

Student's Version

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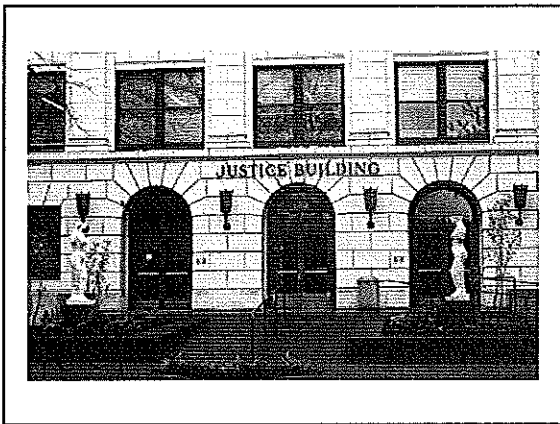
LEGISLATIVE UPDATE

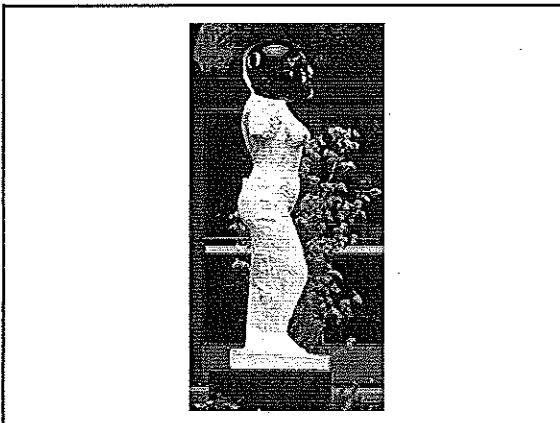
With Legislative Update co-anchors:

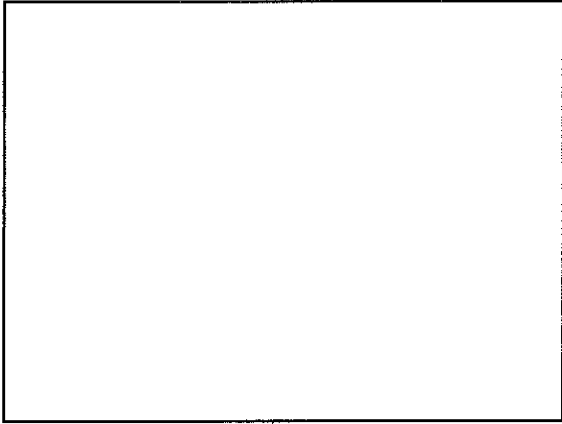
- Vanessa Nordyke
- Pete Shepherd

• And Featuring Update's Intrepid Field Reporters:


- Doug Tookey
- Bill Weidner
- Anthony Geltosky
- Wes Hill
- Alvin Files
- The Honorable Courtland Geyer
- Keri Lazraus, AND
- Andrew Shull








Energy and Environmental Law




Wolves


Department of Agriculture implements wolf depredation compensation & financial assistance grant program
Grants provided to counties for county programs
County program overseen by county advisory committee (1 commissioner, 2 livestock owners, 2 wolf conservationists, 2 county business reps)
Person applying for compensation must provide evidence of loss or injury (must include finding by ODFW that wolf depredation was probable cause of loss or injury)
Compensation based on fair market value and recommendation of county advisory committee
Counties report annually to Department of Agriculture



Bottle Bill


 No later than January 1, 2018, expands coverage of bottle bill to include beverage containers that contain beverages in quantity of 4 fluid ounces or more and 1.5 liters or less

--Exceptions: distilled liquor, wine, dairy, plant-based milk, infant formula and others specified by OLCC rule

 Increases refund value to at least 10 cents when less than 80 percent of beverage containers sold in Oregon are redeemed

--January 1, 2016, at earliest



 Requires OLCC to approve beverage container redemption center pilot project in city with population <300,000

--center must accept up to 300 containers per person per day

--dealers not required to participate, but House Bill 3145 establishes incentives for participation

Bags

(paper, plastic or any other material)

2011 Senate Bill 536 (in Senate Rules Committee upon adjournment) would have:

- Prohibited use of single-use checkout bags; provided exceptions
- Allowed DEQ to impose civil penalty of \$250 per day on retail establishments for violations
- Prohibited local governments from imposing charges on single-use checkout bags and other bags
- Repealed statute requiring retail establishments that offer plastic bags to also offer paper bags



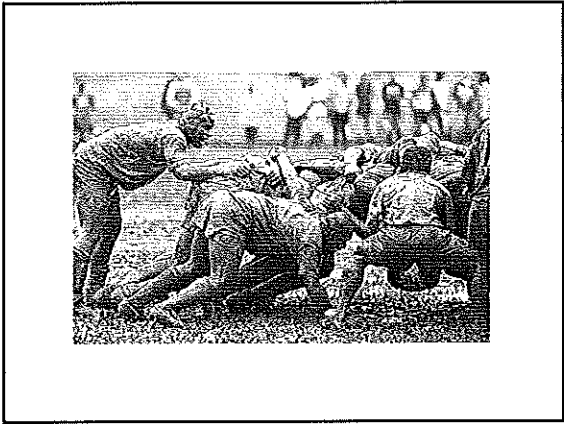


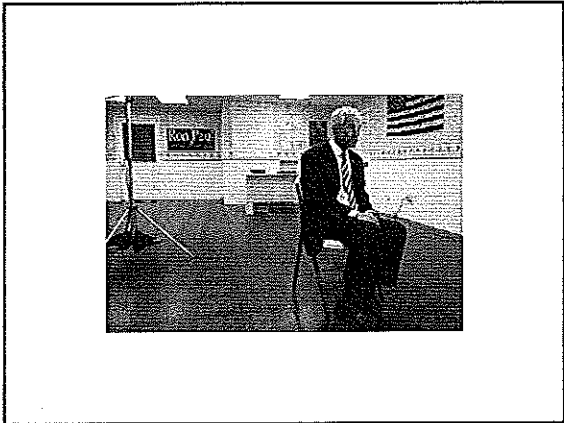
SB 292

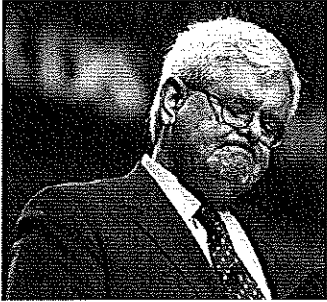
Protects Consumers From "Free" Trial Offers With Strings Attached or Lengthy Cancellation Procedures

SB 292 Trivia: The bill was carried by Former State Senator and current Congressional Candidate Suzanne Bonamici

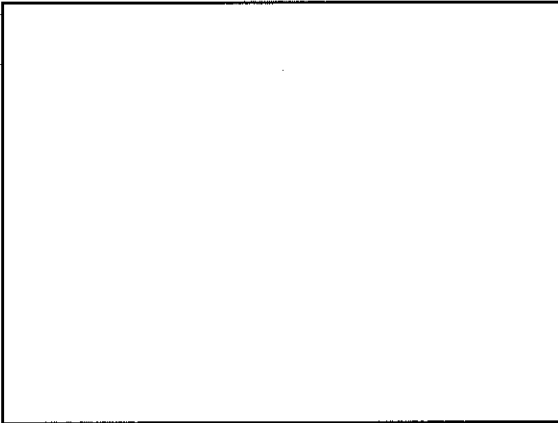








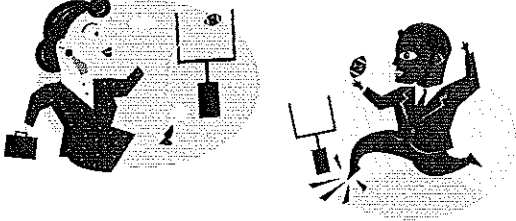




Labor and Employment

Employers: 2

Employees: 4



Bills favoring Employers

HB 2040

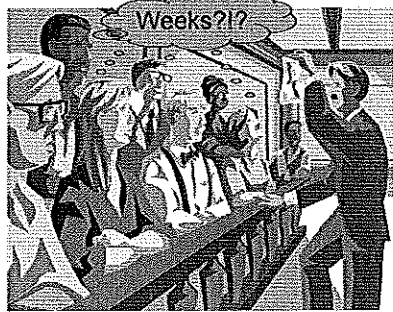
- Requires more detail in demand for unpaid wages (to trigger penalties)

HB 3450

- Reduces notice for arbitration clauses from two weeks to 72 hours

Bills favoring Employees

- HB 3034: Unpaid leave for jury duty
- HB 2828: Continuation of insurance for jurors
- HB 2039: Civil penalties can be assessed when wage checks are dishonored
- HB 3482: New entitlement for unpaid leave for victims of harassment



"I'm sure we will get to know each other a lot better over the next few weeks."

