



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

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July 20, 2001

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## **The Session Is Over!**

*By Bob Oleson*

Early on Saturday, July 7, the 2001 Legislature became part of Oregon's colorful political history as a political logjam was broken. Despite the reality of very tight budgets for everyone not in the education sector, the Judicial Branch of government was treated much better this session than last time. SB 70, one of the very last bills to receive favorable attention in the final hours of session, creates new judicial positions and gives state judges a pay raise in each of the next two-year cycles.

**OJD** -- Legislation restored 2/3 of the Judicial Department budget cuts originally proposed by the governor and legislative leaders. This add-back money includes family- and drug-court positions. Chief Justice Carson and his team of administrators deserve special recognition for their dedicated efforts this legislative session. In addition, representatives of the state bar and the judges' association worked with lawyer-legislators and budget committee leaders at the Capitol to maintain support for the justice system overall.

**ACCESS** -- Bar representatives also worked to improve system access for low-income Oregonians. Legislators are now much more aware of the importance of legal services and judicial access. Passage of the *pro hac vice*

bill should eventually generate some additional funding for legal services programs.

Related to a different kind of access, bar leaders were virtually alone at the Capitol in their effort to improve Oregon's county courthouse buildings. Some key legislators opposed the bill creating a facilities commission and improvement program because they saw facilities as the beginning of an open-ended subsidy of county government. Failure to address the issue this year means that the problem will only get worse.

Thanks to the leadership of Oregon State Bar President Ed Harnden and other bar leaders, the bar has moved up to the next level of political involvement this session. As a result, the legal profession has significantly increased its role in shaping relevant parts of the public policy agenda. It is important now to give some attention to the next steps for the interim.

## **Judicial Administration**

During the flurry of activity at the end of the session, several bills were passed that will have a significant effect on the administration of the state's judicial system. The legislature approved new judgeships and the first increases in judicial salaries since 1997, created a new judicial district, and created an independent body to administer the state's Indigent Defense Program.

**Judges** -- The Judicial Department asked for 16 new judgeships. It gets six. SB 70 approves the six new circuit court judgeships, providing one each for Marion, Yamhill, Jackson, Multnomah, Deschutes, and Washington counties. The judges terms of office will begin in January 2003 by election. The bill also includes provisions dealing with the collection of liquidated and delinquent accounts by the judicial branch. SB 70 had an emergency clause and went into effect on July 7, 2001.

Under HB 2852, all judges will receive a 6 percent annual increase in salary in each of the next two-year cycles. Noting a National Center for State Courts survey ranking Oregon 45<sup>th</sup> in the nation for circuit court salaries, proponents of the bill articulated concerns that judicial salaries needed to be increased to attract and retain quality candidates for the judiciary. HB 2852 went into effect on July 1, 2001.

**Judicial Districts** -- Clatsop County and Tillamook County court administration has been split for several years to more efficiently serve those areas. At the request of the Judicial Department, the legislature made the split official. HB 2335 splits the eighteenth judicial district into two districts, one containing Clatsop County (the eighteenth) and one containing Tillamook County (the twenty-seventh). The bill also allows judges to serve as personal representatives.

**Indigent Defense** -- SB 145 establishes the Public Defense Services Commission independent of the Judicial Department and makes it responsible for the administration and oversight of all public defense functions in state courts. Currently, three bodies, the Public Defender Committee, the State Public Defender, and the State Court Administrator are responsible for various aspects of Oregon's Indigent Defense Program.

The Commission will assume the duties, powers, and functions of the Public Defender Committee and office of Public Defender effective October 1, 2001. Effective October 1, 2003, the duties of the State Court Administrator relating to indigent defense will be transferred to the commission. The bill's provisions took effect on passage.

## Tri-State Reciprocity

The Oregon Supreme Court approved the proposed rule on tri-state reciprocity on July 10, and the rule will go into effect on January 1, 2002. The new rule allows Idaho, Oregon, and Washington attorneys to be admitted to practice law in the other two states without having to take another bar exam. The bar is still in the implementation process but expects this program to be complete by January 1, 2002.

