



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

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March 11, 1999

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## **Session Overview**

Now two months down the road, the '99 session can be described in general terms of Republican efficiency and frugality. Participating interest groups and constituents who are favored seem to be advancing their issues more rapidly than normal.

More than ever, except for public education funding, most legislators appear adamantly committed to reducing the size and growth of state government. This means that some of the less popular programs and agencies will begin to shrink. The Judicial Branch budget hearings should begin within two weeks, and shortly thereafter we will find out whether this important governmental entity will be in a maintenance or a reduction mode. Another problem involves the legislative tendency to treat the court system like one of the irregular or troublesome state agencies. This is a good time to communicate to your local legislators your views on adequately funding a strong and independent judiciary.

Large numbers of proposed bills are being effectively processed in the Senate and House Judiciary Committees, led by Neil Bryant, Peter Courtney, Kate Brown, Lane Shetterly, Judy Uherbelau, Max Williams, Kathy Lowe, Kevin Mannix, and Floyd Prozanski. In addition to handling most of the 30-plus law improvement proposals from state bar groups, these committees tend to have primary responsibility for the complicated issues

involving dispute resolution and our "rule of law" system.

Unfortunately, several other key legislative committees are dominated by relatively new legislators and contain no lawyers. Some of these less experienced committees have difficulty in quickly defining and solving statutory problems. With term limits, the small number of practicing lawyers serving in the legislature (7) is expected to decline next session. (During the months ahead, all of us should begin identifying new legislative candidates of all philosophies.)

## **HB 2274: Effective Date for Legislation**

HB 2274, introduced by Rep. Mannix delays the effective date of legislative acts to January 1 of the even-numbered year following the legislative session. This bill would create a uniform effective date for most legislation that is passed. HB 2274, the brainchild of new lawyer Phillip Klatte, is intended to address the problems caused by the delay between the effective dates of legislation and the publication and distribution of the Oregon Revised Statutes. Numerous bar groups, including the Procedure and Practice Committee and the Professional Liability Fund, support the proposed change.

In his testimony, Klatte cited the last legislative session where changes to the statutes became effective October 4, 1997, yet

most people did not have access to updated volumes of the ORS until February or later. According to Klatte, clients are the ones who suffer, “paying” the price for research time spent looking up statutory changes made during the last session. Under HB 2274, only bills with an emergency clause or prescribed effective date would take effect on other than the January 1 effective date. This bill faces no serious opposition and should sail through the process without any substantial difficulties. It once again proves that one person can make a difference!

## **SB 415: Judgment Liens**

SB 415 is intended to solve the problems created by sections 66 and 67 of HB 3737 from the 1997 session. Those provisions changed the law regarding how to perfect a judgment to create a lien on real property. The change required a judgment debtor to file with the court a lien certificate with certain information. Obtaining a lien on real property of the judgment debtor in a county other than where the judgment was originally docketed required *two steps*: Recording a lien certificate and recording a certified copy of a judgment or a lien record abstract in the County Clerk Lien Record of the county in which the judgment lien is desired.

According to Mark Comstock from the OSB Debtor-Creditor Section, “SB 415 would essentially repeal the provisions of HB 3737 so that all money judgments entered and docketed in Circuit Court automatically become liens on real property in the county in which the judgment is docketed if the judgment is greater than \$3,000.”

Other highlights of the bill include:

- Small claims money judgment (less than \$3,000) may become a lien on real property in the county in which the judgment is docketed, if the judgment is transcribed and a transcription fee paid.
- Amends ORCP 70 regarding information in money judgment.

- Provides standardized format for Lien Record Abstracts.

- All judgments automatically become a lien on real property on January 1, 2000 so as not to upset priorities of judgment creditors who failed to comply with the judgment lien requirements.

SB 415 is the result of an interim workgroup spearheaded by the OSB Debtor-Creditor Section to solve the problems created by the passage of the court consolidation legislation (HB 3737) from the 1997 session relating to perfecting and collecting judgments. SB 415 had its first hearing on the Senate side and, because of its broad-based support, is expected to move quickly through the process.