HB 2828

Continuation of insurance for jurors

- Applies to employers of 10 or more
- Employee must "elect"
- Employee must comply with notice policy
- Employer may have to pay employee portion of insurance
- Unlawful employment practice



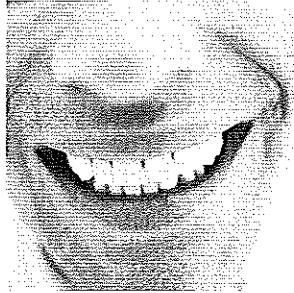
What do you say when your employee says:



"I think I may need some time off for harassment."



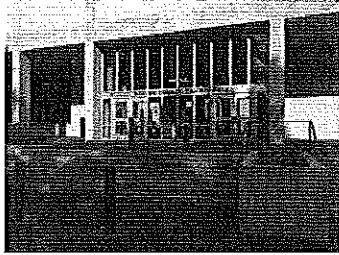
How much?



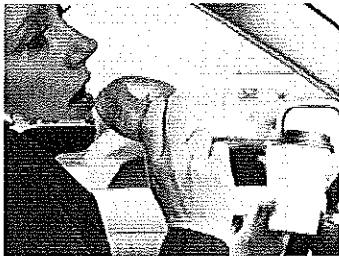
HB 3482

Unpaid leave for victims of harassment

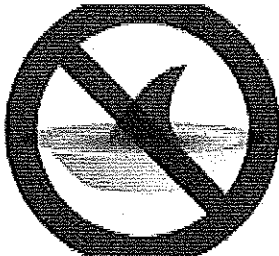
- Applies: Employers of six or more persons
- Duration of Leave: "Reasonable"
- Required Advance Notice: "Reasonable"
- Broad definition of harassment
- "Reasonable safety accommodation"
- Policy: Document, document, document...



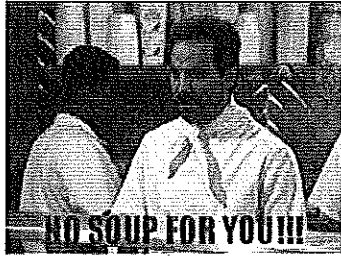
LIVE: The Marion County Courthouse
BREAKING NEWS ALERT: New criminal laws passed by legislature



HB 3186
Removes exception to use of cell phone while driving in the scope of a persons employment if operation of the motor vehicle is necessary for the person's job.



HB 2838
A person may not possess, sell or offer for sale, trade or distribution a shark fin in the state of Oregon.





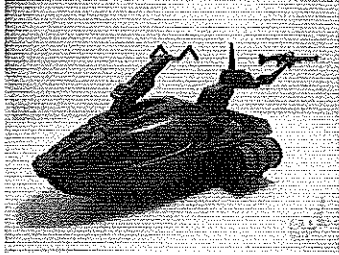
HB 3230

Amends ORS 679.991 to make Unlicensed Identity a Class C Felony (instead of a Class A Misdemeanor)



HB 2792

Permits concealed handguns on a motorcycle, ATV or snowmobile in a locked container within or affixed to the vehicle or when secured with a trigger lock locking mechanism preventing discharge.



HB 2792

HB 2750

Allows Oregon secondary schools to adopt policy for the use of alcohol in culinary classes.

Requires adult supervision and secure storage of the alcohol while not in use.





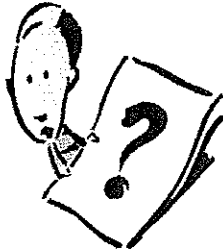
HB 2750

Dan Akroyd gives the class an example of how to carve roast meat; cuts the dickens out of his finger.

HB 2828

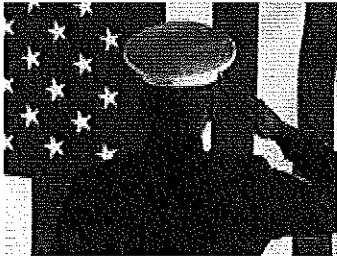
An employer who employs 17 or more persons must obtain and offer health insurance if they want to provide health, dental, life or other services coverage for a time the employee serves or was obligated to serve as a juror.





HB 2712

Creates new fine amounts for crimes and violations. Sets presumptive fine on violations, with expanded minimum and maximum amounts; eliminates separate testimony, society and LEMLE assessments on crimes. Memo attached.



HB 2702

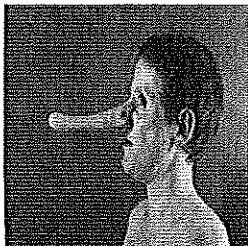
Amends DUII diversion statute to provide flexibility for members of armed forces on active duty to complete terms of diversion.

HB 2183

Creates offense of making a false report of child abuse. Requires an effort to address a possible, perceived issue, violation or child support failure.

Requires that a person make a report of child abuse, knowing it to be false, to DHS, law enforcement or any mandatory reporter (with an intent that the person will make an official report).

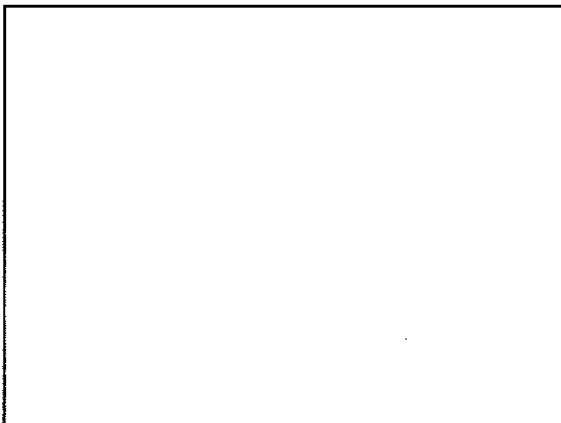
LIAR,
LIAR
Pants
on
Fire!

