

HB 3294-2
(LC 3272)
3/31/23 (RLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Daniel Nguyen)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3294**

1 On page 1 of the printed bill, delete lines 5 through 31 and delete pages
2 2 and 3 and insert:

3 **“SECTION 1. ORS 93.274 is amended to read:**

4 **“93.274. (1)(a) If a recorded instrument conveying or contracting to**
5 **convey fee title to real property, or a declaration recorded under ORS**
6 **94.580, contains a provision that is void by reason of ORS 93.270 (1)(a),**
7 **the owner of the property or the owner of any portion of the property**
8 **subject to the provision may cause the provision to be stricken from**
9 **the public records described in ORS 205.130 by filing a petition in the**
10 **circuit court for the county in which the property is located.**

11 **“(b) The petition must be filed as an in rem declaratory action**
12 **whose title contains the property address.**

13 **“(c) The court may not require that any person other than the**
14 **petitioner be joined as a party to a petition filed under this section.**

15 **“(2) A petition filed under this section must contain:**

16 **“(a) The name and mailing address of the person filing the petition;**

17 **“(b) The legal description of the property subject to the provision**
18 **that is void by reason of ORS 93.270 (1)(a);**

19 **“(c) The name, recording number and date of recordation for each**
20 **instrument or declaration that contains a provision that is void by**
21 **reason of ORS 93.270 (1)(a);**

1 “(d) A clear reference to the provision claimed to be void by reason
2 of ORS 93.270 (1)(a), setting forth verbatim the void provisions to be
3 struck from each such document; and

4 “(e) A complete certified copy of the recorded instrument or re-
5 corded declaration which contains the provision that is void by reason
6 of ORS 93.270 (1)(a).

7 “(3)(a) The sole issue to be decided by the court is whether the
8 provision is void by reason of ORS 93.270 (1)(a).

9 “(b) If the court finds that the provision is not void by reason of
10 ORS 93.270 (1)(a), the court shall dismiss the petition.

11 “(c) If the court finds that any provisions of the recorded instru-
12 ment or declaration are void by reason of ORS 93.270 (1)(a), the court
13 shall enter an order:

14 “(A) Finding that the referenced original written instrument or
15 declaration contains discriminatory provisions that are void and
16 unenforceable under ORS 93.270 (1)(a);

17 “(B) Identifying each document by recording number and date of
18 recordation; and

19 “(C) Striking the void provisions from the public records and elim-
20 inating the void provisions from the title to the property described in
21 the petition.

22 “(d) The order must include a certified copy of each document upon
23 which the court has physically redacted the void provisions.

24 “(e) The order must provide that the effective date of the document
25 redacted by the court is the same as the effective date of the original
26 document.

27 “(4) A county clerk who receives a certified copy of an order and
28 redacted document described in this section with the fees required
29 under ORS 205.320 shall:

30 “(a) Record the order and the certified copy of the document upon

1 **which the court has physically redacted the void provisions;**

2 **“(b) Update the index of each original document referenced in the**
3 **order with the recording number of the modified document; and**

4 **“(c) Maintain the original document or an image thereof separately**
5 **from electronic public access and preserve the original document or**
6 **image for historical or archival purposes.**

7 *“(1)(a) Notwithstanding ORS 93.272, any owner of record of real property*
8 *that is subject to an instrument conveying or contracting to convey fee title to*
9 *the property, or a declaration recorded under ORS 94.580, that contains a*
10 *provision that is in violation of ORS 93.270 (1)(a) may file a petition under this*
11 *section to remove that provision from the title to the property. The petition*
12 *shall be filed in the circuit court for the county in which the property is lo-*
13 *cated. For a petition filed under this section, the court may not charge any*
14 *filing fees to the petitioner and may not award a prevailing party fee to any*
15 *party.]*

16 *“(b) An owner may not use this section for removal of provisions that are*
17 *in violation of both ORS 93.270 (1)(a) and (b).]*

18 *“(2) A petition filed under this section must contain:]*

19 *“(a) The name and mailing address of the person filing the petition;]*

20 *“(b) The name and mailing address of all owners of record of the*
21 *property;]*

22 *“(c) The legal description of the property subject to the provision in vio-*
23 *lation of ORS 93.270 (1)(a); and]*

24 *“(d) A clear reference to the provision claimed to be in violation of ORS*
25 *93.270 (1)(a).]*

26 *“(3)(a) Notwithstanding ORCP 7, notice and a copy of the petition shall*
27 *be served on all owners of record of the property via registered or certified*
28 *mail.]*

29 *“(b) The petitioner shall submit to the court a sworn affidavit certifying*
30 *the petitioner made a good faith effort to notify, in the manner required under*

1 *this subsection, all owners of record of petitioner’s intent to file the petition.]*

2 *“(4) The notice required under subsection (3) of this section shall inform*
3 *the owners of record that:]*

4 *“(a) The petition seeks the removal of a provision that is in violation of*
5 *ORS 93.270 (1)(a) from the title to the property;]*

6 *“(b) The person served may request a hearing within 20 days after service*
7 *of the petition; and]*

8 *“(c) The court is authorized to enter a default judgment removing the*
9 *provision if no hearing is requested by the owners of record.]*

10 *“(5) If no request for hearing is made by any person served under sub-*
11 *section (3) of this section within 20 days after service on that person, the court*
12 *shall enter a judgment removing the provision from the title to the property if*
13 *the court determines that the provision is in violation of ORS 93.270 (1)(a).]*

14 *“(6) If a hearing is requested by any person served under subsection (3)*
15 *of this section, the clerk of the court shall schedule a hearing within 20 days*
16 *after the filing of the request for a hearing. The clerk of the court shall mail*
17 *notification of the hearing date to the petitioner and to all owners of record*
18 *listed in the petition.]*

19 *“(7) At any hearing under the provisions of this section, the sole issue that*
20 *shall be decided by the court is whether the provision that is the subject of the*
21 *petition is in violation of ORS 93.270 (1)(a). The matter shall be tried to the*
22 *court sitting without jury. If the court finds that the provision is not in vio-*
23 *lation of ORS 93.270 (1)(a), the court shall dismiss the petition. If the court*
24 *finds that the provision is in violation of ORS 93.270 (1)(a), the court shall*
25 *enter a judgment removing the provision from the title to the property.]*

26 *“(8) If a court finds only part of a provision to be in violation of ORS*
27 *93.270 (1)(a) under this section, the court shall enter a judgment removing only*
28 *that part of the provision that is in violation.]*

29 *“(9) For the purposes of this section, ‘owner of record’ has the meaning*
30 *given that term in ORS 93.272.]*

1 **“SECTION 2. On or before January 1, 2025, the Judicial Department**
2 **shall create a model template for the petition, notice and order de-**
3 **scribed in ORS 93.274 and shall distribute copies to each circuit court**
4 **and post copies to the department website.**

5 **“SECTION 3. The amendments to ORS 93.274 by section 1 of this**
6 **2023 Act apply to petitions filed and to orders entered on or after the**
7 **effective date of this 2023 Act.**

8 **“SECTION 4. Before January 2, 2026, on the motion of a petitioner,**
9 **a court may enter an order conforming to the form of an order re-**
10 **quired by ORS 93.274 for a judgment entered under ORS 93.274 (2021**
11 **Edition) that was entered on or before the effective date of this 2023**
12 **Act.”.**

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