Workgroup participants included various associations representing collectors, banks, the Judicial Department, mortgage bankers, the Land Title Association, the Professional Liability Fund and the Council on Court Procedures. This coalition worked closely with bar staff during the interim to clarify the law and solve the problem of judgments that failed to comply with the law during the gap between the effective date of HB 3737 (January 15, 1998) and the effective date of SB 415.

## **SB 42: Small Claims Court**

SB 42 increases the civil jurisdiction of small claims departments of circuit and justice courts from \$3,500 to \$5,000. This bill is intended to increase public access to the legal system because the parties in small claims court are not represented by attorneys. SB 42 has passed both houses and is on its way to the governor’s desk for his signature.

## **SB 67: Electronic Filing**

SB 67 allows the Chief Justice of the Oregon Supreme Court to establish rules for the use of electronic applications in the courts. The use of electronic applications includes, but is not limited to, electronic filing of court documents, electronic payments of

statutory or court ordered monetary obligations, and public access through electronic means of court documents. SB 67 has been referred to the House Judiciary-Civil Committee. Committee Counsel, Aaron Felton, is the contact person for this bill. He can be reached at (503) 986-1750.

## **HJR 7: Victims' Rights**

Ballet Measure 40 on victims' rights will be back before the legislature and possibly the voters in the near future. Despite the passage of SB 936 from the 1997 session, HJR 7 is intended to solve the legal problems that Ballot Measure 40 presented because it combined several different subject areas in one initiative. This bill would separate the different subject areas and send each area individually to the voters for approval.

An Attorney General's workgroup, headed by special counsel Mark Gardner, is expected to submit amendments to significantly refine the current draft of the bill. The workgroup amendments will be presented at the hearing before Rep. Mannix's House Judiciary-Criminal Law Committee. Committee Counsel working on this issue is John Horton. He can be reached at (503) 986-1750.

## **March 16<sup>th</sup>: Access Day**

Several key bills intended to improve access to the legal system have been scheduled for a 3 p.m. hearing before the Senate Judiciary Committee chaired by Sen. Neil Bryant. The bills are part of a package proposed by the State Access to Justice Committee, chaired by OSB Board of Governors member Dick Baldwin. The agenda currently includes SB 17 re: juror mileage payment; SB 38 re: certified court interpreters for state agency proceedings; SB 62 re: increasing juror fees; and SB 71 re: court interpreters in juvenile proceedings. For more information on these issues, contact Dick Baldwin at (503) 295-2760.

## **SJR 7: Senate Confirmation of Judicial Appointments**

SJR 7, sponsored by Senators Gene Derfler and Neil Bryant, would amend the Oregon Constitution to provide for Senate confirmation of all gubernatorial appointments for any judicial position, both in the trial and appellate courts. Proponents of the legislation believe the change is necessary because appointed judges are seldom defeated at the polls and therefore become judges for life.

Several groups testified in opposition to the legislation, including the bar and the OSB Litigation Section, citing concern over a more politicized judicial election process. In considering the matter, the OSB Board of Governors reiterated its resolution passed by the 1998 House of Delegates: "Resolved that the Oregon State Bar reaffirms its strong support of the current constitutional and statutory structure for the election and selection of judges that guarantees an independent judiciary." Bar leaders internally will review and consider other options.

An independent group called Oregonians for Justice has been reactivated by Portland lawyer Gail Meyer to moderate efforts to further politicize the Oregon judiciary.

## **How to Obtain a Copy of a Bill**

If you would like to obtain a copy of a bill or determine its status, you can call the Legislative Access Line at (800) 233-2313 or you can access legislative information on the internet at <http://www.leg.state.or.us>.

