



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

July 5, 2001

## End Is in Sight

Now that the redistricting struggles are behind them, the legislators are hard at work trying to bring things to a close in a timely fashion. The House and the Senate are working at a brisk pace to pass bills that have been languishing in committees or in the lineup on the House or Senate floor.

The elimination of discretionary revenue from the state budget has made final budget adjustments especially difficult to complete this session. Last-minute issues and pet projects for legislators will be decided in the next few days.

## Regional HOD Meetings

|              |   |                                      |
|--------------|---|--------------------------------------|
| Region 1     | Aug. 13, 4 p.m.-5 p.m.                          | Conference-call only                 |
| Region 2     | July 5, 3 p.m.-4 p.m.<br>Aug. 21, 4 p.m.-5 p.m. | Gleaves Swearingen, Eugene           |
| Region 3     | Aug. 15, 4 p.m.-5 p.m.                          | Conference-call only                 |
| Region 4     | Aug. 16, 4 p.m.-5 p.m.                          | Justice Services Building, Hillsboro |
| Region 5     | Aug. 17, 4 p.m.-5 p.m.                          | Barran Liebman, Portland             |
| Region 6     | Aug. 14, 4 p.m.-5 p.m.                          | Office of Sarah Rinehart, Salem      |
| Out of state | Aug. 22, 4 p.m. 5 p.m.                          | Conference-call only                 |

All meetings may be attended via conference call. In person attendance is also available where meeting locations are noted.

## SB 133: Criminal Law “Christmas Tree”

SB 133 has become the Christmas tree from which a variety of criminal law proposals hang. The original bill created the crimes of felon in possession of body armor and unlawful possession of body armor, and committing such a crime while in possession of a deadly weapon.

As amended, the bill has a number of other unrelated amendments: (1) creates the crime of vehicular assault of a bicyclist or pedestrian; (2) calls for the creation of early disposition programs for certain offenders; and [3] creates an advisory committee to recommend how to increase family bonding for children with incarcerated parents. SB 133 declares an emergency; its provisions take effect on passage. The Governor signed this bill on June 27, 2001.

## SB 171: New UCC Article 9

Governor Kitzhaber signed SB 171 regarding the new model act on the Uniform Commercial Code article 9, relating to Secured Transactions, on June 19. The Act went into effect on July 2, 2001. Despite early consideration by both chambers, this bill was held up in conference committee so that amendments relating to the regulation of the car title lending industry could be amended into the bill.

The new article 9 improves the operation of the Secretary of State’s public filing system for financing statements, revises

the rules for determining whether a lender should file its financing statement with one state or another state, clarifies the procedures when a borrower defaults, assures borrowers and lenders that electronic documentation will be as effective as paper documentation, and brings new kinds of collateral into article 9's scope, thereby making secured loans available to a broader range of borrowers.

Important for lawyers to note are the applicable transition rules in §§188-195 of the enrolled version of the bill. The transition rules recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) were adopted with little change in Oregon. Therefore, the comments to the NCCUSL rules provide helpful transition examples. In addition, the Professional Liability Fund and others will provide information and other opportunities to get up-to-speed on the latest changes. To obtain the full text of SB 171, visit the legislature's web page for "bills and laws" at [http://pub.das.state.or.us/LEG\\_BILLS/PDFs/ESB171.pdf](http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB171.pdf).

An overview of the new UCC article 9 will be offered at the Oregon State Bar Convention on September 20, 2001, in Seaside. There will also be an OSB CLE seminar entitled *UCC Article 9 Update* on October 5, 2001, at the Doubletree Lloyd Center Hotel in Portland.

