (C) The landlord sets forth the assessment requirement in the written rental agreement at the
27 commencement of the tenancy; and

28 (D) The landlord gives a copy of the assessment the landlord receives from the association to
29 the tenant before or at the time the landlord charges the tenant.

30 (8) If a landlord charges a tenant a fee in violation of this section, the tenant may recover twice
31 the actual damages of the tenant or \$300, whichever is greater. This penalty does not apply to fees
32 described in subsection (2) of this section.

33 (9) The landlord may unilaterally amend a rental agreement for a facility subject to ORS 90.505
34 to 90.850 to impose fees authorized by subsection (3) of this section upon a 90-day written notice to
35 the tenant, except that a marina landlord may not impose a noncompliance fee for parking under
36 subsection (3)(b)(E) of this section.

37 **SECTION 7.** ORS 90.392 is amended to read:

38 90.392. (1) Except as provided in this chapter, after delivery of written notice a landlord may
39 terminate the rental agreement for cause and take possession as provided in ORS 105.105 to 105.168,
40 unless the tenant cures the violation as provided in this section.

41 (2) Causes for termination under this section are:

42 (a) Material violation by the tenant of the rental agreement. For purposes of this paragraph,
43 material violation of the rental agreement includes, but is not limited to, the nonpayment of a late
44 charge under ORS 90.260, [or] a utility or service charge under ORS 90.315 **or a charge in lieu of**
45 **a security deposit under section 2 of this 2023 Act.**

1 (b) Material violation by the tenant of ORS 90.325.

2 (c) Failure by the tenant to pay rent.

3 (3) The notice must:

4 (a) Specify the acts and omissions constituting the violation;

5 (b) Except as provided in subsection (5)(a) of this section, state that the rental agreement will
6 terminate upon a designated date not less than 30 days after delivery of the notice; and

7 (c) If the tenant can cure the violation as provided in subsection (4) of this section, state that
8 the violation can be cured, describe at least one possible remedy to cure the violation and designate
9 the date by which the tenant must cure the violation.

10 (4)(a) If the violation described in the notice can be cured by the tenant by a change in conduct,
11 repairs, payment of money or otherwise, the rental agreement does not terminate if the tenant cures
12 the violation by the designated date. The designated date must be:

13 (A) At least 14 days after delivery of the notice; or

14 (B) If the violation is conduct that was a separate and distinct act or omission and is not on-
15 going, no earlier than the date of delivery of the notice as provided in ORS 90.155. For purposes of
16 this paragraph, conduct is ongoing if the conduct is constant or persistent or has been sufficiently
17 repetitive over time that a reasonable person would consider the conduct to be ongoing.

18 (b) If the tenant does not cure the violation, the rental agreement terminates as provided in the
19 notice.

20 (5)(a) If the cause of a written notice delivered under subsection (1) of this section is substan-
21 tially the same act or omission that constituted a prior violation for which notice was given under
22 this section within the previous six months, the designated termination date stated in the notice
23 must be not less than 10 days after delivery of the notice and no earlier than the designated ter-
24 mination date stated in the previously given notice. The tenant does not have a right to cure this
25 subsequent violation.

26 (b) A landlord may not terminate a rental agreement under this subsection if the only violation
27 is a failure to pay the current month's rent.

28 (6) When a tenancy is a week-to-week tenancy, the notice period in:

29 (a) Subsection (3)(b) of this section changes from 30 days to seven days;

30 (b) Subsection (4)(a)(A) of this section changes from 14 days to four days; and

31 (c) Subsection (5)(a) of this section changes from 10 days to four days.

32 (7) The termination of a tenancy for a manufactured dwelling or floating home space in a facility
33 under ORS 90.505 to 90.850 is governed by ORS 90.630 and not by this section.

34 **SECTION 8.** ORS 90.510 is amended to read:

35 90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall
36 provide a written statement of policy to prospective and existing tenants. The purpose of the state-
37 ment of policy is to provide disclosure of the landlord's policies to prospective tenants and to ex-
38 isting tenants who have not previously received a statement of policy. The statement of policy is
39 not a part of the rental agreement. The statement of policy shall provide all of the following infor-
40 mation in summary form:

41 (a) The location and approximate size of the space to be rented.

42 (b) The federal fair-housing age classification and present zoning that affect the use of the
43 rented space.

44 (c) The facility policy regarding rent adjustment and a rent history for the space to be rented.
45 The rent history must, at a minimum, show the rent amounts on January 1 of each of the five pre-

1 ceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the
2 facility, whichever period is shorter.

3 (d) The personal property, services and facilities that are provided by the landlord.

4 (e) The installation charges that are imposed by the landlord and the installation fees that are
5 imposed by government agencies.

6 (f) The facility policy regarding rental agreement termination including, but not limited to, clo-
7 sure of the facility.

8 (g) The facility policy regarding facility sale.

9 (h) The facility policy regarding mandatory mediation under ORS 90.767 and informal dispute
10 resolution, if any, under ORS 90.769.

11 (i) The utilities and services that are available, the name of the person furnishing them and the
12 name of the person responsible for payment.

13 (j) The facility policy regarding methods of billing for utilities and services as described in ORS
14 90.560 to 90.584.

15 (k) If a tenants' association exists for the facility, a one-page summary about the tenants' asso-
16 ciation. The tenants' association shall provide the summary to the landlord.