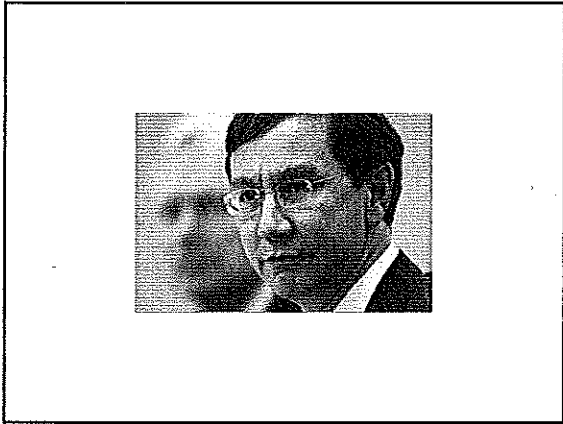


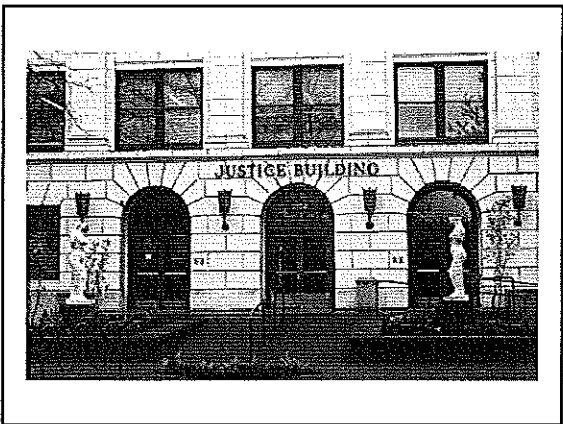


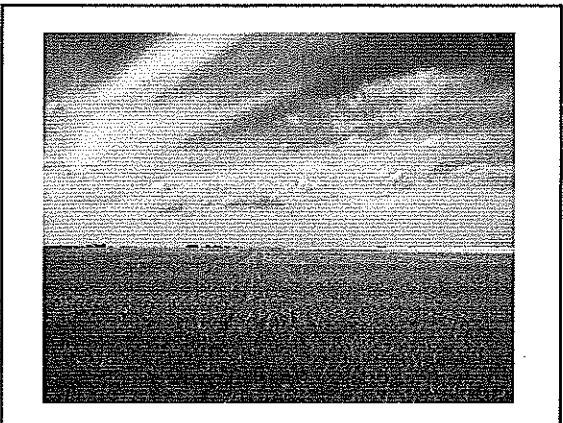
HB 2246
1-800-336-8218

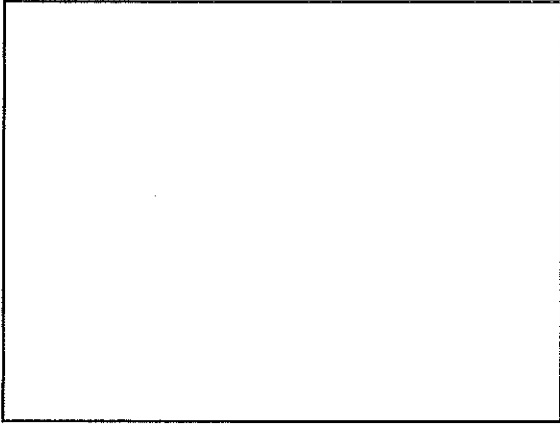
Provides for creation of local government waste hotlines.

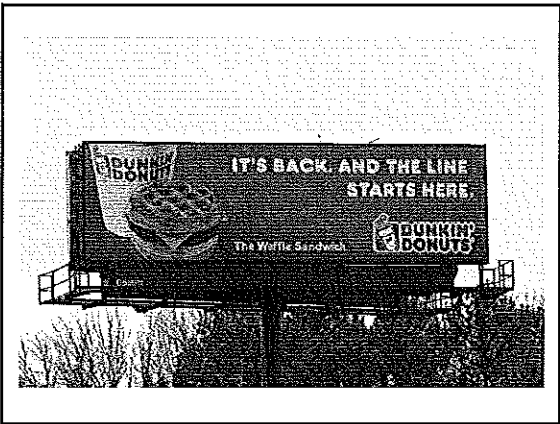














Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: ~ FORECLOSURES AND FORCLOSURE AVOIDANCE

Bill No./Chapter No. from 2011* Legislative Session:

- Senate Bill 491 (2011), (Ch. 510, Or Laws 2011) **Foreclosure Notice to Tenants**
- House Bill 2916 (2011), (Ch. 480, Or Laws 2011) **Short Sale Effect on Residual Debt**
- Senate Bill 628 (2009),* (Ch. 864, Or Laws 2009) **Loan Modification Decisions**
 - (Allowed to sunset thereby withdrawing 45 day requirement for state and federally mandated loan modification decision be given to consumer).

Effective Date, if other than January 1, 2012:

- SB 491: effective as of September 29, 2011
- HB 2916: effective as of June 23, 2011
- SB 628 (2009): substantive changes (sunset) effective January 2, 2012

Brief description of the change in law:

- **SB 491:** Modifies requirements and form for notice of foreclosure and tenancy termination for residential dwellings in foreclosure. Changes prior state law from 60 days to 90 days notice required if new owner will occupy dwelling. Deposits and advance rent previously paid may be applied by tenant for rent owed before foreclosure. New owner must supply change of ownership notice to occupants within 30 days of date of sale, in statutory form. New owner not responsible for security deposits paid to former owner.
- **HB 2916:** Prohibits lender or its assignee from suing on note or otherwise seeking further payment from borrower for residential debt following short sale **if** lender reports cancellation of all or a portion of borrower's debt to IRS and if written evidence of report is given to borrower.
- **SB 628 (2009):** Sunsets borrowers' 45 day right to have a modification decision rendered and given to borrower by lender. Importantly, however, other Treasury Department rules may still require delaying or rescinding foreclosure proceedings until after some borrowers are evaluated by lender for loan modification. Each case is fact

specific and may depend upon the federal rules in effect at time of default and/or foreclosure notice.

Brief statement of why this might be significant to some attorneys: Non judicial foreclosure and the defenses to, or avoidance of the same, have always been full of traps and problems for the unwary. Foreclosure issues are particularly difficult for consumers and practitioners today as foreclosure notice requirements and the safe harbor forms of notice or conduct have been, and continue to be, in constant flux. Simply reviewing the printed statute book for general foreclosure guidance is not sufficient because ORS Chapter 86.705 *et seq* has been modified many times with prospective sunset provisions requiring automatic and further modification of required notices and actions.

Comments, questions, observations: Foreclosure and foreclosure avoidance cannot be evaluated by simply looking to state law. At least for those loans which are underwritten by government or quazi-government entities (Fannie, Freddie, VA, etc.), federal Treasury regulations give parties additional rights and obligations that must be considered. Most Deeds of Trust also recite that the parties will comply fully with all applicable state and federal laws.

For example, the Home Affordable Modification Program ("HAMP") requires that lenders and servicers of federally insured loans must comply with additional requirements and notices for foreclosure. The HAMP program was developed by the United States Department of the Treasury ("Treasury") pursuant to its authority under the federal Troubled Asset Relief Program ("TARP"). See Emergency Stabilization Act of 2008, Pub. L. No. 110-343, §101, 122 Stat. 3765 (Oct. 3, 2008) ("EESA"). As described on the Treasury's website, \$245 Billion of taxpayer money was invested in our country's largest banking institutions to head off imminent financial crises that negatively affected all Americans. Financial Stability, <http://www.treasury.gov/initiatives/financial-stability/programs/Pages/default.aspx> (last visited 12/20/11).

Over \$50 Billion was targeted to "help responsible, but struggling homeowners to keep their homes, and reduce the spillover effects of foreclosures on neighborhoods, communities, the financial system and the economy." *Id.* The nation's largest lenders accepted billions of taxpayer dollars from the TARP fund in 2008 and 2009. 12 USC §5211. In exchange, these lenders and their servicers agreed to participate in the HAMP program and comply with Treasury and Fannie Mae directives for the program.

The express purpose of the TARP and HAMP programs was to keep 3 to 4 million "at risk" homeowners in their homes by reducing monthly mortgage payments to "sustainable" levels, thereby preventing avoidable foreclosures. See Fannie Mae Announcement 09-05R.