## **OSB Legislation**

Bar section and committee bills are moving through the legislative process at a rapid speed. The following is a list of bills introduced this session by the bar and its sections and committees:

Bill #	Summary
<b>OSB/PLF Proposals</b>	
HB 2451	PLF confidentiality issues in SLAC statute; changes due date for bar dues
HB 2294	\$75/hour indigent defense (OSB HOD and Rep. Vicki Walker)

#### OSB Section/Committee Proposals

##### Section

##### *Business, Dave Culpepper (503) 205-2513*

SB 51	Amend LLC Act to incorporate fiduciary provisions of ORUPA
SB 46	Technical changes to LLC Act
SB 145	Cross-entity merger legislation

##### *Consumer, Dick Slottee (503) 222-6429 or Jay Cosgrave (503) 246 7900*

HB 2288	Attorney fees under Unlawful Trade Practices Act
HB 2287	New car lemon law
HB 2289	Used car lemon law changes
HB 2286	Changes to the Unlawful Trade Practices Act and the Oregon Unlawful Debt Collection Practices Act
HB 2284	Claim for damages under TILA or FDCCA
HB 2285	Dealer title change

##### *Criminal, Jesse Barton (503) 378-3349 or Susan Tripp (503) 585-4939*

HB 2293	Adopt federal rule re: ability to accept plea bargain
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##### *Debtor-Creditor, Tom Stilley (503) 227-1111 or Mark Comstock (503) 531-1501*

SB 415	Judgment lien certificate
SB 45	Wage exemption bill

##### *Estate Planning, Bernie Vail (503) 768-6656 or Ron D. Bailey (503) 226-1371*

HB 2291	Adopt 1991 revisions to Uniform Testamentary Additions to Trust Act
HB 2290	Revisions to Uniform Simultaneous Death Act
HB 2292	Repeal common-law marriage in intestate succession

##### *Family, Tammy Dentinger (503) 581-1501 or Shawn O'Neil (503) 227-1515*

HB 2296	Modifies support obligation if child ineligible
SB 29	Repeal sunset provisions of welfare reform (HB 2324)

##### *Adoption, Family Subcommittee, Robin Pope (503) 297-6150*

HB 2298	Psychological parent notice requirement regarding consent to adopt
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##### *Real Estate, Dean Alterman (503) 222-1515*

HB 2295	Amend statutory deed forms to include land use disclosure
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##### *Land Use, Ken Helm (503) 797-1882*

HB 2283	Staggered terms for LUBA judges
HB 2282	Comprehensive cleanup of ORS Chapter 197
HB 2281	Notice of adoption of amendment (ORS 197.615) to contain certificate of mailing with date of deposit
HB 2280	Eliminate notice requirement

#### Committees

##### *Lawyer Referral, Reg Perry (503) 691-2949 ext. 221*

HB 2297	Non-attorney expenses in indigent defense cases (joint proposal with SCA)
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##### *Procedure and Practice, Stacy Hankin (503) 620-0222, ext. 347 or Greg Mowe (503) 294-9458*

SB 48	Future medical liens
SB 50	Increase attorney fee cap (ORS 20.080)
SB 49	Impeachment for bias or interest
SB 47	Learned treatise exception to hearsay rule

## Public Affairs Mission Statement

The Public Affairs Department works to apply the knowledge and experience of the legal profession to the public good by advising governmental bodies, proposing legislation for law improvement and advocating on matters that affect the legal profession. The Public Affairs Committee of the Board of Governors ("PAC") is chaired by Salem attorney David Hittle. Other members include David Orf, Medford; John Tyner, Hillsboro; Larry Rew, Pendleton; Malcolm Scott, Eugene; Mary McCauley Burrows, public member, Eugene; and Joyce Cohen, public member, Portland.

Remember OSB sections and committees must receive approval from the PAC before it may take a public position on a proposed bill. The process for approval requires sections and committees to state, in writing, the section's or committee's position on a particular proposed bill and how that position correlates to the BOG Policies, *Section 11.800*.

Only legislation designated by the PAC as an OSB priority is actively lobbied by the Public Affairs Department staff. Typical OSB priorities include major public policy and political issues in light of *Keller v. State Bar of California*.

## Contacts

If you have questions or comments about this newsletter or legislative issues, feel free to contact the Public Affairs Committee chair David Hittle at (503) 581-2421 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 [boleson@osbar.org](mailto:boleson@osbar.org); Susan Grabe at ext. 380 or [sgrabe@osbar.org](mailto:sgrabe@osbar.org); and Anastasia Meisner at ext. 358 or [ameisner@osbar.org](mailto:ameisner@osbar.org). In addition, please visit the OSB homepage at [www.osbar.org](http://www.osbar.org).