# 2014 OREGON LEGISLATION HIGHLIGHTS

Oregon State Bar

PUBLISHED BY OREGON STATE BAR PUBLIC AFFAIRS DEPARTMENT Most bills passed during the 2014 session have special effective dates. These dates are noted in the description of each bill.

If a special effective date is not proscribed in a bill, it takes effect on January 1, 2015.

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#### FORWARD

The annual *Oregon Legislation Highlights* offers a timely and authoritative resource to help lawyers catch up on the latest legislative developments.

This book highlights more than 70 bills and other measures that were passed by both houses of the legislature. This book does not describe all of the enacted legislation. *Unless otherwise noted, all legislation takes effect on January 1, 2015.* 

The information in this book is organized into chapters by subject. If a bill has a special effective date, that date is noted at the end of the discussion of that bill. Please note that in some cases a bill may have more than one effective date. If in doubt about an effective date of a law, always check the enacting legislation.

Each bill is identified – in the chapter outline and in the text – by its bill number and its 2014 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book for a quick reference to the discussion in the text.

The legislature's website offers additional information that the reader of this book may find useful. This includes measure summaries written by legislative staff, and in some cases supporting documentation submitted during committee hearings. See <a href="http://www.oregonlegislature.gov">www.oregonlegislature.gov</a> for more information.

We are grateful to all who were involved in preparing this book. We are appreciative of the efforts of our volunteer authors, who take time away from their practices to contribute to this publication.

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### 2014 Oregon Legislation Highlights

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#### I. INTRODUCTION

This chapter includes primarily bills affecting Oregon state agency authority and procedures. Most of the bills in this chapter have special effective dates that are noted below. If not otherwise noted, all legislation goes into effect on January 1, 2015. Please note that many bills have multiple operative dates for different sections of the legislation.

#### II. HEALTH CARE AND HUMAN SERVICES

#### 1. <u>HB 4074</u> (Ch. 63) Board of Medical Imaging

HB 4074 authorizes the Board of Medical Imaging to waive some licensing requirements for an individual who has substantial relevant experience, as determined by the board, and who is an employee of a rural hospital. The Board is permitted to require individuals seeking a waiver to demonstrate a shortage of practitioners in the area.

Additionally, the bill amends ORS 688.415 to provide that any health care practitioner licensed in Oregon may order medical imaging procedures, so long as the procedures are within the scope of that licensee's authority. Under the previous statute, this was limited to a specific list of licensed professions.

HB 4074 took effect on March 13, 2014.

#### 2. <u>HB 4109</u> (Ch. 96) Oregon Health Authority Study on a "Basic Health Program"

HB 4109 directs the Oregon Health Authority (OHA) to commission an independent study of the feasibility of operating a "basic health program" (defined in the bill by reference to 42 U.S.C. 18051) in Oregon.

The bill establishes requirements for that study and appropriates funds to OHA for the study. The bill requires that a report be submitted to the Legislature by November 30, 2014.

HB 4109 took effect on April 1, 2014.

#### 3. <u>HB 4124</u> (Ch. 99) Youth Suicide Intervention and Prevention Coordinator

HB 4124 amends ORS 418.704 to rename the Oregon Health Authority's Youth Suicide Prevention Coordinator as the Youth Suicide Intervention and Prevention Coordinator.

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The bill requires the coordinator to develop a statewide strategic Youth Suicide Intervention and Prevention Plan to address youth suicide and self-inflicted injury, and to develop strategies for intervention with suicidal, depressed and at-risk youth. The Coordinator is directed to review data and prepare an annual report to the Legislature regarding emergency room admissions for completed and attempted youth suicide and related matters.

The bill directs the coordinator to update the plan at least once every five years, with the first update to be presented to the Legislature on or before January 1, 2015.

HB 4124 took effect on April 1, 2014, but some provisions do not become operative until August 1, 2014.

#### 4. <u>HB 4151</u> (Ch. 104) Elder Abuse

HB 4151 makes a number of changes to requirements to report and investigate elder abuse in Oregon.

The bill provides that the Department of Human Services (DHS) must complete an investigation pursuant to ORS 124.070 within 120 days after receipt of a report of abuse made under ORS 124.060, unless there is an ongoing concurrent criminal investigation. If that is the case, DHS may take a reasonable amount of additional time to complete the investigation. The bill also establishes criteria for post-investigation reports by DHS.

The bill directs DHS to adopt and establish a database for abuse reports and requires information to be included in the database. DHS must report to the legislature regarding implementation of policies and guidelines for the database by January 1, 2015.

HB 4151 also provides that an adult foster home may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if the home was not notified prior to admission or learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime and the resident meets DHS criteria, established by rule, for transfers or discharges under the bill. A resident transferred or discharged in this manner may request a hearing and contest the move in accordance with ORS chapter 183.

The bill renames the Oregon Elder Abuse Work Group as the Oregon Elder Abuse Prevention Work Group and expands the work group's potential recommendations to include recommendations concerning the criminal background check system and investigating and reporting abuse of vulnerable persons.

The bill amends definitions of "neglect" and "sexual abuse" in ORS 124.050, which effects on persons who are mandatory reporters of elder abuse, including attorneys.

HB 4151 took effect on April 1, 2014, but some provisions of the bill do not take effect until January 1, 2015. For more information about this bill please see the Judicial Administration Chapter.

#### 5. <u>HB 4154</u> (Ch. 78) Cover Oregon

HB 4154 requires that Cover Oregon request federal approval to:

- Extend the open-enrollment period through April 30, 2014;
- Allow individuals to qualify for premium tax credits, cost sharing reductions if individuals enrolled in qualified health plans directly with insurers; and
- Allow small business tax credits for plans enrolled in outside of the Exchange.

The bill also makes employees of Cover Oregon and state contractors subject to state whistleblower protections and allows the Governor to replace any number of members of the Cover Oregon Board of Directors until June 30, 2015.

HB 4154 took effect on March 19, 2014.

#### 6. <u>SB 1526</u> (Ch. 17) Children's Health Insurance Program

SB 1526 directs the Oregon Health Authority (OHA) to investigate whether the Centers for Medicare and Medicaid Services is likely to approve matching funds from the federal Children's Health Insurance Program (CHIP) for a state program for subsidizing health insurance provided by commercial insurers to a child eligible for the Health Care for All Oregon Children program, if the child's family income is 200 to 300 percent of the federal poverty guidelines.

The OHA is required to report its findings and any recommendations for legislation by September 15, 2014.

SB 1526 took effect on March 3, 2014.

#### 7. <u>SB 1553</u> (Ch. 117) Oregon Public Guardian and Conservator

SB 1553 provides for the appointment of the Oregon Public Guardian and Conservator (OPGC) in the office of the Long Term Care Ombudsman to provide public guardian and conservator services for individuals in need.

The OPGC will serve a term of four years, at the Ombudsman's pleasure, and may be removed for good cause. The OPGC will receive a salary fixed by the Ombudsman. The OPGC may hire or contract staff and volunteers to carry out the duties and functions of his or her

#### ADMINISTRATIVE LAW

office, adopt rules to implement the bill and fix compensation for persons hired or contracted by the OPGC. The OPGC is tasked with educating the public about his or her office's function, providing public guardian or conservator services for persons who lack a guardian or conservator and developing standards of conduct and eligibility for deputies and of practice and procedure in public guardianship and conservator proceedings.

SB 1553 took effect on April 1, 2014, but most provisions become operative on July 1, 2014. The early effective date is to allow the Governor and Ombudsman to implement the bill so OPGC can carry out duties on the bill's operative date.

#### 8. <u>SB 1582</u> (Ch. 80) Oregon Medical Insurance Pool Board

SB 1582 allows moneys remaining in the Oregon Medical Insurance Pool Account to be used for the Temporary Medical Insurance Program and allows the Oregon Health Authority to administer the program. The program will facilitate health insurance coverage for individuals who were enrolled in the Oregon Medical Insurance Pool which ended December 31, 2013.

The bill amends the Oregon Reinsurance Program to automatically adjust the attachment point, coinsurance rate and reinsurance cap in the Oregon program to changes in the attachment point, coinsurance rate and reinsurance cap in the federal reinsurance program.

Finally, the bill gives the Department of Consumer and Business Services the authority to permit health insurance plans that do not meet the requirements of the Affordable Care Act to continue in effect until the earlier of December 31, 2015 or a later date specified by rule, if authorized by guidance issued by a federal agency responsible for implementing the Affordable Care Act. This provision sunsets on January 2, 2017.

SB 1582 took effect on March 19, 2014.

#### **III. EDUCATION AND EMPLOYMENT**

#### 1. <u>HB 4023</u> (Ch. 86) Veterans Recognition and Employment

HB 4023 has two separate effects related to veterans.

First, the bill designates the portion of U.S. Highway 26 within the Warm Springs Reservation as the Warm Springs Veterans Memorial Highway. The bill directs Oregon Department of Transportation (ODOT) to place and maintain markers along the highway and authorizes ODOT to accept moneys and enter into agreements to install and maintain those makers.

Second, the bill provides that private, nonpublic employers may give preference in hiring and promotion decisions to veterans, widows and widowers of veterans, and in some cases to spouses of veterans.

HB 4023 took effect on April 1, 2014.

#### 2. <u>HB 4057</u> (Ch. 35) Application of Military Training Toward Professional Licensure

HB 4057 directs an extensive list of boards and agencies to report to the appropriate committees of Legislative Assembly by October 1, 2014, regarding progress made to implement recent requirements to accept substantially equivalent military training or experience for requirements to obtain professional licenses.

The legislature passed bills in both 2012 and 2013 requiring agencies to accept certain military training in lieu of other requirements to obtain licensure.

HB 4057 took effect on March 6, 2014.

#### 3. <u>HB 4058</u> (Ch. 61) "40-40-20" Education Goals

HB 4058 amends Oregon's 40-40-20 education goals to include programs registered with State Apprenticeship and Training Council. The 40-40-20 goals are that by 2025, at least 40% or Oregonians will have earned a bachelor's degree or higher and that an additional 40% will have earned an associate's degree or some other post-secondary credential and that the remaining 20% will have a high school diploma or the equivalent.

HB 4058 provides that completion of registered apprenticeship programs are a postsecondary credential for purposes of the state's middle 40 goal in the 40-40-20 plan.

#### 4. <u>SB 1524</u> (Ch. 50) Study on Providing Free Community College Tuition to Some Students

SB 1524 directs the Higher Education Coordinating Commission (HECC) to examine the viability of creating a program allowing students who either graduated from an Oregon high school or who completed grade 12 in compliance with ORS 339.035 (Homeschooling provisions) to attend community college for a specified period without paying tuition and fees.

The bill identifies matters the HECC must consider during its examination. The HECC may purpose criteria for such a program if it determines that the program is viable. Regardless, the HECC must submit a report summarizing its findings, which may include recommendations for legislation to the interim legislative education committees by September 30, 2014.