Treasury issued uniform directives for loan modifications across the mortgage industry. *Id.* All Fannie Mae servicers are required to participate in HAMP and must comply with the program rules for all loans guaranteed by Fannie Mae. *Id.*

Most loan servicing and foreclosure activities are therefore subject to Treasury or appropriate Government Sponsored Enterprise ("GSE") regulations as described in Announcement 09-05R and its subsequent amendments. *See id.* Importantly, those regulations place the following affirmative requirements, among others, on loan servicers and Trustees:

- Lenders and their agents are not authorized to initiate foreclosures until after a borrower's HAMP eligibility is first determined. *Id* at 16.
- Lenders and their agents must not initiate foreclosure while the borrower is in a HAMP trial modification phase. *Id.*
- Lenders and their agents must suspend all foreclosures for the duration of any trial period plan. *Id.*
- Lenders and their agents are required to supervise and manage any contractor that assists in the performance of any services in connection with HAMP. *Id* at 25.
- Lenders must comply with all other federal, state and local law. *Id* at 14.
- Servicers are required to provide adequate staffing, resources and facilities for receiving and processing HAMP documents. *Id* at 15.

For more information:

- 1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
- 2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2008 through 2011 Regular Sessions, Advance Sheets of Oregon Laws 2008 through 2011 (organized by chapter number).**
- 3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**
- 4. John Rao, et al., Foreclosures: Defenses, Workouts and Mortgage Servicing. National Consumer Law Center (2010) (available at Oregon State Law Library).**
- 5. Senate Bill 1013, Chapter 28 Oregon Laws 2010 – effective March 4, 2010 (modified by SB 491 (2011), *supra*).**
- 6. Oregon Laws 2008, Chapter 19 amendments to ORS 86.737.**
- 7. Oregon Laws 2009, Chapter 864 (SB 628) amendments to ORS 86.737.**
- 8. Oregon Laws 2010, Chapter 49 (HB 3610) amendments to ORS 86.737.**

Prepared by: ~ *Wes Hill*

2012 “SCHEDULE OF FINES” ON VIOLATIONS (SOF-12)

**PRESUMPTIVE, MINIMUM, AND MAXIMUM AMOUNTS
FOR VIOLATION OFFENSES IN OREGON**

EFFECTIVE JANUARY 1, 2012

Office of the State Court Administrator
Oregon Judicial Department

ABOUT THE SCHEDULE

Effective Date: Oregon Laws 2011, chapter 597 (HB 2712), eliminated the complex structure of calculated "base fines" on violations in favor of explicit "presumptive fines" for classified violations and many unclassified "specific fine violations." The law also set new minimum and maximum fines on violations. The new presumptive fines and minimum and maximum fine amounts apply to offenses committed on or after January 1, 2012.

Effective January 1, 2012, this "schedule of fines" (SOF-12) supersedes MBFS-11 and all previous fine schedules and summaries for violations committed on or after that date.

Purposes: The Office of the State Court Administrator is publishing SOF-12 as a helpful guide for courts and law enforcement. The schedule is not a substitute for reading the actual law. The legislature may adopt changes in 2012 to clarify some provisions passed in 2011; we will update this schedule as needed.

SOF-12 provides summarized information on

- the amount a citing enforcement officer must enter on the citation in the place designated for "presumptive fine" when charging a person with a violation offense under **state law**, regardless of the court the officer cites the person to appear in, and
- minimum and maximum amounts courts can impose on conviction.

The presumptive fine is not the maximum fine a court can impose. It is the fine amount the defendant can pay to resolve the violation offense without having to do anything else, unless the law or the court requires the defendant to appear. (See ORS 153.061 as amended by Or Laws 2011, c 597, §25.) The court can impose a higher fine, up to the maximum statutory sanction, if the law or the court requires the defendant to appear.

Offenses Included: SOF-12 includes amounts for Class A, B, C, and D violations and common "specific fine violations." Many offenses separately listed in MBFS-11 and prior schedules are not separately listed in SOF-12 because various changes in 2011 reclassified offenses and removed offense-specific provisions, eliminating the need for separate listing.

What Presumptive Fines Are Not/Do Not Do: The presumptive fines listed in SOF-12

- are **not** bail, security-release amounts, or security-release deposit amounts; they do not affect security-release procedures under ORS 135.265;
- do **not** include any moneys for restitution or costs; and
- do **not** apply to misdemeanors or felonies.

Where to Find Schedules: SOF-12 and earlier schedules are posted in PDF on the Oregon Judicial Department's website – www.courts.oregon.gov/OJD.

- Click on **Materials & Resources**.
- Click on the **Court Rules** tab.
- Using the drop-down menu under "Complete List of Rules," select **Fines on Violations**.
- Click on **Go**.

| (a) | (b) | (c) | (d) | (e) |
|---|-------------------------|---------------------|-----------------------------------|------------------------------------|
| 2012 Schedule of Fines on Violations | Presumptive Fine | Minimum Fine | Maximum Fine (Individuals) | Maximum Fine (Corporations) |
| Standard | | | | |
| (1) Class A violation | \$435 | \$220 | \$2,000 | \$4,000 |
| (2) Class B violation | \$260 | \$130 | \$1,000 | \$2,000 |
| (3) Class C violation | \$160 | \$80 | \$500 | \$1,000 |
| (4) Class D violation | \$110 | \$60 | \$250 | \$500 |
| Traffic Violation in Special Zone | | | | |
| (5) Class A violation | \$870 | \$220 | \$2,000 | \$4,000 |
| (6) Class B violation | \$520 | \$130 | \$1,000 | \$2,000 |
| (7) Class C violation, speed only | \$320 | \$80 | \$500 | \$1,000 |
| (8) Class D violation, speed only | \$220 | \$60 | \$250 | \$500 |
| Drugs and Alcohol | | | | |
| (9) A Viol. OLCC licensee furnishing alcohol to a minor, 471.410(6), first offense | \$435 | \$220 | \$2,000 | \$4,000 |
| (10) SF Viol. OLCC licensee furnishing alcohol to a minor, 471.410(6), second offense (third or subsequent is a Class A misd.) | \$860 | \$172 | \$2,000 | \$2,000 |
| (11) A Viol. Allow minor to consume alcohol on property, 471.410(9), first offense | \$435 | \$220 | \$2,000 | \$4,000 |
| (12) SF Viol. Allow minor to consume alcohol on property, 471.410(9), second or subsequent offense | \$1,000 | \$200 | \$2,000 | \$2,000 |
| (13) SF Viol. Delivery of less than 5 grams of marijuana for no consideration, 475.860(3)(b), (within 1000 ft. of a school is a Class C misd.) | \$650 | \$130 | \$2,000 | \$2,000 |
| (14) SF Viol. Possession of less than an ounce of marijuana, 475.864(3) (within 1000 ft. of school is a Class C misd.) | \$650 | \$130 | \$2,000 | \$2,000 |
| (15) SF Traffic Viol. Refusal to take test for intoxicants, 813.095 | \$650 | \$130 | \$2,000 | \$2,000 |
| Special Traffic Violations | | | | |
| (16) SF Traffic Viol. Speeding 100 mph or greater, 811.109(5) | \$1,150 | \$230 | \$2,000 | \$2,000 |
| (17) A Viol. Careless driving, injury or death of vulnerable user, 811.135(3) | N/A must appear | N/A | \$12,500 | \$12,500 |
| (18) SF Traffic Viol. Unlawful parking in a winter recreation parking area, 811.590 | \$30 | \$6 | \$2,000 | \$2,000 |
| (19) SF Traffic Viol. Bicycle helmet, 814.485 and 814.486 | \$25 | \$5 | \$2,000 | \$2,000 |
| (20) SF Traffic Viol. Motor-assisted scooter helmet, 814.534 and 814.536 | \$25 | \$5 | \$2,000 | \$2,000 |
| (21) SF Traffic Viol. Skateboarder, scooter rider, in-line skater helmet, 814.600 | \$25 | \$5 | \$2,000 | \$2,000 |