Reciprocity applicants would have to meet certain basic requirements to participate, such as ABA law school graduation, passage of the bar exam in one of the three states, three years of practice immediately preceding the application, and 15 hours of CLE in the practice, procedure, and ethics of the new state. For more information contact George Riemer at (503) 431-6405 or by e-mail at <mailto:griemer@osbar.org>

## Legislative Highlights

The bar publishes a compilation of the legislative highlights after every session. The focus of the book is legislation that will affect the practice of law in Oregon. Authors explain the substance of each bill and explain how it will affect the actions that lawyers take or the advice that lawyers give to clients. The book will be available in early September. Watch for an announcement in the OSB *Bulletin* or call the OSB Order Desk (503-684-7413 or 1-800-452-8260, ext. 413) **after September 15.**

## **SB 118: Minority Shareholders Plus**

SB 118 combines SB 116, 117, 118, and 119, all OSB Business Law Section bills, into one vehicle plus additional amendments. The primary focus of SB 118 was the issue presented by the *Naito* case relating to minority shareholders in closely held corporations. The bill essentially codifies case law relating to additional judicial remedies that shareholders of corporations have available outside of dissolution of the corporation.

In addition, the bill allows non-unanimous consent opt-in provisions, clarifies limited liability company duty of loyalty provisions, makes technical clarifications to entity mergers and conversions, and addresses issues raised by Department of Consumer and Business Services relating to fraudulent banking.

## **Bar Group Activity**

In terms of achievement, the state bar also had another very good year for law improvement. Despite the pace, the closed nature of the process, and difficulties in marshaling bar volunteers, over 25 bills initiated by bar groups were enacted. For details, see the score box in the June 19 edition of the *Capitol Insider* by clicking on the following link: <http://www.osbar.org/Programs/LawImprovement/ci0106b.pdf>

Additionally, bar groups took positions or commented on over 200 bills this session, most of which were heard by the two judiciary committees. At the staff level, we worked with a broad range of bar committees and outside interest groups to promote high-quality laws and the other public affairs program goals.

Bar groups were also more centrally involved with improving many major bills. A few examples: new act on Uniform Commercial Code Article 9; UETA, which allows the use of electronic signatures and records in transactions; statutory construction

assistance, which allows the court to use legislative history in interpreting a statute; improving the procedural aspects of the bill on strategic lawsuits against public bodies; judicial review transfer provision; minority shareholder rights in closely held corporations; guardianship and protected proceeding bills; changes in third-party visitation rights (*Troxel*); numerous attorney fee bills; etc.

## **Gramm-Leach-Bliley Act (GLBA)**

July 1, 2001 was the deadline for customer privacy notices now required by the Federal Trade Commission (FTC) for lawyers who provide "financial products and services" to clients for nonbusiness purposes.

Under the GLBA, businesses that are significantly engaged in "financial activities" are required to provide clients with notice regarding the disclosure of nonpublic personal information. "Financial activities" is defined broadly to include tax planning and preparation and real estate settlement services, and may also include securities, insurance, debt collection services, personal bankruptcy services, and employee compensation or benefit planning.

According to the FTC, the GLBA applies to lawyers or law firms holding themselves out as providing these types of services, and the GLBA may be interpreted to include services not specifically named in the regulations. For more information, see the FTC Web site at [www.ftc.gov](http://www.ftc.gov). or the bar's Web page at [www.osbar.org](http://www.osbar.org).

## **SB 268/269: GLBA bills**

The legislature responded to the extensive integration of financial services and financial institutions permitted under the GLBA with the passage of SB 268 and 269. SB 268 allows the Department of Consumer and Business Services (DCBS) to facilitate interstate licensing of insurance agents to promote reciprocal or uniform licensing of

insurance agents. SB 268 was signed by the Governor on May 24 and took effect on July 1.