SB 1524 took effect on March 11, 2014.

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### 5. <u>SB 1525</u> (Ch. 113) Interstate Agreements for Post-Secondary Distance Education

SB 1525 authorizes the Higher Education Coordinating Commission to enter into and administer interstate agreements regarding the provision of post-secondary distance education, such as the State Authorization Reciprocity Agreement (SARA) proposed by the Western Interstate Commission for Higher Education (WICHE).

The bill provides that the act of registering to vote by a student attending a postsecondary institution has no effect in determining the student's eligibility to participate in WICHE's Western Undergraduate Exchange. The bill also clarifies HECC's responsibility to advise and assist the Oregon Education Investment Board (OEIB) on higher education policy matters and changes the composition of the State Board of Higher Education. Under the bill, members are appointed by the Governor, subject to Senate confirmation and may not serve more than two consecutive terms of two years each. The Governor may remove members at any time for cause, after notice and public hearing, but may not remove more than three members in a fouryear period, unless the member is removed for corrupt conduct in office. The bill creates a legislative work group to consider and propose legislation regarding regional education delivery systems.

SB 1525 took effect on April 1, 2014.

#### 6. <u>SB 1527</u> (Ch. 70) Dislocated Worker Training Program

SB 1527 requires the Oregon Business Development Department, in coordination with local workforce investment boards, to enter into an agreement with one or more private or public entities to develop an industry-designated Dislocated Worker Training Program. The purpose of the program is to enable unemployed and underemployed engineers and other professionals to be reemployed in Oregon in the bioscience and manufacturing traded sector industries. Under the bill, the program is required to establish qualifications for applicants, recruit instructors, develop a system for tracking and reporting results, establish program and curriculum guidelines and graduation standards, and devise ways for industries to hire program graduates.

The department must submit a report to the legislature by February 1, 2016. SB 1527 took effect on March 13, 2014.

#### 7. <u>SB 1566</u> (Ch. 49) State Workforce Investment Board

SB 1566 removes the Teacher Standards and Practices Commission from, and adds the State Workforce Investment Board to, the list of agencies the Governor's education and workforce policy advisor must involve in the performance of his or her duties. On July 1, 2014, the High Education Coordinating Commission is also added to that list.

The bill directs the Governor to appoint a representative of a local workforce investment board to the State Workforce Investment Board, and includes organizations working with persons with disabilities, persons living at or below 100 percent of the federal poverty guidelines and persons chronically un- or underemployed among those organizations the board must consult and collaborate with.

SB 1566 also authorizes the board to hold state workforce agencies and local workforce investments boards accountable for performance goals and system outcomes and directs local workforce investment boards to include strategies and outcomes they will implement and make all parties accountable for carrying them out as part of the local board's plan.

SB 1566 took effect on March 6, 2014.

#### **IV. ELECTIONS**

#### 1. <u>SB 1515</u> (Ch. 112) Election Law

SB 1515 makes numerous changes to different aspects of Oregon elections law. One of the major changes is that the bill provides that candidates for more than one district office are to have their names printed for each office for which they were nominated. The bill also reduces the amount of time for disclosing information about electors whose ballots were challenged and for individuals nominated or elected by write-in votes to accept nomination or office. The bill also makes changes regarding criminal records checks for circulators and prior violations that may prohibit someone from being a circulator.

SB 1515 took effect on April 1, 2014.

#### 2. <u>SB 1544</u> (Ch. 72) Citizen's Initiative Review Commission

SB 1544 repeals the sunset on the Citizen's Initiative Review Commission and changes the composition of the commission. Under the bill, two, rather than four, former moderators shall be appointed and six, rather than four, electors who have served on a citizen panel shall be appointed as members.

The commission is authorized to adopt rules for the compensation of electors for each day of service on a panel. Panels may not review measures for less than three and not more than five consecutive days or a total of not less than 24 hours, unless otherwise provided by the commission rule. The commission shall provide each panel with any complaints regarding the panel by the third day the panel convenes.

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The bill also establishes that the commission is subject to ORS 182.456 to 182.472 (provisions regarding semi-independent state agencies). SB 1544 directs the Secretary of State to include any statement submitted for the measure by a citizen panel in the voters' pamphlet.

SB 1544 took effect on March 13, 2014.

#### V. BILLS AFFECTING OTHER AGENCIES

#### 1. <u>HB 4020</u> (Ch. 85) Engineering and Technology Industry Council

HB 4020 amends provisions concerning the Engineering and Technology Industry Council. Currently, the Council submits biennial performance review of all investments to the Oregon University System Chancellor and the State Board of Higher Education. Under the bill, the Council now submits the review to Oregon's Chief of Education Officer and the Oregon Education Investment Board (OEIB).

The bill also establishes an account in the Oregon Education Investment Fund for investing in engineering education. OEIB is directed to use money in the account for that purpose and to follow criteria and measurements established by the Council.

HB 4020 takes effect on July 1, 2014.

#### 2. <u>HB 4028</u> (Ch. 56) Oregon Lottery Funds for Problem Gambling

HB 4028 authorizes the Oregon State Lottery to use moneys otherwise allocated for administrative expenses to pay for:

- Adopting and implementing rules to minimize problem gambling risks and to mitigate problem gambling harms;
- Advertising the availability of problem gambling treatment programs;
- Collecting and reporting data regarding problem gambling; and
- Assisting the Oregon Health Authority and treatment providers.

HB 4028 took effect on March 13, 2014.

#### 3. <u>HB 4031</u> (Ch. 87) State Interoperability Executive Council

The major effect of HB 4031 is to transfer the State Interoperability Executive Council from the Oregon Department of Transportation (ODOT) to the Department of Administrative Services (DAS).

However, ODOT's rules regarding the Council will remain in effect until superseded or repealed by DAS.

The Council is directed to serve as the steering group for the state's Statewide Communication Interoperability Plan. The bill amends Council membership to include a member from the Oregon Broadband Advisory Council (OBAC), an IT officer from an Oregon city, an IT officer from an Oregon county, a member from a nonprofit organization for the enhancement of public safety communications systems and a person who resides in FCC region 35. The bill removes the OBAC member from council effective January 2, 2016.

HB 4031 further directs the Council to develop, update and monitor the plan; coordinate activities for the purpose of obtaining grants to support interoperability; submit plans to the U.S. Department of Homeland Security; and make recommendations to the Governor and legislature.

HB 4031 will take effect on July 1, 2014.

#### 4. <u>HB 4045</u> (Ch. 57) Well Constructors Continuing Education Committee

HB 4045 retroactively revives and reconstitutes the Well Construction Contractors Continuing Education Committee and statutes related to continuing education programs for licensed water well constructors. Legislation that created the Committee and the accompanying continuing education requirement had a sunset date of January 2, 2014.

The bill ratifies any action taken by the Committee after it had officially sunsetted and establishes a new sunset date of January 2, 2022.

HB 4045 took effect on March 13, 2014.

#### 5. <u>HB 4081</u> (Ch. 8) Charitable Organizations

HB 4081 identifies a non-comprehensive list of acts and practices that constitute a violation of ORS 128.610 to 128.769. The bill then provides that the Attorney General may, in accordance with ORS chapter 183, deny, suspend, condition or revoke the registration of a charitable organization after giving it notice of the basis for the proposed administrative action. The organization has 90 days to ameliorate the violation or request a hearing.

Additionally, the Attorney General may impose a civil penalty of no more than \$2,000, order the organization to cease soliciting or accepting contributions until it has corrected its behavior or order the organization to submit more information.

For additional information on HB 4081, see the Taxation Chapter.

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#### 6. <u>HB 4135</u> (Ch. 102) State Chief Information Officer

HB 4135 creates a pilot project that requires the State Chief Information Officer (CIO) to advise executive staff of state agencies that are responsible for acquiring or maintaining IT resources. Additionally, the bill authorizes the CIO to form and lead workgroups for planning and implementing IT initiatives involving more than one agency, implement cost-effective acquisition and deployment of IT products and services, and manage IT initiatives.

Among other duties, the bill makes the CIO responsible for ensuring agencies' IT plans align with and conform to Oregon's Enterprise Information Resources Management Strategy.

HB 4135 requires the State Chief Information Officer to report to the legislature prior to the convening of each legislative session.

HB 4135 took effect on April 1, 2014, but becomes operative on July 1, 2015. The bill sunsets on June 30, 2015.

#### 7. <u>HB 4139</u> (Ch. 40) Educational Materials on Pesticides

HB 4139 directs Oregon State University, in consultation with the Oregon Department of Agriculture, to develop educational materials on best practices for avoiding adverse effects on bees and other pollinating insects, specifically honeybees and bumblebees.

The bill further requires the Department to include these materials as part of the educational requirements for the pesticide applicator licensing exam.

HB 4139 took effect on March 6, 2014. For additional information on this bill, please see the Energy and Environment Chapter.

#### 8. <u>HB 4149</u> (Ch. 14) Expedited Titling Services

HB 4149 directs the Oregon Department of Transportation (ODOT) to provide expedited titling services, upon request of a vehicle dealer, if the dealer pays a \$100 fee and makes the request in the manner required by ODOT rules.

#### 9. <u>SB 1514</u> (Ch. 111) State Parks and Recreation Department Fee Revenue

SB 1514 increases the percentage of moneys distributed for county parks from 35 percent to 40 percent of moneys transferred to State Parks and Recreation Department from registration of travel trailers, campers and motor homes and from recreational vehicle trip permits. The percentage to county parks will increase again, to 45%, on July 1, 2015.

The bill amends ORS 390.134 to provide that counties may not use moneys received from State Parks and Recreation Department Fund to supplant moneys otherwise made available to counties for acquiring, developing and maintaining county park and recreation sites. The bill directs the State Parks and Recreation Director and representatives of county parks and recreation directors to submit a report on January 15<sup>th</sup> of each odd-numbered year describing the results of county activities and programs financed by moneys transferred under these provisions.

SB 1514 took effect on April 1, 2014.

#### 10. <u>SB 1537</u> (Ch. 44) Mutuel Pool Wagering

SB 1537 authorizes the Oregon Racing Commission to adopt new rules regarding forms of mutuel wagering that race meet licensees may offer. Under the bill, a mutuel pool for either a live or previously held horse race may include amounts carried forward from the mutuel pools of previous races subject to mutuel wagering and be carried forward and included in subsequent mutuel pools for subsequent races subject to mutuel wagering. The bill amends the definition of "mutuel" in ORS 462.010.

#### 11. <u>SB 1545</u> (Ch. 2) Oregon Ocean Science Trust

SB 1545 changes the composition of the Oregon Ocean Science Trust to include seven members: five voting members to be appointed by the State Land Board and two non-voting members, one appointed by the President of the Senate and the other by the Speaker of the House of Representatives.