| (a) | (b) | (c) | (d) | (e) |
|--|-------------------------|---------------------|-----------------------------------|------------------------------------|
| 2012 Schedule of Fines on Violations | Presumptive Fine | Minimum Fine | Maximum Fine (Individuals) | Maximum Fine (Corporations) |
| Overweight--Schedule I | | | | |
| (22) 1,000 or less | \$100 | \$20 | \$2,000 | \$2,000 |
| (23) 1,001 - 2,000 | \$150 | \$30 | \$2,000 | \$2,000 |
| (24) 2,001 - 3,000 | \$200 | \$40 | \$2,000 | \$2,000 |
| (25) 3,001 - 5,000 | \$300 | \$60 | \$2,000 | \$2,000 |
| (26) 5,001 - 7,500 | (a) * 0.15 | (b) * 0.20 | \$2,000 | \$2,000 |
| (27) 7,501 - 10,000 | (a) * 0.16 | (b) * 0.20 | \$2,000 | \$2,000 |
| (28) 10,001 - 12,500 | (a) * 0.20 | (b) * 0.20 | amt in (b) | amt in (b) |
| (29) 12,501 and over | (a) * 0.24 | (b) * 0.20 | amt in (b) | amt in (b) |
| Overweight--Schedule II | | | | |
| (30) 100 - 5,000 | \$200 + (a) * 0.10 | (b) * 0.20 | \$2,000 | \$2,000 |
| (31) 5,001 - 10,000 | \$350 + (a) * 0.15 | (b) * 0.20 | \$2,000 | \$2,000 |
| (32) 10,001 - and over | \$600 + (a) * 0.30 | (b) * 0.20 | amt in (b) | amt in (b) |
| Overweight--Schedule III | | | | |
| (33) 100 - 5,000 | \$200 + (a) * 0.15 | (b) * 0.20 | \$2,000 | \$2,000 |
| (34) 5,001 - 8,250 | \$350 + (a) * 0.20 | (b) * 0.20 | \$2,000 | \$2,000 |
| (35) 8,251 - 10,000 | \$350 + (a) * 0.20 | (b) * 0.20 | amt in (b) | amt in (b) |
| (36) 10,001 - and over (Class C misd.) | N/A | N/A | N/A | N/A |
| Miscellaneous Other Violations | | | | |
| (37) SF Viol. Scrap metal business violation, 165.107, first through third offense | \$1,000 | \$200 | \$2,000 | \$2,000 |
| (38) SF Viol. Scrap metal business violation, 165.107, fourth or subsequent offense | \$5,000 | \$1,000 | \$5,000 | \$5,000 |
| (39) SF Viol. Unlawful air pollution in the second degree, 468.936 | \$5,000 | \$1,000 | \$25,000 | \$25,000 |
| (40) D Viol. Operating manually propelled boat w/o aquatic invasive species permit, 830.565 | \$30 | \$30 | \$250 | \$500 |
| (41) D Viol. Operating motor boat w/o aquatic invasive species permit, 830.565 | \$50 | \$50 | \$250 | \$500 |

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Enrolled
House Bill 3186

Sponsored by Representative BERGER, Senators PROZANSKI, ROSENBAUM; Representatives BEYER, BOONE, BUCKLEY, CANNON, CONGER, COWAN, ESQUIVEL, KOMP, MATTHEWS, PARRISH, THOMPSON, TOMEL, Senators BOQUIST, WINTERS

CHAPTER

AN ACT

Relating to operating a motor vehicle while using a mobile communication device; creating new provisions; and amending ORS 811.507.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 811.507 is amended to read:

811.507. (1) As used in this section:

(a) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mobile communication device, whether or not permanently installed in a motor vehicle, that when used allows a person to maintain both hands on the steering wheel.

(b) "Mobile communication device" means a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication.

(2) A person commits the offense of operating a motor vehicle while using a mobile communication device if the person, while operating a motor vehicle on a highway, uses a mobile communication device.

(3) This section does not apply to a person who activates or deactivates a mobile communication device or a function of the device or who uses the device for voice communication if the person:

(a) *[To a person who]* Is summoning medical or other emergency help if no other person in the vehicle is capable of summoning help;

(b) *[To a person]* Is using a mobile communication device for the purpose of farming or agricultural operations;

(c) *[To a person]* Is operating an ambulance or emergency vehicle;

(d) *[To a person]* Is 18 years of age or older *[who]* and is using a hands-free accessory;

(e) *[To a person]* Is operating a motor vehicle while providing public safety services or emergency services *[as a volunteer]*;

(f) *[To a person]* Is operating a motor vehicle while acting in the scope of the person's employment as a public safety officer, as defined in ORS 348.270;

[(g) To a person operating a motor vehicle in the scope of the person's employment if operation of the motor vehicle is necessary for the person's job;]

[(h) To a person activating or deactivating the mobile communication device or a function of the device;]

(g) Is operating a tow vehicle or roadside assistance vehicle while acting in the scope of the person's employment;

[(i)] (h) [To a person who] Holds a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and is operating an amateur radio;

[(j)] (i) [To a person who operates] **Is operating** a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission; [or]

(j) **Is operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, while acting in the scope of the person's employment; or**

(k) [To a person] **Is using** a function of the mobile communication device that allows for only one-way voice communication while the person is:

- (A) Operating a motor vehicle in the scope of the person's employment;
- (B) Providing transit services [to persons with disabilities or to senior citizens]; or
- (C) Participating in public safety or emergency service activities.

(4) The offense described in this section, operating a motor vehicle while using a mobile communication device, is a Class D traffic violation.

SECTION 2. The amendments to ORS 811.507 by section 1 of this 2011 Act apply to offenses that occur on or after the effective date of this 2011 Act.

Passed by House May 4, 2011

Received by Governor:

Repassed by House June 15, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2011

Passed by Senate June 13, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State

Enrolled
House Bill 2838

Sponsored by Representative WITT (Presession filed.)

CHAPTER

AN ACT

Relating to shark fins.

Whereas sharks are one of the top predators in the marine food chain and play an important role in the ocean's ecosystem; and

Whereas sharks have characteristics that make them more vulnerable to overfishing than most fish, and data from state, federal and international agencies show a decline in shark populations locally and worldwide; and

Whereas most sharks, unlike other fish, do not reach sexual maturity until seven to 12 years of age and then only give birth to a small litter of young; and

Whereas shark populations do not recover quickly once they are overfished; and

Whereas the practice of shark finning, in which a shark is caught, the fin is cut off and the shark is returned to the water, causes tens of millions of sharks to die a slow death each year; and

Whereas after a shark's fin is cut off and the shark is returned to the water some sharks starve to death, others are slowly eaten by other fish and some drown because most sharks need to keep moving to force water over their gills to extract oxygen; and

Whereas sharks are an essential element of the ocean's ecosystem, and by reducing the demand for shark fins, Oregon can help ensure that sharks will not become extinct; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 509.

SECTION 2. (1) As used in this section:

(a) "Shark fin" means the raw or dried fin or tail of a shark.

(b) "Spiny dogfish" means a shark belonging to the family Squalidae in the order Squaliformes that has two spines, one anterior to each dorsal fin, and that does not have an anal fin.

(2) A person may not possess, sell or offer for sale, trade or distribute a shark fin in this state.

(3) This section does not apply to:

(a) A person who possesses, sells or offers for sale, trades or distributes a shark fin from a spiny dogfish that was legally taken or landed under rules adopted by the State Department of Fish and Wildlife and in accordance with federal regulations;

(b) A person who holds a license or permit issued by the State Department of Fish and Wildlife under the commercial fishing laws to take a shark and who possesses, sells or offers for sale, trades or distributes a shark fin consistent with the terms of that license or permit; and

(c) A fish processor who holds a license under the commercial fishing laws, who possesses and processes a shark obtained from a person described in paragraph (a) of this subsection and who sells or offers for sale, trades or distributes the shark fin consistent with the terms of the license of that fish processor.

SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS chapter 498.

SECTION 4. (1) As used in this section:

(a) "Shark fin" means the raw or dried fin or tail of a shark.

(b) "Spiny dogfish" means a shark belonging to the family Squalidae in the order Squaliformes that has two spines, one anterior to each dorsal fin, and that does not have an anal fin.