### **Want to Have an Impact?**

The Board of Governors Appointments Committee will soon be appointing members to its regulatory boards, committees, councils, affiliated commissions, and bodies. To be considered for the annual appointment process, your volunteer opportunity form must be filed with the bar no later than July 20, 2001. Annual appointments are normally made in October and November; however, members may volunteer at any time during the year. Volunteers are also being recruited for other activities, including bar program support, public service, and the New Lawyers Division. To obtain a form or more information, go to the bar's web site at [www.osbar.org](http://www.osbar.org) or contact Carol Guile at 1-800-452-8260, or 503-620-0222, ext. 308.

## **SB 485: Comp Overhaul**

SB 485 was the result of negotiations on modifications to the workers' compensation system by a committee comprising management and organized labor representatives. The bill was intended to develop fairer standards and disability benefits, result in faster decisions, and give employers greater certainty with respect to potential liability. It revises laws regarding the compensability of preexisting, new, and omitted conditions, and increases partial and permanent disability benefits. The bill also includes provisions modifying claims processing procedures and defines the process for payment of interim medical expenses.

The bill stalled as legislators considered the impact of the Oregon Supreme Court decision in *Smothers*, in which the court allowed an injured worker to proceed with an action in negligence after being denied benefits under the workers' compensation system. Concerns that the ruling would overwhelm the existing system generated some discussion of legislative action to overturn the court's ruling.

Instead, the original bill was amended in line with the decision to authorize an injured worker to pursue a civil negligence action for work-related injury under specified conditions. The amended version also requires the Management-Labor Advisory Committee to monitor the impact of *Smothers* and develop an alternative to civil litigation. SB 485 declares an emergency; its provisions are effective on passage. The amended bill was passed out of both houses on the 4th of July.

## **Other Comp Issues**

Two other bills that may affect workers' compensation lawyers are SB 439 and SB 316. SB 439 reduces the membership of the Workers' Compensation Board from five to four members. A minority report that did not pass would have reduced the membership to three and required that all board members be members of the Oregon State Bar. SB 439 passed on the 4th of July. SB 316 clarifies time limits for filing aggravation claims and for requesting reclassification of nondisabling

claims. The Governor signed SB 316 on June 8, 2001.

## HB 3912: Condo Bill

This bill modifies several provisions relating to organized communities. It provides a statutory framework allowing homeowners to conduct the business affairs of a project when the developer failed to provide the appropriate organization. It also takes steps toward making provisions relating to the organization of condominium and noncondominium homeowner associations more consistent. HB 3912 has passed both chambers.

## SB 722: Investigator Licenses

This bill modifies the regulatory functions of the Oregon Board of Investigators by allowing persons currently working for an investigator to continue to work under a "provisional investigator" license until their registration renewal date. It also modifies the criteria and procedures for suspending, revoking, or refusing to renew licenses.

SB 722 expands the membership of the Board from five to seven, prescribes its composition, including at least two members of the Oregon State Bar, and requires that the Governor appoint or reappoint seven members to the board by January 1, 2002. SB 722 takes effect on the 91st day following adjournment sine die. Both the House and Senate have passed the bill.

## Factoids on the Legislature

**How does a bill become a law?** A bill must be approved by the two chambers of the legislature, the House of Representatives and the Senate, and be signed by the Governor.

**Committee action.** In Oregon, legislative committees dominate the legislative process. On entering either chamber, each bill is referred to a committee, which considers the bill and proposed amendments, and holds public hearings and work sessions. The committee can effectively kill the bill by refusing to consider it but, if approved, the bill and any adopted amendments go back to the

full chamber for a vote. Once approved by both chambers, the bill is enrolled and sent to the Governor.

**Governor action.** During the legislative session, the Governor must act on an enrolled bill within five days of receiving it. After the session adjourns, the Governor must act within 30 days but must give at least five days' notice of intent to veto. If the Governor signs the bill or fails to act, or if the legislature overrides a veto, the bill becomes law on the prescribed effective date.

**Effective date.** In accordance with ORS 171.022, the effective date of legislation is January 1 of the year after the passage of the act unless otherwise specified. However, a bill may contain a provision specifying a particular effective date or an emergency clause making the bill's provisions effective immediately on its passage.