The bill also establishes qualification criteria for members appointed by the board. Members who are not legislators are not entitled to compensation, but may be reimbursed for travel and other expenses incurred in the performance of their duties. Claims are to be paid out of funds appropriated to the Department of State Lands for purpose of administering the Trust.

SB 1545 took effect on February 26, 2014.

#### 12. <u>SB 1549</u> (Ch. 46) Public Accountancy

Under existing law, persons engaged in public accountancy are arguably required to be registered as investigators with the Department of Public Safety Standards and Training. SB 1549 eliminates this requirement by amending ORS 703.411 to provide that ORS 703.401 to 703.490, 703.993 and 703.995 do not apply to accountants while engaged in the practice of public accountancy or employees of an accountant while working for the accountant.

Persons practicing public accountancy are still required to be registered with the Oregon Board of Accountancy.

SB 1549 took effect on March 6, 2014.

#### 13. <u>SB 1558</u> (Ch. 48) Self-Insured Employers

SB 1558 requires the Department of Consumer and Business Services to set standards by rule for proof of financial viability of self-insured employers and for insurance coverage retention and combined net worth of members of a self-insured employer group. The bill authorizes the department to require information from employers that demonstrates acceptable financial viability and authorizes the department to revoke certification for self-insured employers who violate the rules.

SB 1558 also authorizes the Director of the Department of Consumer and Business Services (DCBS) to advance funds from the Workers' Benefit Fund to injured workers who have not received compensation payments due from a self-insured employer group that is decertified by September 15, 2014, after exhaustion of group's funds and securities deposited with the director.

SB 1558 took effect on April 1, 2014.

#### 14. <u>SB 1584</u> (Ch. 4) Department of Agriculture Permits for Exotic Animals

SB 1584 authorizes the Oregon Department of Agriculture to issue permits for the keeping of "exotic animals" (defined in ORS 609.305) to a person who applies for the permit between passage and December 31, 2014, if that person satisfies criteria, including compliance with rules adopted by the department under ORS 609.335.

The department may collect a fee, not the exceed \$300, for issuing permit. Individuals in possession of an exotic animal may maintain possession of that animal until the department acts on the individual's permit application.

SB 1584 took effect on February 26, 2014 and sunsets on January 2, 2017.

# **Criminal Law**

#### I. INTRODUCTION

#### II. CRIMINAL LAW

1. HB 4022	(Ch. 29)	Law Enforcement Access to Cellular Location Data
2. HB 4035	(Ch. 88)	Firearms on Department of Corrections Property
3. HB 4037	(Ch. 31)	Transfer of Youth Offenders
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5. HB 4094	(Ch. 11)	Minor in Possession of Alcohol
6. SB 1531	(Ch. 79)	Marijuana Facilities
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9. SB 1550	(Ch. 73)	New Speedy Trial Statute
10. SB 1557	(Ch. 21)	Offense of Failure to Provide Clear Title

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#### I. INTRODUCTION

Several important criminal law bills were passed during 2014. Some of the most important related to law enforcement access to cell phone information, concealed handgun licenses, and medical marijuana dispensaries. Additionally, after significant discussions among criminal lawyers, the legislature passed an important update to Oregon's speedy trial regime in SB 1550. Many of these bills have special effective dates, which are included in the descriptions. If not otherwise noted, bills go into effect on January 1, 2015.

#### II. CRIMINAL LAW

#### 1. HB 4022 (Ch. 29) Law Enforcement Access to Cellular Location Data

HB 4022 creates the "Kelsey Smith Act" within ORS Chapter 403. The Act requires "providers of radio communications service for cellular devices", at the request of a law enforcement agency, to provide location information for a 9-1-1 call or for a device that is reasonably believed to be in the possession of someone who is at risk of serious physical harm.

The Office of Emergency Management is required to maintain a database containing emergency contact information for providers that is immediately available to public safety answering points (PSAP's). Providers are required to submit emergency contact information to the Office of Emergency Management each year or whenever information changes.

The office is required to make a report to the legislature biennially that includes the number of requests received and provided.

HB 4022 will take effect on January 1, 2015.

#### 2. <u>HB 4035</u> (Ch. 88) Firearms on Department of Corrections Property

HB 4035 creates an exception to the crime of supplying contraband (ORS 162.185) for a corrections officer to store a firearm in his or her vehicle on Department of Corrections property if:

- 1. The officer's department does not provide a secure and locked location for the firearm;
- 2. The firearm is kept in a key accessible locked container within the vehicle;
- 3. The officer is acting in an official capacity at the public building; and
- 4. The officer has a concealed handgun license.

HB 4035 will take effect on June 6, 2014.

#### 3. <u>HB 4037</u> (Ch. 31) Transfer of Youth Offenders

HB 4037 authorizes a county sheriff to designate the county juvenile department or the Oregon Youth Authority to directly transfer a youth to a youth correction facility without first delivering the youth to the Department of Corrections as part of a direct transfer agreement with the Department of Corrections.

The purpose of this change is to minimize occasions where youth offenders are even temporarily housed with adult offenders while awaiting final transfer to the Oregon Youth Authority.

HB 4037 took effect on March 6, 2014.

#### 4. <u>HB 4068</u> (Ch. 62) Concealed Handgun Licenses

HB 4068 provides that a person is not excluded from getting a concealed handgun license because of either a single misdemeanor conviction for possession of marijuana, or for a single successful diversion for possession of marijuana. As under current law though, there is still a four year waiting period if there is a conviction.

The bill also provides that out of state convictions and diversions are treated the same as in state convictions for this purpose.

HB 4068 takes effect on January 1, 2015.

#### 5. <u>HB 4094</u> (Ch. 11) Minor in Possession of Alcohol

HB 4094 creates an exception to the offense of possession of alcohol by a minor. Under the bill a person under the age of 21 is immune from prosecution under the minor in possession statute if that person:

- 1. Contacted either emergency medical services or law enforcement;
- 2. To obtain medical assistance for themselves or another person because of alcohol consumption; and
- 3. The evidence of the violation for a minor in possession was obtained as a result of the person contacting medical services or law enforcement for medical assistance.

The bill would not preclude evidence of alcohol consumption being used for proceedings related to other crimes or offenses.

HB 4094 takes effect on January 1, 2015.

#### 6. <u>SB 1531</u> (Ch. 79) Marijuana Facilities

SB 1531 allows a governing body of a city or county to adopt ordinances that impose reasonable limitations on hours, locations and manner of dispensation for registered medical marijuana facilities.

Additionally, under the bill, cities or counties may also adopt an ordinance enacting a moratorium on the operation of facilities as long as the moratorium is enacted no later than May 1, 2014 and ends by May 1, 2015. The governing body must notify the Oregon Health and Authority of its adopted moratorium.

Employees of a registered facility subject to a moratorium are not exempted from criminal offenses where possession or delivery of marijuana are elements. A registered facility may surrender its registration, in which case the Oregon Health Authority may refund any imposed fee.

The section of the bill that allows cities and counties to enact moratoriums is repealed on January 2, 2016.

SB 1531 also provides that registered facilities may not transfer any THC-infused product that is meant to be attractive to minors. Registered facilities are prohibited from transferring any THC-infused product that is swallowed or inhaled, unless placed in a child-resistant safety package.

SB 1531 took effect on March 19, 2014.

#### 7. <u>SB 1536</u> (Ch. 71) Juvenile Court Records

SB 1536 expands on and clarifies changes made in SB 622 in 2013. The bill defines and clarifies the terms "public defense provider" and "record of the case". The bill adds that "supplemental confidential files" may be maintained in paper or electronic form, and includes similar reports and materials filed in juvenile court proceedings commenced before January 1, 2014.

Records of the case are now unavailable to be inspected by attorneys or prospective appellate attorneys for the surrogate and service providers in the case. In addition to the parties being able to view records of the case, supplemental confidential files are able to be viewed by attorneys and prospective attorneys for the youth and their parents or guardians. OJD may permit county or state access to juvenile court records to such offices as: the Oregon Youth Authority, the district attorney, and the office of public defense services.

For adoption cases filed before January 1, 2014, a person over the age of 18 is allowed to obtain medical history information, home study information, addresses, phone numbers, and Social Security numbers of person or entities.

For adoption cases filed after or on January 1, 2014, a person over the age of 18 may now inspect exhibits that are contained in the court's record including medical history.

SB 1536 took effect on March 13, 2014. However, amendments to ORS 419A.255 by section 11, chapter 417, Oregon Laws 2013; by section 3 of this bill; and the amendments to ORS 419A.256 by section 5 of this bill come into effect on September 30, 2015.

#### 8. <u>SB 1546</u> (Ch. 20) Alcohol and Tobacco Products Sales to Minors

SB 1546 amends ORS 163.575 (endangering the welfare of a minor) to provide that selling a device for smoking tobacco to a person under the age of 18 is a Class A violation, instead of a Class A misdemeanor.

Additionally, the bill reduces a conviction for a first offense for a cashier who sells alcohol to a person under the age of 21 to a Class A violation.

SB 1546 took effect on March 3, 2014.

#### 9. <u>SB 1550</u> (Ch. 73) New Speedy Trial Statute

Under SB 1550, a felony trial must be commenced within 3 years of the date of the filing of the charging instrument and a misdemeanor trial must be commenced within 2 years of the filing date. A trial is a felony or a misdemeanor depending on the most serious charge in the charging instrument, even if there are consolidated charges or defendants. The remedy is dismissal without prejudice, unless the court finds substantial and compelling reasons not to dismiss.

A defendant who fails to appear at trial waives all rights under this statute.

Additionally, the speedy trial period is tolled where:

- The issue of defendant's competency is pending or the defendant has been determined to be unable to aid and assist.
- The defendant has failed to appear (until the next substantive court appearance).
- A trial date is set past the end of the speedy trial period and defendant fails to object within 7 days of the setting (until the trial setting).
- The defendant has asserted a mental defense (from notice of raising of the defense to trial).
- The defendant is physically unable to appear.
- An interlocutory appeal, mandamus, habeas or appeal from a dismissal is pending.

- The defendant's location is known but defendant's presence cannot be obtained or the defendant is out of state.
- The defendant's location is unknown and either the defendant's location could not be found with due diligence or the defendant has attempted to avoid prosecution.
- A mistrial has occurred, for a period not to exceed three months following the mistrial.
- The trial has been continued with the consent of the defendant.

Any crime in which an element is that the victim was a police officer can be alternately proven by evidence that the victim was a reserve officer. This provision likely only applies to aggravated murder.

SB 1550 took effect on March 13, 2014.

#### 10. <u>SB 1557</u> (Ch. 21) Offense of Failure to Provide Clear Title

SB 1577 clarifies that a car dealer purchasing a vehicle from another dealer must satisfy the interests of a selling car dealer within 15 days of receiving clear title. The bill further clarifies that a title is received by a purchaser where either:

- 1. The purchaser or the department of transportation is in physical possession of the certification or document; or
- 2. Where the seller sends notice by certified or registered mail to the purchaser that the documentation is ready to be picked up.