(2) A person may not possess, sell or offer for sale, trade or distribute a shark fin in this state.

(3) This section does not apply to:

(a) A person who possesses, sells or offers for sale, trades or distributes a shark fin from a spiny dogfish that was legally taken or landed under rules adopted by the State Department of Fish and Wildlife and in accordance with federal regulations; and

(b) A person who holds a license or permit issued by the State Department of Fish and Wildlife under the wildlife laws to take a shark and who possesses, sells or offers for sale, trades or distributes a shark fin consistent with the terms of that license or permit.

SECTION 5. Sections 2 (2) and 4 (2) of this 2011 Act do not apply to a person who possesses a shark fin on the effective date of this 2011 Act, except that the person may not sell or offer for sale, trade or distribute the shark fin.

Passed by House April 29, 2011

Received by Governor:

Repassed by House June 2, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate May 31, 2011

.....M.,....., 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State

**Enrolled
House Bill 3230**

Sponsored by Representative HOYLE (at the request of Oregon Dental Association)

CHAPTER

AN ACT

Relating to unlicensed practice of dentistry; amending ORS 679.991.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 679.991 is amended to read:

679.991. (1) Violation of any provision of ORS 679.020 or 679.025 (1)[,] is a Class [A misdemeanor] **C felony.**

(2) Violation of ORS 679.170 or 679.176 is a Class B misdemeanor.

(3) In the event of a second or subsequent conviction under subsection (1) of this section, it is mandatory upon the part of the court to sentence the convicted person to imprisonment in the county jail for not less than 10 days in addition to the maximum fine or imprisonment permitted.

(4) In any prosecution for violation of subsection (1) or (2) of this section, it [*shall be*] is sufficient to sustain a conviction to show a single act of conduct in violation of any of the provisions of this chapter and it [*shall*] is not be necessary to show a general course of such conduct.

Passed by House April 14, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 1, 2011

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State

Enrolled
House Bill 2792

Sponsored by Representative THATCHER, Senator PROZANSKI; Representatives FREEMAN, G SMITH (Pre-session filed.)

CHAPTER

AN ACT

Relating to firearms; creating new provisions; amending ORS 166.250, 166.274, 166.425 and 821.240; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 166.250, as amended by section 8a, chapter 826, Oregon Laws 2009, is amended to read:

166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 166.291, 166.292 or 166.410 to 166.470 or section 5, chapter 826, Oregon Laws 2009, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony;

(D) Was committed to the Oregon Health Authority under ORS 426.130;

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

(F) Has been found guilty except for insanity under ORS 161.295 of a felony.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or

keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4)(a) Except as provided in [paragraph (b)] paragraphs (b) and (c) of this subsection, a handgun is readily accessible within the meaning of this section if the handgun is within the passenger compartment of the vehicle.

(b) If a vehicle, **other than a vehicle described in paragraph (c) of this subsection**, has no storage location that is outside the passenger compartment of the vehicle, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is stored in a closed and locked glove compartment, center console or other container; and

(B) The key is not inserted into the lock, if the glove compartment, center console or other container unlocks with a key.

(c) If a vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is in a locked container within or affixed to the vehicle; or

(B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the discharge of the firearm.

(5) Unlawful possession of a firearm is a Class A misdemeanor.

SECTION 2. ORS 166.250, as amended by sections 8a and 11a, chapter 826, Oregon Laws 2009, is amended to read:

166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony;

(D) Was committed to the Oregon Health Authority under ORS 426.130;

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

(F) Has been found guilty except for insanity under ORS 161.295 of a felony.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such

citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4)(a) Except as provided in [paragraph (b)] paragraphs (b) and (c) of this subsection, a handgun is readily accessible within the meaning of this section if the handgun is within the passenger compartment of the vehicle.

(b) If a vehicle, other than a vehicle described in paragraph (c) of this subsection, has no storage location that is outside the passenger compartment of the vehicle, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is stored in a closed and locked glove compartment, center console or other container; and

(B) The key is not inserted into the lock, if the glove compartment, center console or other container unlocks with a key.

(c) If the vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is in a locked container within or affixed to the vehicle; or

(B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the discharge of the firearm.

(5) Unlawful possession of a firearm is a Class A misdemeanor.

SECTION 3. ORS 166.274, as amended by section 19, chapter 826, Oregon Laws 2009, and section 2, chapter 86, Oregon Laws 2010, is amended to read:

166.274. (1) Except as provided in subsection (11) of this section, a person barred from possessing or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2) of this section if:

(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) [to] or (C) or 166.270; or

(b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a) [to (d) or (g)], (b) or (g).

(2) A petition for relief described in this section must be filed in the circuit court in the petitioner's county of residence.

(3) A person may apply once per calendar year for relief under the provisions of this section.

(4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(5)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(6) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(7) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

[(8) A person barred from possessing or purchasing a firearm because the person, while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.]

[(9)] (8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

[(10)] (9) Filing fees shall be as for any civil action filed in the court.

[(11)(a)] (10)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

(11) The court may not grant relief under this section to a person who:

(a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015;

(b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an offense listed in ORS 137.700 in any other jurisdiction; or

(c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony sentence in the one-year period preceding the filing of the petition.

SECTION 4. ORS 166.274, as amended by sections 19 and 20, chapter 826, Oregon Laws 2009, and section 3, chapter 86, Oregon Laws 2010, is amended to read:

166.274. (1) Except as provided in subsection (10) of this section, a person barred from possessing a firearm under ORS 166.250 (1)(c)(A) or (C) to (E) or 166.270 or barred from purchasing a firearm under ORS 166.470 (1)(a), (b) or (e) to (g) [to (g)] may file a petition for relief from the bar in the circuit court in the petitioner's county of residence.

(2) A person may apply once per calendar year for relief under the provisions of this section.

(3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(4)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

[(7) A person barred from possessing or purchasing a firearm because the person, while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.]

[(8)] (7) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

[(9)] (8) Filing fees shall be as for any civil action filed in the court.

[(10)(a)] (9)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

(10) The court may not grant relief under this section to a person who:

(a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015;

(b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an offense listed in ORS 137.700 in any other jurisdiction; or

(c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony sentence in the one-year period preceding the filing of the petition.

SECTION 5. ORS 166.425 is amended to read:

166.425. (1) A person commits the crime of unlawfully purchasing a firearm if the person, knowing that the person is prohibited by state *[or federal]* law from owning or possessing the firearm or having the firearm under the person's custody or control, purchases or attempts to purchase the firearm.

(2) Unlawfully purchasing a firearm is a Class A misdemeanor.

SECTION 6. ORS 821.240 is amended to read:

821.240. (1) A person commits the offense of operating a snowmobile or an all-terrain vehicle while carrying a firearm or bow if the person operates any snowmobile or all-terrain vehicle with a firearm in the possession of the person, unless the firearm is unloaded, or with a bow, unless all arrows are in a quiver.

(2) Subsection (1) of this section does not apply to a person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(3) As used in this section, "unloaded" means:

(a) If the firearm is a revolver, that there is no live cartridge in the chamber that is aligned with the hammer of the revolver;

(b) If the firearm is a muzzle-loading firearm, that the firearm is not capped or primed; or

(c) If the firearm is other than a revolver or a muzzle-loading firearm, that there is no live cartridge in the chamber.

[(2)] (4) The offense described in this section, operating a snowmobile or an all-terrain vehicle while carrying a firearm or bow, is a Class B traffic violation.

SECTION 7. No later than December 31, 2011, the Department of State Police shall submit a report to the interim legislative committee related to the judiciary that describes the State of Oregon's compliance with the National Instant Criminal Background Check System Improvement Amendments Act of 2007 (P.L. 110-180). The report must include a description of the rate at which the State of Oregon is providing the United States Attorney General

records relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under federal or state law.