### What Does THAT Mean? Some Important Terminology

- Introduced Bill: A bill as first presented; not amended.
- Engrossed Bill: Includes amendments recommended by committee; the first amended version is A-Engrossed, the second B-Engrossed.
- Enrolled Bill: A bill (in introduced or engrossed version) that has passed both houses of the legislature and has been signed by both the Speaker of the House and the President of the Senate.

For more information on the legislative process and law improvement, visit this bar web page: [www.osbar.org/Programs/LawImprovement/home.html](http://www.osbar.org/Programs/LawImprovement/home.html)

To obtain the full text of a measure or its status, visit the legislature's Web site at [www.leg.state.or.us](http://www.leg.state.or.us)

## Oregon Law Commission

The Oregon Legislature created the Oregon Law Commission in 1997 to conduct a continuous substantive program of major law revisions. It comprises representatives of the Oregon State Bar, each of the state's three accredited law schools, the Supreme Court, the House, the Senate, the Governor, and the

Attorney General. The commission considers the laws of Oregon with a view to effecting reforms necessary to simplify and modernize the law and remedy defects and inequities.

Each legislative session, the commission submits a report to the legislature containing recommendations for statutory and administrative changes, a list of the studies in progress, and a list of topics intended for future consideration.

Next week, the commission will evaluate its performance during the current session and consider some operational changes. The commission plays a valuable role by providing lawyer-legislators a venue to help offset the negative effects of term limits by pursuing more involved interim study projects.

An overview of the law commission bills submitted is set forth below:

**Civil Rights Work Group**

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|---|----------------------|
| HB 2352: Revises ORS chapter 659. Clarifies BOLI authority; clarifies procedures for administrative claims of unlawful discrimination and civil actions | Governor signed 6/26 |
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**Conflict of Laws Work Group**

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| HB 2414: Codifies choice of law in contracts | Governor signed 5/21 |
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**Judgments and Work Group**

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| HB 2386: Provides for a unified garnishment form and revises affected statutes to simplify the garnishment process | Governor signed 5/30 |
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**Judicial Review Work Group**

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| HB 2246: Provides comprehensive procedures for judicial review of government acts | Dead |
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**Juvenile Code Revision Work Group**

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| HB 2611: Revises rules governing procedure and practice in all juvenile court proceedings under ORS chapter 419B | Governor signed 6/26 |
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**Juvenile Code Revision Work Group (continued)**

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|--|---------------------------------|
| HB 2392: Creates additional exemption to mandatory income - withholding for child support  | Governor signed 5/22            |
| HB 2388: Requires counsel in a proceeding from which appeal is being taken to file and serve all documents necessary to commence appeal in juvenile court cases  | Governor signed 6/8             |
| HB 2355: Allows juveniles to seek post-adjudication relief in juvenile proceedings   | Passed House and Senate June 30 |
| HB 2391: Requires court at juvenile dependency review hearings to ask for current contact information for parent. Requires SCF to provide parent with letter setting forth expectations of parent to make return of child possible | Governor signed 6/12            |

**Public Body Work Group**

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| HB 2425: Clarifies language re public bodies in ORS | Governor signed 4/13 |
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To obtain more information about the Oregon Law Commission and legislation it is working on, visit the commission's Web page at: [www.willamette.edu/wucl/oregonlawcommission](http://www.willamette.edu/wucl/oregonlawcommission)

**Contacts**

If you have questions or comments about this newsletter or legislative issues, please contact the Public Affairs Committee chair John Tyner at (503) 648-5591 or the Public Affairs staff at the bar office at (503) 620-0222 or toll-free in Oregon at (800) 452-8260. You can reach Bob Oleson at ext. 317 or by e-mail at [boleson@osbar.org](mailto:boleson@osbar.org); contact Susan Evans Grabe at ext. 380 or by e-mail at [sgrabe@osbar.org](mailto:sgrabe@osbar.org).