Otherwise, the purchasing dealer may be charged with failing to provide a clear title.

SB 1577 took effect on March 3, 2014.

# **Elder Law**

#### I. INTRODUCTION

#### II. ELDER LAW

- 1. HB 4114 (Ch. 39)
- Court Appointed Special Advocates Elder Abuse
- HB 4151 (Ch. 104)
   SB 1553 (Ch. 117)
- Oregon Public Guardian and Conservator

**Michael Schmidt:** 1978 Northwestern School of Law. Member of the Oregon State Bar since 1978.

#### I. INTRODUCTION

There were only a few significant bills in 2014 dealing with Elder Law issues. The most important dealt with elder abuse, court appointed special advocates and with the creation of the Oregon Public Guardian and Conservator. Many of these bills have special or multiple effective dates, which are noted in the summaries. If not otherwise noted, all bills go into effect on January 1, 2015.

#### II. ELDER LAW

#### 1. <u>HB 4114</u> (Ch. 39) Court Appointed Special Advocates

HB 4114 authorizes the Court to appoint a special advocate at any time after appointment of a fiduciary. This does not apply if the fiduciary is a financial institution or trust company.

The presiding judge must first establish qualifications of the advocates and standards and procedures for the advocates. Advocates may be employees of the court but may not have any personal, pecuniary, or financial interest in the protected person or proceedings. Responsibilities of the advocate include:

- Investigate and evaluate the protected person's circumstances to establish whether the fiduciary is fulfilling the duties and obligations with which the fiduciary has been charged,
- Inform the fiduciary of support services and resources available in the community to assist in the care and welfare of the protected person,
- Provide a written report to the court of the findings of the special advocate, in a form approved by the court, and provide copies of the report to all persons entitled to notice under ORS 125.060, and
- Perform any other duties, responsibilities or functions as ordered by the court.

The advocate may, within the confines of confidentiality, inspect and copy records of the protected person relating to health, mental health, finances, education and welfare in order to better carry out the duties of the advocate. An advocate is not entitled to any compensation from the state or from the protected person's estate. A person appointed as a special advocate is immune from any liability for acts or omissions or errors in judgment made in good faith in the course or scope of the person's duties, responsibilities and functions as a protected person special advocate.

HB 4114 took effect on March 6, 2014.

#### 2. <u>HB 4151</u> (Ch. 104) Elder Abuse

HB 4151 makes a number of important statutory changes related to preventing elder abuse, including changes related to the new elder abuse reporting requirement to which attorneys will be subject in 2015.

For detailed descriptions of this bill, see both the Administrative Law Chapter and the Judicial Administration Chapter.

#### 3. <u>SB 1553</u> (Ch. 117) Oregon Public Guardian and Conservator

SB 1553 creates the Oregon Public Guardian and Conservator within the Long Term Care Ombudsman's office. Working with the Residential Facilities Advisory Committee, the Long Term Care Ombudsman is to appoint an Oregon Public Guardian and Conservator for a four year term. The bill provides that any vacancy in the office should be filled within 60 days and the appointee may be removed for good cause. The appointee will be paid a set salary along with expense reimbursement. The appointee will, under the direction of, and, in consultation with the Long Term Care Ombudsman, hire and contract with employees, set forth the duties of employees, fix compensation, and any other duties needed to carry out the function of the Oregon Public Guardian and Conservator's Office.

The primary duties of the Oregon Public Guardian and Conservator will include providing guardian and conservator services for those individuals who do not have relatives or friends willing or able to assume the duties and who lack the financial resources to obtain a private guardian or conservator. The Oregon Public Guardian and Conservator will establish a set-criteria to determine the level of need in order for the services to be extended to the individual. Factors to be considered in the criteria will include the individual's capacity to provide for their own safety, manage finances, obtain food, shelter, and medical attention, whether or not there is someone able to serve/volunteer as the guardian or conservator, or decide how best to appoint a guardian or conservator to that individual.

If an individual appears to be in need of the attention of the Oregon Public Guardian and Conservator, then an individualized plan will be implemented as to the services that will be extended from the office. If a volunteer steps forward to serve as a guardian or conservator for the individual the volunteer must pass a background check and be secured by bond. For services provided by the Oregon Public Guardian and Conservator, a lien will be placed against the individual's estate for the reasonable cost of services provided along with court costs and attorney fees. The guardian or conservator is immune for civil liability except for cases of intentional misconducts that rise to the level of gross negligence.

SB 1553 took effect on April 1, 2014.



# **Energy and Environment**

#### I. INTRODUCTION

#### II. ENERGY AND ENVIRONMENTAL LAW

1. HB 4	4041	(Ch. 32)	Financing of Energy Improvements by Local
			Governments
2. HB 4	4042	(Ch. 33)	Net Metering of Energy Produced by Marine
			Resources
3. HB 4	4049	(Ch. 1)	Vessel Ocean Dungeness Crab Permits
4. HB 4	4093	(Ch. 64)	Wild Bird Conservation and Confidentiality
5. HB 4	4107	(Ch. 38)	Alternative Fuel Vehicles Revolving Loan Fund
6. HB 4	4126	(Ch. 100)	Renewable Energy Certificates and Tariffs
7. HB 4	4131	(Ch. 13)	Taxation of Natural Gas or Propane Motor Vehicle
			Fuel
8. HB 4	4139	(Ch. 40)	Pollinator Health
9. HJⅣ	1 201		Transport of Crude Oil by Rail
10. SB 1	1516	(Ch. 68)	The Salmonberry Trail
11. SB 1	1520	(Ch. 69)	Securities Registration Exemption for Renewable
			Energy Cooperative Corporations
12. SB 1	L545	(Ch. 2)	Oregon Ocean Science Trust - New Members
13. SB 1	L555	(Ch. 47)	Forest Product Sales

**Duncan Delano:** 2010 Northwestern School of Law. Member of the Oregon State Bar since 2010.

**Michael Grainey:** 1972 New York University School of Law. Member of the Oregon State Bar since 1979.

#### I. INTRODUCTION

The Energy and Environment Law chapter includes several bills relating energy production and to the energy industry in general, as well as well as to conventional and alternative fuels. The chapter also includes bills relating to the management and development of public lands in Oregon, and to the protection of Oregon's wildlife.

Most bills passed during the 2014 session have special, and sometimes multiple, effective dates which are specified in the descriptions below. If not otherwise specified however, all bills will take effect on January 1, 2015.

#### II. ENERGY AND ENVIRONMENTAL LAW

1. <u>HB 4041</u> (Ch. 32) Financing of Energy Improvements by Local Governments

HB 4041 expands the existing energy improvement program by authorizing local governments to help facilitate private financing of energy improvements by property owners. Under existing law, local governments may provide loans for energy improvements directly.

The bill authorizes local governments to impose requirements to ensure that the cost of improvements does not exceed the cumulative energy cost savings over the life of the improvements.

The bill also prohibits local governments from entering into loan agreements or facilitating financing agreements under the program unless the owner of qualifying real property gives notice to and receives written consent from mortgagees of the property. Finally, the bill modifies the definition of "qualifying real property" to exclude single-family residential dwellings.

HB 4041 took effect on March 6, 2014.

#### 2. <u>HB 4042</u> (Ch. 33) Net Metering of Energy Produced by Marine Resources

Net metering is a system whereby customers who generate some amount of their own renewable energy are allowed to offset that production against energy they are buying from the utility.

HB 4042 adds renewable marine energy - defined to include wave energy, wave-wind hybrid energy and tidal energy - to the types of energy for which availability of net metering is required in interconnection arrangements with utilities. The bill also expands the allowable

location where generation can occur to establish that renewable marine energy can be located on the territorial sea or outer continental shelf, provided it is directly interconnected to the customer-generator's premises.

HB 4042 will take effect on January 1, 2015.

#### 3. <u>HB 4049</u> (Ch. 1) Vessel Ocean Dungeness Crab Permits

HB 4049 transfers responsibility for revocation of vessel ocean Dungeness crab permits from the Fish and Wildlife Commission to the Commercial Fishery Permit Board. This change brings crab fishery permits into line with other similar vessel permits. The bill also modifies the restrictions on the transfer of vessel permits, allowing the permits to be transferred to larger vessels under specified circumstances.

HB 4049 took effect on February 26, 2014.

#### 4. <u>HB 4093</u> (Ch. 64) Wild Bird Conservation and Confidentiality

HB 4093 creates a public record exemption for certain reports and written agreements relating to the conservation of the greater sage grouse and its habitat. In its original form, the bill would have applied to all wild birds, but amendments limited the scope of the bill to greater sage grouse.

The bill specifically adds a protection from public disclosure for voluntary agreements relating to the conservation of the greater sage grouse entered into by owners or occupiers of land with a soil and water conservation district.

The major objective of the bill is to address privacy concerns of landowners who are interested in entering into conservation agreements.

HB 4063 took effect on March 13, 2014.

#### 5. <u>HB 4107</u> (Ch. 38) Alternative Fuel Vehicles Revolving Loan Fund

HB 4107 expands the Alternative Fuel Vehicle Revolving Fund loan program to private entities that operate motor vehicle fleets. Under the original law passed in 2013, only public bodies and federally recognized tribes could be granted loans under the program.

The purpose of this program is to encourage and assist these entities in purchasing alternative fuel vehicles and converting existing vehicles to alternative fuels.

HB 4107 also permits the State Department of Energy to charge an application fee for an Alternative Fuel Vehicle Revolving Fund loan, and extends the income tax credit for alternative fuel vehicle contributions to tax years beginning on or after January 1, 2017.

HB 4107 took effect on March 6, 2014.

#### 6. <u>HB 4126</u> (Ch. 100) Renewable Energy Certificates and Tariffs

HB 4126 allows consumer-owned utilities to use a certain amount of unbundled renewable energy certificates to meet the Renewable Portfolio Standard (RPS) for a period of time after becoming subject to the RPS. Under existing law, both investor-owned and consumer-owned utilities are required to meet renewable portfolio standards by 2025, and some utilities are held to interim standards sooner. HB 4126 provides consumer-owned utilities with another option for meeting these standards.

Additionally, HB 4126 instructs the Public Utility Commission to study the impacts of allowing electric companies to offer voluntary renewable energy tariffs to non-residential customers. Upon a determination by the Commission that such tariffs should be allowed, the bill authorizes the use of such tariffs.

HB 4126 will take effect on January 1, 2015.

#### 7. <u>HB 4131</u> (Ch. 13) Taxation of Natural Gas or Propane Motor Vehicle Fuel

Under current law, all motor vehicle fuels, including alternative fuels such as compressed natural gas (CNG) or propane are taxed at the pump. However, natural gas and propane are only taxed if the fuel is being used for vehicle use - fuels sold for non-vehicle purposes are not taxed. Because of the complexity of collecting the tax, some retail outlets limit their sales of propane or natural gas to non-vehicle uses. This limits the retail options available for owners of CNG or propane vehicles.