SECTION 8. Section 7 of this 2011 Act is repealed on January 2, 2012.

SECTION 9. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 21, 2011

Received by Governor:

Repassed by House June 28, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 15, 2011

.....M.,....., 2011

Repassed by Senate June 28, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State

Enrolled
House Bill 2750

Sponsored by Representative CLEM (at the request of Bradd Swank) (Presession filed.)

CHAPTER

AN ACT

Relating to use of alcoholic beverages in schools; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section, "alcoholic beverage" has the meaning given that term in ORS 471.001.

(2) A district school board may adopt a policy that allows the use of alcoholic beverages in the secondary schools of the school district for the following purposes:

(a) As ingredients in cooking or food preparation; and

(b) In a culinary arts class taught at a secondary school of the school district or in preparation for a culinary competition or demonstration by the students of a secondary school of the school district.

(3) A policy adopted under this section must:

(a) Specify the circumstances under which the alcoholic beverages may be used;

(b) Require that the alcoholic beverages be used only while under adult supervision;

(c) Require that the alcoholic beverages be securely stored while not in use;

(d) Require that the parent or legal guardian of each student participating in the culinary arts class provide written consent for the student to use alcoholic beverages in the culinary arts class; and

(e) Allow a student to participate in an alternative project if consent is not provided under paragraph (d) of this subsection or if the student chooses not to participate in a project that requires the use of an alcoholic beverage.

(4) A policy adopted under this section may allow for the use of alcoholic beverages:

(a) At specified culinary competitions or demonstrations while requiring board approval for the use of alcoholic beverages in other culinary competitions or demonstrations; and

(b) In specified culinary arts classes while not allowing for the use of alcoholic beverages in other culinary arts classes.

SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS chapter 471.

SECTION 3. (1) Notwithstanding ORS 471.410, an employee of a school district may make alcoholic beverages available to a student in a culinary arts class for use in the culinary arts class if the alcoholic beverages are provided in compliance with a policy adopted under section 1 of this 2011 Act.

(2) Notwithstanding ORS 471.430, a student of a culinary arts class may have personal possession of alcoholic beverages for use in the culinary arts class if the student has possession of the alcoholic beverages in compliance with a policy adopted under section 1 of this 2011 Act.

SECTION 4. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House April 21, 2011

Received by Governor:

Repassed by House June 6, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 1, 2011

.....M.,....., 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State

Enrolled
House Bill 2828

Sponsored by Representative WITT (Pre-session filed.)

CHAPTER

AN ACT

Relating to service as a juror; creating new provisions; amending ORS 10.090 and 659A.885; and repealing ORS 10.992.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 10.

SECTION 2. (1) An employer who employs 10 or more persons commits an unlawful employment practice under ORS chapter 659A if:

(a) The employer ceases to provide health, disability, life or other insurance coverage for an employee during times when the employee serves or is scheduled to serve as a juror; and

(b) The employee elected to have coverage continued while the employee served or was scheduled to serve as a juror, and the employee provided notice of that election to the employer in compliance with the employer's policy for notification.

(2) Notwithstanding ORS 652.610 (3), if, following an election described in subsection (1) of this section, an employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for the employee that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. The total amount deducted for insurance under this subsection may not exceed 10 percent of the employee's gross pay each pay period.

(3) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of providing health, disability, life or other insurance coverage for an employee under subsection (2) of this section, and the employee ceases to work for the employer before the total amount the employer advanced toward the payments is paid, the employer may deduct the remaining amounts from any amounts owed by the employer to the employee or may seek to recover those amounts by any other legal means.

(4) An employee who alleges a violation of this section may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

SECTION 3. ORS 10.090 is amended to read:

10.090. (1) An employer [*shall not discharge or threaten to discharge, intimidate, or coerce*] commits an unlawful employment practice under ORS chapter 659A if the employer discharges, threatens to discharge, intimidates or coerces any employee by reason of the employee's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) This section [shall] may not be construed to alter or affect an employer's policies or agreements with employees concerning employees' wages during times when an employee serves or is scheduled to serve as a juror.

(3) When summoning jurors, the person whose duty it is under the law to summon shall notify each juror of the juror's rights under this section.

[(4) Upon complaint filed by a prospective juror or a juror who has served or upon petition of the district attorney, the circuit court shall have jurisdiction to prevent and restrain violations of this section by issuing appropriate orders, including but not limited to, reinstatement of an employee discharged by reason of service as a juror, with back pay for the time the employee was discharged.]

(4) An employee who alleges a violation of subsection (1) of this section may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

SECTION 4. ORS 659A.885, as amended by section 3, chapter 102, Oregon Laws 2010, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 10.090, 25.337, 25.424, 171.120, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 or section 2, chapter 102, Oregon Laws 2010, or section 2 of this 2011 Act.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or section 2 of this 2011 Act, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

[(6)] (7) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

[(7)] (8) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

[(8)] (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

[(9)] (10) In an action under subsection (1) or [(7)] (8) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

SECTION 5. ORS 10.992 is repealed.

Passed by House April 5, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 10, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....
Kate Brown, Secretary of State

Enrolled
House Bill 2702

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants diversion agreement; creating new provisions; amending ORS 813.220, 813.225 and 813.255; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 813.220 is amended to read:

813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

- (1) Shall consider whether the diversion will be of benefit to the defendant and the community.
- (2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.
- (3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.
- (4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.
- (5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.
- (6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.
- (7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if, after the date the defendant filed the petition, the defendant was charged with or convicted of:
 - (a) An offense of driving while under the influence of intoxicants in violation of:
 - (A) ORS 813.010; or
 - (B) The statutory counterpart to ORS 813.010 in another jurisdiction;
 - (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or
 - (c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(8) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in another jurisdiction after the date the defendant filed the petition.

(9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed the petition.

(10) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

(11) For the purposes of subsection (7) of this section, may not consider a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older as a prior conviction.

(12) May not deny the petition for a driving while under the influence of intoxicants diversion agreement solely on the basis that the defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and has been called or demonstrates that the defendant will be called to active duty, and the military service will impair the defendant's ability to complete the diversion program.

SECTION 2. ORS 813.225 is amended to read:

813.225. [(1) Within 30 days prior to the end of the period of a driving while under the influence of intoxicants diversion agreement described in ORS 813.230, a defendant may apply by motion to the court in which the diversion agreement was entered for an order extending the diversion period.]

(1) A defendant may apply by motion to the court in which a driving while under the influence of intoxicants diversion agreement described in ORS 813.230 was entered for an order extending the diversion period:

(a) Within 30 days prior to the end of the diversion period; or

(b) If the defendant is serving on active duty as a member of the Armed Forces of the United States, or is a member of the reserve components of the Armed Forces of the United States or the National Guard, at any time prior to the end of the diversion period.

(2) Petition forms for an application for an extension under this section shall be available to a defendant at the court.

(3) The form of the petition for an extension under this section shall be determined by the Supreme Court under ORS 1.525. The petition forms made available to a defendant by any city or state court shall conform to the requirements of the Supreme Court.

(4) The court may grant a petition for an extension filed under this section if the court finds that the defendant made a good faith effort to complete the conditions of the diversion agreement and that the defendant can complete the conditions of the diversion agreement within the requested extended diversion period.

(5) An extension granted under this section may be for no more than 180 days from the ending date of the original diversion period or for another time period the court allows under subsection (7) of this section.

(6) Except as provided in subsection (7) of this section, a court may grant a defendant only one extension of a diversion period under this section.

(7) The court may extend the diversion period as necessary to allow the defendant sufficient time to complete the conditions of the diversion agreement if the defendant:

(a) Is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard;

(b) Is on active duty or has received orders that the defendant will be called to active duty; and

(c) Demonstrates that the military service will impair the defendant's ability to complete the conditions of the diversion agreement and no comparable treatment program described in section 5 of this 2011 Act is available.