17 (L) Any facility policy regarding the removal of a manufactured dwelling, including a statement
18 that removal requirements may impact the market value of a dwelling.

19 (m) Any facility policy regarding the planting of trees on the rented space for a manufactured
20 dwelling.

21 (n) Any requirement to obtain and maintain renter's liability insurance under ORS 90.527.

22 (2) The rental agreement and the facility rules and regulations must be attached as an exhibit
23 to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agree-
24 ment attached to the statement of policy must be a copy of the agreement entered by the landlord
25 and tenant.

26 (3) The landlord shall give:

27 (a) Prospective tenants a copy of the statement of policy before the prospective tenants sign
28 rental agreements;

29 (b) Existing tenants who have not previously received a copy of the statement of policy and who
30 are on month-to-month rental agreements a copy of the statement of policy at the time a 90-day
31 notice of a rent increase is issued; and

32 (c) All other existing tenants who have not previously received a copy of the statement of policy
33 a copy of the statement of policy upon the expiration of their rental agreements and before the
34 tenants sign new agreements.

35 (4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide
36 a written rental agreement, except as provided by ORS 90.710 (2)(d). The agreement must be signed
37 by the landlord and tenant and may not be amended by one of the parties to the contract except
38 by:

39 (a) Mutual agreement of the parties;

40 (b) The landlord unilaterally under ORS 90.155 (4), 90.302 (9), 90.530, 90.566, 90.574, 90.578 (3),
41 90.600, 90.610, 90.643, 90.725 (3)(f) and (7), 90.727 or 90.767 (9); or

42 (c) Those provisions required by changes in statute or ordinance.

43 (5) The rental agreement required by subsection (4) of this section must specify:

44 (a) The location and approximate size of the rented space.

45 (b) The federal fair-housing age classification.

- 1 (c) The rent per month.
- 2 (d) All personal property, services and facilities provided by the landlord.
- 3 (e) All security deposits **or charges in lieu of a security deposit under section 2 of this 2023**
- 4 **Act**, fees and installation charges imposed by the landlord.
- 5 (f) Any facility policy regarding the planting of trees on the rented space for a manufactured
- 6 dwelling.
- 7 (g) Improvements that the tenant may or must make to the rental space, including plant mate-
- 8 rials and landscaping.
- 9 (h) Provisions for dealing with improvements to the rental space at the termination of the
- 10 tenancy.
- 11 (i) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or
- 12 floating home as a tenant in the event the tenant elects to sell the home. Those conditions must be
- 13 in conformance with state and federal law and may include, but are not limited to, conditions as to
- 14 pets, number of occupants and screening or admission criteria.
- 15 (j) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person
- 16 who intends to leave the manufactured dwelling or floating home on the rental space until the
- 17 landlord has accepted the person as a tenant.
- 18 (k) The term of the tenancy.
- 19 (L) The process by which the rental agreement or rules and regulations may be changed that
- 20 is consistent with ORS 90.610.
- 21 (m) The process by which the landlord or tenant shall give notices.
- 22 (n) That either party may request no-cost mandatory mediation of disputes through the Housing
- 23 and Community Services Department or a dispute resolution program described in ORS 36.155 and
- 24 the process by which mandatory mediation is initiated and conducted that is consistent with ORS
- 25 90.767.
- 26 (o) Any requirement to obtain and maintain renter's liability insurance under ORS 90.527.
- 27 (6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide
- 28 rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the
- 29 rules and regulations may be cause for termination of a rental agreement. However, this subsection
- 30 does not create a presumption that all rules and regulations are identical for all tenants at all times.
- 31 A rule or regulation is enforceable against the tenant only if:
- 32 (a) The rule or regulation:
 - 33 (A) Promotes the convenience, safety or welfare of the tenants;
 - 34 (B) Preserves the landlord's property from abusive use; or
 - 35 (C) Makes a fair distribution of services and facilities held out for the general use of the ten-
 - 36 ants.
- 37 (b) The rule or regulation:
 - 38 (A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;
 - 39 (B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to
 - 40 fairly inform the tenant of what the tenant shall do or may not do to comply; and
 - 41 (C) Is not for the purpose of evading the obligations of the landlord.
- 42 (7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a
- 43 rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility
- 44 must be based on reasonable factors and not be more restrictive than limiting occupancy to two
- 45 people per bedroom.

- 1 (b) As used in this subsection:
2 (A) Factors to be considered in determining reasonableness include:
3 (i) The size of the dwelling.
4 (ii) The size of the rented space.
5 (iii) Any discriminatory impact as described in ORS 659A.421 and 659A.425.
6 (iv) Limitations placed on utility services governed by a permit for water or sewage disposal.
7 (B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and
8 does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar
9 areas.
10 (8) Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this
11 section is cause for suit or action to remedy the violation or to recover actual damages. The pre-
12 vailing party is entitled to reasonable attorney fees and court costs.
13 (9) A receipt signed by the potential tenant or tenants for documents required to be delivered
14 by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an
15 action against the landlord for nondelivery of the documents.
16 (10) A suit or action arising under subsection (8) of this section must be commenced within one
17 year after the discovery or identification of the alleged violation.
18 (11) Every landlord who publishes a directory of tenants and tenant services must include a
19 one-page summary regarding any tenants' association. The tenants' association shall provide the
20 summary to the landlord.

21