HB 4131 allows a person that uses natural gas or propane in a motor vehicle to purchase an annual decal which would exempt them from being required to pay the per-gallon tax at the pump. The cost of the decal would be based primarily on the weight of the vehicle. This will enable additional retailers to sell these fuels to drivers without the need to calculate the pergallon tax on the fuel sold.

HB 4131 takes effect on July 1, 2015.

#### 8. <u>HB 4139</u> (Ch. 40) Pollinator Health

HB 4139 requires Oregon State University and the Oregon Department of Agriculture to create educational materials addressing best practices for avoiding adverse effects of pesticides on populations of bees and other pollinating insects. The bill then requires that the Department
make these materials part of the standard educational requirements for receiving a pesticide applicator license.

HB 4139 also creates a Task Force on Pollinator Health. Task force members are appointed by the governor, and the task force is required to study issues related to pollinator health and to report findings to the Legislature no later than October 1, 2014.

This bill was drafted in part in response to an incident in Wilsonville in 2013 where approximately 25,000 bees were inadvertently killed by a pesticide applied to trees in order to control aphids.

HB 4139 took effect on March 6, 2014.

#### 9. HJM 201 Transport of Crude Oil by Rail

HJM 201 is a memorial to Congress addressing the safety of rail cars used to transport crude oil. The quantity of crude oil being shipped by rail has increased significantly in recent years due in large part to increase Canadian production.

HJM 201 urges Congress to direct the Pipeline and Hazardous Materials Safety Administration to enhance safety standards for new and existing tank rail cars, requiring that existing cars either be retrofitted or phased out of service.

#### 10. <u>SB 1516</u> (Ch. 68) The Salmonberry Trail

SB 1516 requires the State Parks and Recreation Department and the State Forestry Department to develop a plan for the construction of the Salmonberry Trail.

This trail would run along a portion of the former Pacific Railway and Navigation Company rail line between Tillamook and Banks, Oregon. This section of railway was damaged by flooding and in 2007 the owners of the railway decided not to reopen the line.

The plan must be created in consultation with other stakeholders, and must address issues such as funding and impacts on private property rights. The plan is to be submitted to the Legislature no later than October 1, 2015.

SB 1516 took effect on March 13, 2014.

### SB 1520 (Ch. 69) Securities Registration Exemption for Renewable Energy Cooperative Corporations

SB 1520 creates an exemption from registration requirements for securities issued by a renewable energy cooperative corporation to members of the cooperative as evidence of

#### **ENERGY AND ENVIRONMENT**

membership in the cooperative. This exemption is intended to eliminate costs imposed on the cooperatives, and to be consistent with similar exemptions for other types of cooperatives.

SB 1520 took effect on March 13, 2014, but the new exemption becomes operative October 1, 2014.

#### 12. <u>SB 1545</u> (Ch. 2) Oregon Ocean Science Trust - New Members

The Oregon Ocean Science Trust was created in 2013 on the recommendation of the Task Force on Nearshore Research in order to promote ocean and coastal resource research and monitoring. The Trust is made up of five members appointed by the State Land Board.

SB 1545 adds two legislators as nonvoting members to the Oregon Ocean Science Trust, who are to act only in an advisory capacity.

SB 1545 took effect on February 26, 2014.

#### 13. <u>SB 1555</u> (Ch. 47) Forest Product Sales

SB 1555 caps at \$500,000 the amount of bonds or other securities that are required by the State Forester in connection with forest product sale. Currently, a performance bond must equal 20% of the bid value, and there is no cap on the maximum amount required.

The bill also limits amount of time for the State Forester to return any unexpended amount from a performance bond to a maximum of 180 days. The new requirements of the bill are likewise applied to the sale of forest products by the Department of State Lands.

HB 1555 took effect on March 6, 2014, and the bill applies to timber sale contracts entered in to on or after July 1, 2014.

## **Health Law**

#### I. INTRODUCTION

#### II. HEALTH LAW

1. HB 4013	(Ch. 55)	Electronic Prescriptions and Step Therapy
2. HB 4050	(Ch. 58)	Stop-loss Insurance
3. HB 4052	(Ch. 34)	Electronic Notices
4. HB 4074	(Ch. 63)	Medical Imagining Technicians
5. HB 4085	(Ch. 9)	Colorectal Cancer Screenings
6. HB 4094	(Ch. 11)	Possession of Alcohol by Minors
7. HB 4104	(Ch. 94)	Workers' Compensation Claims
8. HB 4108	(Ch. 95)	Durable Medical Equipment Pilot Project
9. HB 4109	(Ch. 96)	Study on Basic Health Plans
10. HB 4110	(Ch. 97)	Coverage of Persons in Jail
11. HB 4154	(Ch. 78)	Cover Oregon
12. SB 1519	(Ch. 16)	Dental Autoclave Testing
13. SB 1526	(Ch. 17)	Healthy Kids Waiver Study
14. SB 1542	(Ch. 116)	Home Care Registry
15. SB 1548	(Ch. 45)	Physician Assistants and Nurse Practitioners
16. SB 1562	(Ch. 74)	Coverage of Diabetes During Pregnancy and Cover
		Oregon Business Plan
17. SB 1579	(Ch. 25)	Refill Synchronization Policy
18. SB 1582	(Ch. 80)	Temporary Medical Insurance Program

Jeremy Vandehey: 2007 University of North Dakota School of Law. Member of the Oregon State Bar since 2009.

#### I. INTRODUCTION

The Health Law Chapter primarily includes bills regulating the medical professionals and the health insurance industry. It also includes legislation effecting state agencies dealing with health care providers. This year, the chapter includes several bills impacting the Oregon Health Authority and Cover Oregon.

Many of these bills have special or multiple effective dates, which are noted below. If not otherwise noted, all legislation goes into effect January 1, 2015.

#### II. HEALTH LAW

#### 1. <u>HB 4013</u> (Ch. 55) Electronic Prescriptions and Step Therapy

HB 4013 has two major effects, the first of which is to allow Schedule II controlled substances to be prescribed electronically.

HB 4013 also requires that a health care coverage plan or coordinated care organization that directly or through a risk-bearing entity requires step therapy drug protocols must make easily accessible to a prescribing practitioner:

- The clinical criteria for each step therapy protocol;
- The procedure for a practitioner to submit the medical rationale for determining that step therapy is not appropriate for a particular patient; and
- The documentation that is required.

HB 4013 took effect on March 13, 2014. The step therapy provisions become operative January 1, 2015.

#### 2. <u>HB 4050</u> (Ch. 58) Stop-loss Insurance

HB 4050 removes the prohibition on selling "stop-loss" insurance to small groups. Currently "small groups" are defined as entities having between 1 and 50 employees. However, this definition will expand to include entities having up to 100 employees in January of 2016 in order to conform to requirements of the federal Affordable Care Act.

HB 4050 took effect on March 13, 2014.

#### 3. <u>HB 4052</u> (Ch. 34) Electronic Notices

HB 4052 allows any notice, offer, disclosure, document, form, correspondence, information or other communication required or permitted by the Insurance Code to be made in writing to be provided electronically, so long as the consumer consents to receive electronic communications.

Under current law, while some communications from an insurance company to a consumer may be electronic, many communications such as cancellations are required to be in writing.

HB 4052 took effect on March 6, 2014.

#### 4. <u>HB 4074</u> (Ch. 63) Medical Imagining Technicians

HB 4074 has two major effects relating to medical imaging technicians. The first is that the bill allows the Board of Medical Imaging to waive some licensing requirements for an individual providing services at a rural hospital. In order to receive such a waiver, it must be demonstrated that denial of the waiver would result in a shortage of service in the affected area.

The second change is that the bill allows any health care practitioner to order or interpret medical images if it is within the practitioner's scope of authority, as defined by the practitioner's licensing board.

HB 4074 took effect on March 13, 2014.

#### 5. <u>HB 4085</u> (Ch. 9) Colorectal Cancer Screenings

HB 4085 amends the mandate that a health issuer cover colorectal cancer screening examination and laboratory tests. The bill requires coverage of all examinations and tests assigned either a grade A or grade B by the U.S. Preventive Services Task Force.

For insureds who are 50 or older, the bill prohibits cost sharing for colorectal cancer screenings, and requires coverage of polyps removal found during a screening procedure.

HB 4085 applies to all health insurance plans issued or renewed on or after March 3, 2014.

#### 6. <u>HB 4094</u> (Ch. 11) Possession of Alcohol by Minors

HB 4094 provides that a minor has immunity from prosecution for a charge of Minor In Possession of Alcohol if evidence of the violation results from that minor contacting emergency medical services or law enforcement to request medical assistance for themselves or another person. Additionally the bill provides immunity if evidence of a violation of the statute was obtained as a result of a minor seeking or obtaining medical assistance.

HB 4094 will take effect on January 1, 2015, and applies to incidents occurring on or after that date.

#### 7. <u>HB 4104</u> (Ch. 94) Workers' Compensation Claims

HB 4104 requires health benefit plans, including plans offered by the Oregon Educators Benefit Board and Public Employees' Benefit Board, to guarantee payment for medical services pending acceptance or denial of a workers' compensation claim.

The bill also requires a health plan to expedite prior authorizations while a workers' compensation claim is pending.

HB 4104 applies to all health plans issued or renewed on or after January 1, 2015.

#### 8. <u>HB 4108</u> (Ch. 95) Durable Medical Equipment Pilot Project

HB 4108 requires the Oregon Health Authority to contract with non-profit organizations to establish a pilot program to make refurbished durable medical equipment available to individuals enrolled in the state medical assistance program. The pilot project will serve recipients in Washington, Multnomah, Clackamas, Umatila, Marion, and Polk Counties, but the Oregon Health Authority may expand the project if appropriate. The pilot project must be operational by October 1, 2014 and will sunset on January 2, 2018.

HB 4108 took effect on April 1, 2014.

#### 9. <u>HB 4109</u> (Ch. 96) Study on Basic Health Plans

HB 4109 requires the Oregon Health Authority to conduct an impact and feasibility study of operating a basic health plan (or basic health program) allowed under the Affordable Care Act. 'Basic Health Program" is defined in the federal law. The OHA is required to report on the outcome of this study to the Legislature by November 30, 2014.

HB 4109 took effect on April 1, 2014.

#### 10. <u>HB 4110</u> (Ch. 97) Coverage of Persons in Jail

HB 4110 prohibits a health benefit plan from denying reimbursement for any covered service or supply, or from canceling the plan, on the basis that the insured is in custody pending disposition of charges.

The bill requires an insurer to reimburse a county for the cost of covered services or supplies provided to insured while in custody at an amount not less than 115% of the Medicare rate. An insurer may not refuse to credential a health care provider who is an employer or contractor of the county or local supervisory authority (i.e. county jail) on the basis that the individual provides services in a county or local supervisory authority facility.