SB 269 specifies when certain banking and insurance regulatory information in possession of the DCBS is confidential and not subject to disclosure. It also specifies the circumstances in which workers' compensation insurers may disclose worker medical and vocational records. SB 269 was signed by the Governor and took effect on June 15.

### **SB 104: Privacy of Medical Information**

SB 104 creates an Advisory Committee on Privacy of Medical Information and Records to study the relationship between the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and state information privacy laws. The committee is required to make recommendations to the seventy-second Legislative Assembly.

The HIPAA rules and how they interrelate to existing Oregon laws are important because of their potential impact on consumer control over health information; boundaries on medical record use and release; security of information; penalties for misuse; and limitations on public use, including research purposes, public health reporting purposes, and judicial proceedings.

The OSB Health Law Section is considering how to and how much to become more involved in this issue. At the same time, the bar's Computer and Electronic workgroup is also considering how to approach the privacy issues related to electronic recordkeeping.

### **SB 293: Presumptive Sentencing**

Proposed as a response to Oregon's relatively high rate of property crime, SB 293 expands the list of crimes for which there is a presumptive sentence for repeat offenders. This builds on attempts by the 1999

legislature to create stiffer penalties for repeat property offenders under ORS 137.717. After the Senate passed the bill, the House Rules Committee amended the bill to increase the severity of the penalties and to refer the bill to the voters at the next regular general election. However, the bill was sent to the House Judiciary Committee from the floor where the bill was restored to its original Senate version.

### **SB 384: Juvenile Offender Oversight**

The Governor's 1999 High-Risk Juvenile Crime Prevention Partnership created a system to serve at-risk children in Oregon. SB 384 makes the statutory modifications necessary to implement the administration of the new system. The bill transfers some of the authority and responsibility of the State Commission on Children and Families to other administrative bodies.

Responsibility for developing guidelines governing operation of juvenile detention shifts to the Juvenile Crime Prevention Advisory Committee. SB 384 declares an emergency; its provisions went into effect on July 1, 2001

### **HB 2381: Attorney Fees**

Proposed by the Oregon Debt Collector's Association, this bill clarifies that the language of ORS 20.080 allowing the award of attorney fees applies only to tort cases. However, it creates new provisions awarding attorney fees to the prevailing party in a contract action when the amount claimed is \$5,500 or less, the contract is silent as to attorney fees, and proper notice has been served. Certain contracts and types of actions are excluded. The Litigation and Consumer Law sections of the bar raised concerns regarding the bill. Amendments to address some of those concerns were made. The full impact the bill will have on the system is yet to be seen.

## **Bills of Interest that Impact the Supreme Court:**

### **HB 2674: Nominating Petitions --**

This bill provides that in a proceeding challenging the rejection of a candidate for state office by the Secretary of State because of constitutional term limits, an appeal of a circuit court decision finding any part of the term limits provisions unconstitutional or otherwise invalid shall be appealed directly to the Supreme Court. HB 2674 was signed by the Governor on May 17 and goes into effect on January 1, 2002.

### **HB 2918: Appeals --**

In response to the *Harberts* case, the legislature enacted HB 2918. This bill provides that all state appeals of felony cases regarding orders that suppress evidence or dismiss or set aside an indictment shall be appealed directly to the Supreme Court. In addition, the bill requires the court to issue an opinion within one calendar year of the state's filing of the notice of appeal.

## **OSB Public Affairs**

The OSB Public Affairs Committee ("PAC") oversees legislative activities and makes recommendations on major policy issues. Chaired by Hillsboro attorney John Tyner, other members include; James Brown, Salem; William Carter, Medford; Malcolm Scott, Eugene; Charles Williamson, Portland; and public member Mary McCauley Burrows, Eugene. Ed Harnden, OSB President, is also an ex-officio member of the PAC.

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).