However, an insurer offering a health benefit plan may:

- Deny coverage for treatment of injuries resulting from violation of a law;
- Waive quality and performance reporting requirements;
- Impose the same utilization controls that it would impose if the insured were not in custody;
- Impose the same billing and medical coding requirements that it imposes on other providers;
- Deny coverage of diagnostic tests or health evaluations required of all individuals in custody;
- Limit coverage of hospital and ambulatory surgical center services to in-network facilities; and
- Reimburse an out-of-network renal dialysis facility at its in-network or out-ofnetwork rate.

The requirements apply to health services provided to inmates on or after January 1, 2015.

#### 11. <u>HB 4154</u> (Ch. 78) Cover Oregon

HB 4154 requires that Cover Oregon request federal approval to do all of the following:

- Extend the open-enrollment period through April 30, 2014;
- Allow individuals to qualify for premium tax credits, cost-sharing reductions if individuals enrolled in qualified health plans directly with insurers; and
- Allow small business tax credits for plans enrolled in outside of the Exchange.

The bill also makes employees of Cover Oregon and state contractors subject to state whistleblower protections, and allows the Governor to replace any number of members of the Cover Oregon Board of Directors until June 30, 2015.

HB 4154 took effect on March 19, 2014.

#### 12. <u>SB 1519</u> (Ch. 16) Dental Autoclave Testing

SB 1519 requires dentists to test autoclave or other heat sterilization device at least once a week.

The bill directs the Board of Dentistry to dismiss any pending disciplinary cases resulting from failure to test an autoclave at least weekly and to remove public information for dentists who have already been disciplined for failure to test the device at least once a week. The bill further prohibits a dentist who has already been disciplined for failure to test an autoclave at least weekly from bringing a cause of against an entity relating to testing.

SB 1519 took effect on March 3, 2014.

#### 13. SB 1526 (Ch. 17) Healthy Kids Waiver Study

SB 1526 requires that the Oregon Health Authority investigate whether the Centers for Medicare and Medicaid Services will allow federal funds to be used to subsidize costs of children between 200-300% of the federal poverty level enrolled in commercial coverage rather than in coordinated care organizations.

The findings of this investigation are due to the Legislature no later than September 15, 2014.

SB 1526 took effect March 3, 2014.

#### 14. SB 1542 (Ch. 116) Home Care Registry

SB 1542 establishes a program administered by the Home Care Commission to allow private individuals to purchase home care worker services from the Commission through the Home Care Registry. Currently, only medical assistance recipients access home care workers through the registry. The bill requires the commission to establish payment rates that reflect no more than 107 percent of the costs of providing the services, including the home care worker's reimbursement, health care coverage and workers' compensation and the commission's administrative costs. The bill also requires the commission to adopt rules regarding the type and scope of services available through the program and to adopt requirements to ensure the quality of the home care provided.

The commission is authorized to increase payment rates or suspend the program if it becomes too costly.

SB 1542 took effect on April 1, 2014. The program becomes operative July 1, 2015.

#### 15. <u>SB 1548</u> (Ch. 45) Physician Assistants and Nurse Practitioners

SB 1548 is a housekeeping bill that amends numerous statutes that reference "physician" to also include "physician assistant" and "nurse practitioner," except where the change would alter scope of practice.

In general physician assistants in Oregon are allowed to perform medical services at their supervising physician's discretion. However, in many places the statute is vague and refers only to physicians. SB 1548 was proposed to clarify these statutes regarding services that may be performed by physician assistants and nurse practitioners.

SB 1548 takes effect on July 1, 2014.

## 16.SB 1562(Ch. 74)Coverage of Diabetes During Pregnancy and Cover<br/>Oregon Business Plan

SB 1562 amends ORS 743A.082, which prohibits cost-sharing for coverd services, medications and supplies for the treatment of diabetes during a woman's pregnancy, to exempt health savings plans. The coverage may be limited by network and formulary restrictions that apply to other benefits under the health plan, and the cost-sharing prohibition does not apply to services, medications, test strips and syringes that are not covered due to network or formulary restrictions. An insurer may require an enrollee or the enrollee's provider to notify the insurer that the enrollee is diabetic and pregnant or has recently given birth. These provisions become operative January 1, 2015.

#### **Cover Oregon Business Plan**

Additionally, the bill requires that any independent reports conducted on or after October 1, 2013 on the development, implementation or quality control of Cover Oregon be made public. The bill requires the Cover Oregon executive director to appear before the House and Senate interim health care committees in May 2014 to present an updated business plan for the Exchange.

SB 1562 took effect on March 13, 2014. The provisions regarding diabetes coverage become operative January 1, 2015.

#### 17. <u>SB 1579</u> (Ch. 25) Refill Synchronization Policy

SB 1579 requires that coordinated care organizations and health benefit plans, including plans offered by the Oregon Educators Benefit Board, the Public Employee's Benefit Board, and Oregon Health and Science University, implement a policy allowing for the alignment of refill dates of prescription drugs so that a patient can refill most of his or her prescriptions at the same time and in the same frequency and avoid repeated trips to the pharmacy.

#### 18. <u>SB 1582</u> (Ch. 80) Temporary Medical Insurance Program

SB 1582 authorized the Oregon Health Authority to operate a temporary medical insurance program through March 31, 2014 for individuals who were enrolled in the Oregon Medical Insurance Pool on December 31, 2013.

The bill requires that funding for the program come first from the ending balance of the health insurance premium tax, which expired September 30, 2013. If those funds are insufficient to cover the cost of the program the Oregon Medical Insurance Pool Board may authorize use of funds from the Oregon Reinsurance Program. The bill also makes technical changes to the attachment points, coinsurance rates, and reinsurance caps of the Oregon Reinsurance Program.

#### 2013 Plan Extensions

If authorized by the federal government, the bill requires the Department of Consumer and Business Services to permit transitional health benefit plans (i.e. non-ACA compliant 2013 health plans) to remain in force until December 31, 2015, or a later date established by the Department. This provision sunsets January 2, 2017.

SB 1582 took effect on March 19, 2014.

## **Judicial Administration**

#### I. INTRODUCTION

#### II. JUDICIAL FUNDING

1.	HB 4066	(Ch. 76)	eCourt Funding
2.	HB 5201	(Ch. 118)	Budget Rebalance
3.	SB 5701	(Ch. 109)	Lottery Allocation
4.	SB 5703	(Ch. 121)	Bonding Limits and County Courthouse
			Construction

#### III. ATTORNEY REGULATION AND RESPONSIBILITIES

1.	HB 4151	(Ch. 104)	Elder Abuse Reporting Requirement
2.	SB 1540	(Ch. 19)	Bad Faith Allegations of Patent Infringement

**Amy Zubko:** 2007 University of Oregon School of Law. Member of the Oregon State Bar since 2007.

**Amber Hollister:** 2003 University of Washington School of Law. Member of the Oregon State Bar since 2003.

Ian Gates: 2005 Northwestern School of Law. Member of the Oregon State Bar since 2005.

#### I. INTRODUCTION

The Judicial Administration chapter addresses legislation related to the operation of the Oregon Judicial Department, and to the court system in general. In 2014 the legislature passed several significant bills that followed up on previous legislation addressing issues such as the new eCourt system and future courthouse construction. This chapter also includes bills related to attorney business practices and reporting requirements.

The bills below all have special effective dates, which are noted.

#### II. JUDICIAL ADMINISTRATION

#### 1. <u>HB 4066</u> (Ch. 76) eCourt Funding

HB 4066 authorizes the Chief Justice's to establish reasonable temporary and permanent fees for the use of the Oregon Judicial Case Information Network (OJCIN). The Chief Justice must give notice prior to the adoption of the temporary fees and the permanent fees may only be adopted after notice and an opportunity to comment. OJCIN includes three components: the Oregon Judicial Information Network (OJIN), the Appellate Case Management System (ACMS), and the Oregon eCourt Case Information System (OECI).

HB 2562, which passed in the 2013 legislative session, established court filing fee increases and dedicated those funds to the State Court Technology Fund with a sunset of July 1, 2014. HB 4066 repealed the sunset of the fee increases and the fee dedications that support court technology.

HB 4066 took effect on March 19, 2014.

#### 2. <u>HB 5201</u> (Ch. 118) Budget Rebalance

HB 5201 is the omnibus budget reconciliation bill for the 2014 legislative session and modifies a number of agency budgets, including the budget of the Oregon Judicial Department. When the 2013-2015 biennial budget was created, HB 5008 (2013) included a 2% supplemental General Fund ending fund balance holdback from most agency budgets.

HB 5201 increased General Fund support for the Judicial Department. Approximately \$3.1 million was approved to restore 49% of the agency's 2% supplemental General Fund ending balance holdback. Funding was directed to the operations budget, pass-through appropriations, mandated payments, third-party debt collection, and services and supplies.

Two special purpose appropriations were made to the Oregon State Legislature's Emergency Board for third-party debt collection and operations support as well.

The General Fund appropriations for judicial compensation and debt service were both reduced due to larger than anticipated carry-forwards from the previous biennium. The reductions reduced support to the levels needed.

The Douglas County court facilities account received a \$50,000 General Fund appropriation to assist the county in providing security protection in the county courthouse.

HB 5201 also included a \$2.6 million Other Funds expenditure limitation increase for grant-funded projects.

HB 5201 took effect on April 1, 2014.

#### 3. <u>SB 5701</u> (Ch. 109) Lottery Allocation

SB 5701 makes and adjusts a number of allocations of the net proceeds of the Oregon State Lottery. These include allocations to the Department of Administrative Services, and allocations to the Problem Gambling Treatment Fund.

Importantly, the bill increases the allocation of Criminal Fine Account revenues to the State Court Facilities and Security Account. The increase addresses compensation plan changes for employees in the Judicial Department's Security and Emergency Preparedness Office and was made in conjunction with the increases in the Judicial Department State Court Facilities and Security Account Other Funds expenditure limitation found in HB 5201.

SB 5701 took effect on April 1, 2014.

#### 4. <u>SB 5703</u> (Ch. 121) Bonding Limits and County Courthouse Construction

SB 5703 amends the bonding limits established during the 2013 legislative session. The bill addressed, among many other projects, funding for a new courthouse in Jefferson County and the continuing efforts to fund a courthouse for Multnomah County.

During the 2013 session, the legislature passed SB 5506 which allowed the State Treasurer to issue bonding not to exceed \$15 million in net proceeds to fund the Oregon Courthouse Capital Construction and Improvement Fund ("Fund"). The Fund will be used to finance the costs related to "acquiring, constructing, remodeling, repairing, equipping, or furnishing" courthouses or portions of courthouses that are owned or will be owned by the state of Oregon. Further, the bill required a county to transfer not less than 50% of the total estimated costs to the Fund as well, making the state and county partners in building or remodeling any courthouse. SB 5703 clarified that a county's responsibility for 50% of the total estimated costs of a project could be met, in part, by a credit based on either the value or price of land purchased by the county for a courthouse.

In addition, the bill provided an additional \$4 million increase in designated funding for construction of a new courthouse in Jefferson County.

SB 5703 took effect on April 1, 2014.

#### III. ATTORNEY REGULATION AND RESPONSIBILITIES

#### 1. <u>HB 4151</u> (Ch. 104) Elder Abuse Reporting Requirement

Beginning January 1, 2015, lawyers are mandatory reporters of elder abuse. (ORS 124.050(9)(r)).

The lawyer elder abuse requirement was first passed in 2013 as part of HB 2205, but the bill provided the reporting requirement would not be effective until January 1, 2015. The legislature delayed implementation to allow the Oregon Elder Abuse Work Group (Work Group) time to further refine the elder abuse reporting definitions, requirements and process.

HB 4151 is the final result of the Work Group's efforts. The Work Group was charged with studying and making recommendations to the legislature on the definitions of "neglect" and "sexual abuse." The new definitions are found in sections 9 and 11 of the bill. Neglect is defined to mean the "failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person." *ORS 124.050(7)*. The definition of sexual abuse was expanded to also include "[v]erbal or physical harassment of a sexual nature, including but not limited to severe or pervasive exposure to sexually explicit material or language" and "sexual exploitation." *ORS 124.050(11)(a)(B),(C)*.

In addition, HB 4151 standardizes the statutory timeline for the Oregon Department of Human Services (DHS) to investigate and report on elder abuse across types of care facilities, as well as requires DHS to augment their existing background check system.

The bill's changes are the result of extensive work by representatives from the Oregon Department of Human Services and the Oregon Health Care Association, as well as Lara Johnson and John Lamborn, who were appointed to the workgroup by the Oregon State Bar's Board of Governors. The Oregon Elder Abuse Work Group, now re-named the Oregon Elder Abuse Prevention Work Group, will continue to focus on these issues throughout 2014 and possibly return during the 2015 legislative session with additional modifications. HB 4151 took effect on April 1, 2014. The reporting requirements for lawyers will take effect on January 1, 2015. For additional information about this bill, see the Administrative Law Chapter.

#### 2. <u>SB 1540</u> (Ch. 19) Bad Faith Allegations of Patent Infringement

SB 1540 prohibits an individual from communicating a demand that alleges in bad faith that the recipient has infringed or is infringing on a patent. The bill makes such a bad faith demand a violation of the Unlawful Trade Practices Act, and allows the Attorney General to investigate alleged violations appropriately as an unlawful trade practice.

The bill specifies a lengthy set of criteria that the court may consider as evidence when determining whether a specific demand was made in bad faith. Some examples of evidence that a demand may have been in bad faith include:

- Whether the demand includes specific information about the patent being infringed,
- Whether the demand included enough information for the recipient to understand the nature of the alleged infringement,
- Whether the person communicating the demand adequately compared the claims in the patent with the actual features of the product, service, or technology in question,
- Whether the demand required the recipient to respond or pay a license fee within an unreasonably short period of time, and
- Whether a person making a demand has a history of frivolous demands.

SB 1540 took effect on March 3, 2014, but the most sections of the bill do not become operative until July 3, 2014. (91 days after the effective date.)

Alan Sorem

# Land Use

#### I. INTRODUCTION

#### II. LAND USE

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1. HB 4029 (Ch. 75) Withdrawal of Land from Damascus 2. HB 4078 (Ch. 92) 3. SB 1531 (Ch. 79)

Land Use "Grand Bargain"

Local Zoning Restrictions on Marijuana

Dispensaries

Alan Sorem: 2006 Willamette University School of Law. Member of the Oregon State Bar since 2006.

#### I. INTRODUCTION

This chapter covers bills related to zoning, and to Oregon's land use system in general. The two most significant issues in this area in 2014 were related to the growth of Metro's urban growth boundary and to the status of properties in the City of Damascus. All of the bills listed have special effective dates, which are included in the descriptions.

#### II. LAND USE

#### 1. <u>HB 4029</u> (Ch. 75) Withdrawal of Land from Damascus

HB 4029 allows an owner of a tract of land that is located on the boundary of a city and that is within one-half mile of another city to withdraw the tract from the city when the tract to be withdrawn is in a city that has not adopted its comprehensive plan, or caused that plan to be acknowledged, within the four-year period after incorporation and that remains without an acknowledged plan.

HB 4029 applies to land tracts within Metro's boundaries and to cities that incorporated between 2000 and 2005. As such, the bill appears to apply only to apply to land tracts within the jurisdiction of the City of Damascus.

The bill specifies procedures that must be followed, including applicable hearing procedures, but does not give a city the ability to prohibit the withdrawal.

HB 4029 took effect on March 19, 2014.

#### 2. <u>HB 4078</u> (Ch. 92) Land Use "Grand Bargain"

The "land use grand bargain," as HB 4078 came to be known, designates urban reserves, rural reserves, and a new Metro urban growth boundary in Washington County. The legislature uses Metro Council's Ordinance No. 11-4245 (designation of urban and rural reserves) and Ordinance No. 12-UGB-001823 (expansion of the urban grown boundary) as a starting point, then re-designates certain properties as urban, rural or undesignated and brings certain properties within the urban growth boundary.

The bill specifies that certain employment land that brings within the urban growth boundary may not be counted by Metro towards the employment capacity of the land within Metro in its first legislative review of the urban growth boundary following passage of the bill. Starting in 2015, HB 4078 expands Metro's time frame to inventory and analyze buildable lands under ORS 197.296 from five years to six. It also requires the Land Conservation Development Commission (the "Commission") to issue a final order within 180 days after voting to approve or deny certain decisions by a metropolitan service district to amend urban reserves, rural reserves, or an urban growth boundary. HB 4078 alters the Commission's scope of review for Metro's urban and rural reserve designations following the 2014 remand from the Court of Appeals. The bill states that when the Commission acts on remand of the decision in Court of Appeals Case No. A152351, the Commission may approve all or part of the local land use decision if the Commission identifies evidence in the record that clearly supports all or part of the decision. The Commission may make a full or partial approval, even if the findings from the local government may not recite adequate facts or conclusions and may not adequately identify applicable legal standards, or the relationship of the standards to the facts.

The bill also specifies that land in a Metro county that is zoned for farm, forest, or mixed farm and forest use that is not designated as urban reserve may not be brought within the Metro urban growth boundary until 75 percent of the land designated as urban reserve in that county by the bill is brought within the urban growth boundary and zoned for urban use.

HB 4078 took effect on April 1, 2014.

#### 3. <u>SB 1531</u> (Ch. 79) Local Zoning Restriction on Marijuana Dispensaries

SB 1531 allows local governments to apply reasonable regulations on the operation of medical marijuana facilities registered under ORS 475.314. The bill defines "reasonable regulations" to include reasonable limitations on hours of operation, location of facility, and conditions on the manner of dispensing medical marijuana.

Additionally, the bill allows local governments to adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015. The governing body must enact the moratorium no later than May 1, 2014 and must notify Oregon Health Authority of the moratorium. Authority for the local moratoriums sunsets on January 2, 2016.

SB 1531 took effect on March 19, 2014.

# 8

# Taxation

#### I. INTRODUCTION

#### II. HB 3601 (2013 SPECIAL SESSION) (CH. 5) AND SB 1534 (CH. 114, 2014 LAWS)

- 1. Business Taxpayer Changes
- 2. Personal Income Taxpayer Changes
- 3. Information Returns Law
- 4. Earned Income Credit

#### III. OTHER INCOME TAX

1.	HB 4003	(Ch. 52)	Federal Reconnection
2.	HB 4081	(Ch. 8)	Charitable Organization Regulation; Potentially
			related to Tax Credit Applicability
3.	HB 4138	(Ch. 103)	Corporate Excise Tax; Interstate Broadcaster
			Income Apportionment
4.	SB 1541	(Ch. 115)	Crop Donations to Food Banks

#### IV. PROPERTY TAX

1.	HB 4005	(Ch. 53)	Enterprise Zones
2.	HB 4039	(Ch. 7)	Low-Income Housing Exemption
3.	SB 1534	(Ch. 114)	Interstate Bridges

**Robert Manicke:** 1992 University of Illinois School of Law. Member of the Oregon State Bar since 1995.

#### I. INTRODUCTION

This chapter includes major tax legislation from the 2014 regular session, as well as the 2013 Special Session. These bills primarily affect business and personal income taxes, though some property taxation legislation is included as well.

Some legislation takes effect with the 2014 tax year, but others does not go into effect until 2015. Effective dates of all the legislation are included in the description. If not otherwise noted, legislation passed during the 2014 Regular Session takes effect on January 1, 2015.

## II. HB 3601 (2013 SPECIAL SESSION) (CH. 5) AND SB 1534 (CH. 114, 2014 LAWS)

#### 1. Business Taxpayer Changes

SB 1534 was primarily drafted in order to make updates and corrections to HB 3601 from the 2013 special session. For this reason, these two bills are best considered together. The tax portion of the 2013 "grand bargain" (generally, tax changes in exchange for cuts to public employee retirement benefits) contains several provisions which are discussed individually below.

SB 1534 takes effect on June 6, 2014. Some provisions are specifically relevant for designated tax years, which may be identified below. Check the text of the legislation to confirm relevant operative dates when necessary.

#### <u>Reduced Oregon Tax Rate on Nonpassive Flow-Through Income from Partnerships and S</u> <u>Corporations:</u>

For tax years beginning on or after January 1, 2015, personal income taxpayers may elect to have nonpassive income attributable to any partnership or S corporation (after reduction for nonpassive losses) taxed at the following rates:

If income is more than:	But not more than:	The tax rate is:	
	\$250,000	7.0%	
\$250,000	\$500,000	7.2%	
\$500,000	\$1,000,000	7.6%	
\$1,000,000	\$2,500,000	8.0%	
\$2,500,000	\$5,000,000	9.0%	
\$5,000,000		9.9%	

The term "partnership" includes a limited liability company (LLC) or other entity taxed as a partnership. However, the new reduced rates will not apply to a single-member LLC that is disregarded as an entity separate from its owner. As a result, Schedule K-1 income reported on Schedule E generally will receive more favorable tax treatment than either Form W-2 wage income or income from a sole proprietorship (including from a single-member LLC) reported on Schedule C.

"Nonpassive income" is as defined in the Internal Revenue Code and does not include wages, interest, dividends or capital gains. In calculating the amount of income not subject to the special rates, taxpayers must use the subtractions, deductions and additions otherwise allowed. On the other hand, in calculating the amount of income subject to the special rates, depreciation adjustments directly relate to the partnership or S corporation are the only additions or subtractions allowed.

A taxpayer can elect to use the alternative rates only if: (1) the taxpayer materially participates in the trade or business; (2) the partnership or S corporation employs at least one person who is not an owner, member or limited partner of the partnership or S corporation; and (3) those non-owner employees perform at least 1,200 aggregate hours of work in Oregon by the close of the tax year, taking into account for this purpose only hours worked by an employee in weeks in which the employee works at least 30 hours.

SB 1534 defines "material participation" by express reference to IRC § 469 in lieu of the 2013 language, which required that the taxpayer materially participate in the "day-to-day operations" of the business (a phrase not used in IRS § 469).

A nonresident may apply the reduced rates only to "income earned in Oregon" (an undefined term). A part-year resident must calculate the tax due using the reduced rates by first applying those rates to the taxpayer's qualifying nonpassive income, and then multiplying that amount by the ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive income from all sources. A nonresident joining in the filing of a composite return is not eligible for the reduced rates.

One of the many amendments proposed to SB 1534 would have used the phrase "income from Oregon sources" rather than the undefined phrase "income earned in Oregon." However, the amendment would have inserted "income from Oregon sources" into a different portion of the law, arguably conferring the benefit of the rate reductions only to the extent the business operates in Oregon. This amendment failed in the last days of the session.

The bill directs the Legislative Revenue Officer to calculate projected and actual ratios of revenue loss to total state income. To the extent the actual ratios deviate from the projected ratios by specified thresholds, the special tax rates will be adjusted for tax years beginning after 2018 and again after 2022.

#### TAXATION

#### Change in the Oregon Corporation Excise Tax Brackets:

For tax years beginning on or after January 1, 2013, the Oregon corporation excise tax brackets have been changed so that the 7.6% top marginal rates apply to taxable income in excess of \$1 million, rather than taxable income in excess of \$10 million. This change also applies to the Oregon corporation income tax, while adopts by reference the Oregon corporation excise tax brackets and rates. (HB 3601 also trimmed the portion of tax above the pre-Measure 67 rate of 6.6% that is deposited into the Rainy Day Fund.)

#### Creation of an Oregon IC-DISC Regime:

Prior to the 2013 special session, Oregon did not conform to the federal tax regime applicable to an IC-DISC. Instead, Oregon law treated an IC-DISC in the same manner as any other corporation and disregarded transactions between a taxpayer and an IC-DISC if the two were related. For tax years beginning on or after January 1, 2013, the new law changes this treatment for IC-DISCs formed on or before January 1, 2014 (the date HB 3601 takes effect). For these IC-DISCs:

- The Oregon minimum tax does not apply.
- A 2.5% tax rate applies to commissions received by the IC-DISC, rather than the marginal tax rates that generally apply to corporations.
- A related taxpayer is allowed a deduction for commissions paid to the IC-DISC.
- The federal taxable income of a shareholder subject to the Oregon personal income tax is reduced by the amount of any dividend paid by the IC-DISC.

SB 1534 states expressly that the IC-DISC must have been formed on or before January 1, 2014 in order for <u>both</u> the deduction to be available and the 2.5% rate to apply. The original language from the 2013 law arguably allowed the 2.5% rate even if the IC-DISC was formed after January 1, 2014.

Note that SB 1534 requires that the 2.5% tax be "imposed on the commission" in order for the deduction to apply.

#### 2. Personal Income Taxpayer Changes

#### Elimination of Personal Exemption Credit for Higher-Income Taxpayers:

Oregon generally provides a personal exemption credit equal to an inflation-adjusted amount (for 2013, \$183) multiplied by the number of personal exemptions allowed to the taxpayer. Prior to the special session, the credit was reduced if the taxpayer's income exceeded a threshold amount. For tax years beginning on or after January 1, 2013, the credit has been

eliminated for taxpayers whose federal adjusted gross income exceeds \$200,000 (for joint filers, a surviving spouse or a head of household) or \$100,000 (for single filers, including married filing separately).

By changing a cross-reference, SB 1534 preserves the additional exemption credits for individuals with certain disabilities and for dependent children with certain disabilities, as allowed in ORS 316.758 and 316.099, respectively, regardless of whether the regular personal exemption credit is phased out due to means-testing.

#### Senior Medical Expense Deduction Means-Testing and Increased Age Threshold:

For tax years beginning on or after January 1, 2013, the reduction in Oregon taxable income allowed for seniors for nondeductible medical expenses is phased out for adjusted gross incomes between \$100,000 and \$200,000 (for joint return filers, a surviving spouse or a head of household) or \$50,000 and \$100,000 (for single filers, including married filing separately). The minimum age for eligibility will rise incrementally from 62 for 2013 to 66 starting in 2020. SB 1534 corrects errors in the description of the income brackets for purposes of the phase-outs.

#### 3. Information Returns Law

The 2013 legislature adopted HB 2464 (2013), which purported to impose penalties for failure to file reports required by ORS 316.202 (\$50 per report up to \$2,500; or \$250 per report up to \$25,000 for knowing failures).

SB 1534 changes the 2013 language to refer to failure to "substantiate" the reports. This change appears to acknowledge that ORS 316.202 does not directly require the filing of Forms W-2 or 1099 with the Department of Revenue. Instead, the statute authorizes the Department to require by rule that taxpayers "substantiate" their state payroll tax returns by providing copies of Forms W-2 or other documents.

The Department began drafting rules to implement the new penalties before the "substantiation" provisions were added to the 2014 cleanup bill. It is not clear whether the change in the law will affect the Department's rulemaking. In general, the draft rules seek to define "incorrect" information that is subject to penalty (clerical errors and obvious math errors would not be penalized), as well as circumstances that indicate a "knowing" failure (including repeated failures, failure to correct after the taxpayer discovers the error or after a request by the Department, and evidence that the taxpayer thought the cost of complying would be greater than the cost of the penalty).

SB 1534 took effect on June 6, 2014.

#### TAXATION

#### 4. Earned Income Credit

As part of the "grand bargain," HB 3601 increased the amount of the Oregon earned income tax credit from 6% of the federal credit to 8% of the federal credit, effective for tax years starting on or after January 1, 2014.

#### **III. OTHER INCOME TAX**

#### 1. <u>HB 4003</u> (Ch. 52) Federal Reconnection

The Oregon Legislature regularly updates statutes to tie state tax laws to the federal definitions in the Internal Revenue Code. In the 2014 regular session, the legislature reconnected to the Internal Revenue Code as amended and in effect on January 3, 2013.

HB 4003 amends a large number of statutes in order to update the connection date to December 31, 2013.

#### 2. <u>HB 4081</u> (Ch. 8) Charitable Organization Regulation; Potentially related to Tax Credit Applicability

HB 4081 increases the penalties that apply for failure to pay certain fees, or to timely file a delinquent annual report with the Oregon Attorney General's office, from \$1,000 to \$2,000. The bill also authorizes the Attorney General to impose civil penalties of up to \$2,000 for failure to register, failure to file a report, or for willfully making false or misleading statements. The penalties may be levied on the organization, or on directors, officers or other fiduciaries responsible for the violation.

The bill also authorizes the Attorney General to take other corrective actions, including prohibiting the solicitation or acceptance of contributions, and revoking or suspending the registration of the charitable organization.

HB 4081 takes effect on January 1, 2015.

#### 3. <u>HB 4138</u> (Ch. 103) Corporate Excise Tax; Interstate Broadcaster Income Apportionment

HB 4138 modifies the method of apportionment of business income of interstate broadcaster for purposes of corporate excise taxation. The bill replaces the ratio based on the relative portion of the overall viewing audience with a ratio based on the relative gross receipts from "customers" of the broadcaster (generally, advertisers and licensees) that have their commercial domicile in Oregon.

As originally introduced, the bill would have changed the definition of a "broadcaster" to include anyone transmitting film programming or radio programming by any means. The bill was amended, however, to retain the existing, narrower definition, which is limited to one-way transmissions.

The bill includes a short sunset period, in that the changes apply to tax years beginning on or after January 1, 2014 through 2016. The Legislative Revenue Officer is directed to present a study of the effect of the change no later than February 1, 2017. By default, the apportionment method is again based on the viewing audience for tax years beginning on or after January 1, 2017.

#### 4. <u>SB 1541</u> (Ch. 115) Crop Donations to Food Banks

SB 1541 increases the credit allowed for donation of crops to a food bank by increasing the percentage of the wholesale price allowed as credit a credit, from 10% to 15%. The bill also revives the credit, which was sunsetted for 2012 and 2013, so that it is now available for tax years starting on or after January 1, 2014 through the 2019 tax year.

#### IV. PROPERTY TAX

#### 1. <u>HB 4005</u> (Ch. 53) Enterprise Zones

HB 4005 increases the number of enterprise zones eligible for designation as electronic commerce zones, from 10 to 15. The version of the bill originally would have adopted an income tax credit for manufacturing facilities, known as the "manufacturing BETC," but it was gutted and stuffed with the e-commerce enterprise zone provisions.

HB 4005 takes effect on June 6, 2014.

#### 2. <u>HB 4039</u> (Ch. 7) Low-Income Housing Exemption

HB 4039 responds to a 2013 decision by the Oregon Tax Court Regular Division in *Corvallis Neighborhood Housing Services, Inc. v. Linn County*, OTC Reg Div No. 4996 (Feb 27 2013). The court held that several housing projects owned by nonprofit entities exempt from income tax under IRC § 501(c)(3) were taxable. The owners leased the units to low-income individuals and also provided some support services to the individuals, so that the nonprofit corporations themselves could not be said to "use" the property as required for purposes of the charitable exemption in ORS 307.130. The taxpayers appealed to the Oregon Supreme Court in December 2013.

HB 4039 essentially "grandfathers" property if, for the 2012-13 tax year, the property was offered, occupied or used as low-income housing. The exemption continues until the end of the earliest tax year in which property is no longer offered, occupied or used as low-income housing, changes ownership and use or is leased in its entirety, other than by leases for occupancy of individual units as low-income housing.

The exemption applies retroactively to property tax years beginning on or after July 1, 2012 and sunsets after the 2017-18 property tax year.

#### 3. <u>SB 1534</u> (Ch. 114) Interstate Bridges

In addition to addressing numerous income tax items as discussed in the sections above, SB 1534 also restores retroactively a reciprocal property tax exemption that apparently was deleted inadvertently in 2007 and would have been relevant for the Columbia River Crossing project:

"Every bridge that passed over a river or body of water forming a boundary between this state and another state, and that has been constructed or acquired and is being operated by the other state or by any county, city or other municipality of the other state, shall, together with its approaches, be exempt from all property and other taxes in this state, if the other state exempts from all taxation every such interstate bridge, together with its approaches, constructed or acquired and operated by this state or by any county, city or other municipality of this state."

Under this exemption, the Columbia River Crossing would have been exempted from Oregon state taxes, so long as Washington likewise agreed to exempt the project from state taxes.

#### **BILL NUMBER INDEX**

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