[(7)] (8) If the court grants the petition for an extension under this section, the following apply:

(a) If the defendant fully complies with the conditions of the diversion agreement within the extended diversion period, the court may dismiss the charge with prejudice under ORS 813.250.

(b) If the court finds that the defendant failed to comply with the diversion agreement within the extended diversion period, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant.

[(8)] (9) If the court denies the petition for an extension under this section, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant.

SECTION 3. ORS 813.255 is amended to read:

813.255. (1) At any time before the court dismisses with prejudice the charge of driving while under the influence of intoxicants, the court on its own motion or on the motion of the district attorney or city attorney may issue an order requiring defendant to appear and show cause why the court should not terminate the diversion agreement. The order to show cause shall state the reasons for the proposed termination and shall set an appearance date.

(2) The order to show cause shall be served on the defendant and on the defendant's attorney, if any. Service may be made by first class mail, postage paid, addressed to the defendant at the mailing address shown on the diversion petition and agreement or at any other address that the defendant provides in writing to the court.

(3) Except as provided in subsection (4) of this section, the court shall terminate the diversion agreement and enter the guilty plea or no contest plea that was filed as part of the petition for the diversion agreement if:

(a) At the hearing on the order to show cause, the court finds by a preponderance of the evidence that any of the reasons for termination described in this section exist; or

(b) The defendant fails to appear at the hearing on the order to show cause.

(4) If a defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and is on active duty, the court shall:

(a) Allow the defendant to appear at the hearing by telephone or other communication device approved by the court, if the defendant's military service permits such an appearance; or

(b) Stay the termination proceeding if the defendant's military service prohibits the defendant's appearance by telephone or other communication device and prohibits the defendant from aiding and assisting the attorney who would appear on the defendant's behalf.

[(4)] (5) If the court terminates the diversion agreement and enters the guilty plea or no contest plea, the court may take into account at time of sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

[(5)] (6) The court shall terminate a diversion agreement under this section for any of the following reasons:

(a) The defendant fails to fulfill the terms of the diversion agreement.

(b) The defendant does not qualify for the diversion agreement under the criteria in ORS 813.215.

SECTION 4. Section 5 of this 2011 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 5. In lieu of completing a treatment program in this state as a part of completing the conditions of a driving while under the influence of intoxicants diversion agree-

ment in this state, the court may allow a defendant who is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and who is serving on active duty to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction.

SECTION 6. Section 5 of this 2011 Act and the amendments to ORS 813.220, 813.225 and 813.255 by sections 1 to 3 of this 2011 Act apply to petitions for driving while under the influence of intoxicants diversion agreements filed before, on or after the effective date of this 2011 Act.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 15, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 17, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State

Enrolled
House Bill 2183

Sponsored by Representatives KRIEGER, SCHAUFLER; Representative ESQUIVEL (Pre-session filed.)

CHAPTER

AN ACT

Relating to reporting of child abuse.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 419B.005 to 419B.050.

SECTION 2. (1) A person commits the offense of making a false report of child abuse if, with the intent to influence a custody, parenting time, visitation or child support decision, the person:

(a) Makes a false report of child abuse to the Department of Human Services or a law enforcement agency, knowing that the report is false; or

(b) With the intent that a public or private official make a report of child abuse to the Department of Human Services or a law enforcement agency, makes a false report of child abuse to the public or private official, knowing that the report is false.

(2) Making a false report of child abuse is a Class A violation.

Passed by House May 3, 2011

Repassed by House June 20, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 16, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....
Kate Brown, Secretary of State

Enrolled
House Bill 2246

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care for Secretary of State Kate Brown)

CHAPTER

AN ACT

Relating to government waste hotlines; creating new provisions; and amending ORS 177.180.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 177.180 is amended to read:

177.180. (1) The Secretary of State shall designate one person employed by the Division of Audits of the Office of the Secretary of State to be responsible for reports of waste, inefficiency or abuse received through the Government Waste Hotline or received by the secretary through any other method. The person designated under this section shall log all reports received.

(2) *[Notwithstanding any other provision of law] Except as provided in subsection (3) or (5) of this section, the identity of any person calling the Government Waste Hotline or otherwise making a report under ORS 177.170 is confidential. A person making a report under ORS 177.170 may waive the confidentiality otherwise granted under this subsection. [A report of waste, inefficiency or abuse received under ORS 177.170 and any resulting investigation are confidential unless the Secretary of State finds that waste, inefficiency or abuse has occurred and reports these findings as provided under subsection (4) of this section. If the Secretary of State finds that waste, inefficiency or abuse has occurred, a report of waste, inefficiency or abuse and any resulting investigation are confidential until the investigation described in subsection (3) of this section is complete.]*

(3) The secretary shall conduct an initial investigation of each report of waste, inefficiency or abuse made under ORS 177.170. Following the initial investigation, the secretary shall determine which reports shall be investigated further and assign the investigation to audit staff qualified to conduct waste, inefficiency and abuse investigations. The secretary may audit any state agency if it appears that officers or employees of the agency, or persons under contract with the agency, are engaging in activities that constitute waste, inefficiency or abuse. Notwithstanding subsection (2) of this section:

(a) If the secretary determines during the investigation that a violation of any provision of ORS chapter 244 may be occurring or may have occurred, the secretary shall notify the Oregon Government Ethics Commission of the potential violation; and

(b) If the secretary determines during the investigation that fraud or other criminal activity may be occurring or may have occurred, the secretary shall notify the appropriate law enforcement agency of the potential fraud or other criminal activity.

(4) **Except as provided in subsection (3) or (5) of this section, an investigation of a report of waste, inefficiency or abuse received under ORS 177.170 is confidential unless the secretary finds that waste, inefficiency or abuse has occurred and reports these determinations as provided under subsection (6) of this section or determines not to investigate following**

an initial investigation under subsection (3) of this section. If the secretary finds that waste, inefficiency or abuse has occurred, the investigation and any determinations made are confidential until the investigation described in subsection (3) of this section is complete. A determination by the secretary not to investigate following an initial investigation constitutes completion of the investigation.

(5) Notwithstanding subsections (2) and (4) of this section, the secretary may convey the contents of a report of waste, inefficiency or abuse made under ORS 177.170 to a public body, as defined in ORS 174.109, unless the person making the report under ORS 177.170 objects to disclosure of the report to the public body.

~~[(4)]~~ (6) Subject to the confidentiality requirements of subsection (2) of this section, upon completion of an investigation under this section:

(a) The secretary shall determine in writing whether officers or employees of a state agency, or persons under contract with a state agency, are engaging in activities that constitute waste, inefficiency or abuse. The written determination may include other information about the nature of the investigation or the secretary's determination.

(b) If the secretary finds that waste, inefficiency or abuse has occurred, upon request of the person who made the report under ORS 177.170, the secretary shall provide the person with a copy of the determination and any other information included by the secretary.

(c) If the secretary determines that officers or employees of another state agency or public body, or persons under contract with a state agency or public body, are involved in activities that constitute waste, inefficiency or abuse, the secretary shall notify the state agency or public body of the determination and deliver a copy of the secretary's findings to the agency or body.

~~[(5)]~~ (7) A written determination prepared by the secretary under this section is a public record. Following the completion of an investigation, or a determination not to investigate beyond an initial investigation, all documents, information or other records relating to the investigation are disclosable public records under ORS 192.410 to 192.505 unless an exemption from disclosure set forth in a provision of law other than this section applies to the records, except that the identity of the person making the report under ORS 177.170 shall remain confidential.

~~[(6)]~~ (8) The secretary shall prepare an annual report and submit it to each regular session of the Legislative Assembly and to appropriate interim committees of the Legislative Assembly. The report shall describe the number, nature and resolution of reports made under ORS 177.170 and shall identify savings resulting from improved efficiencies or the elimination of waste or abuse resulting from reports received and investigations conducted under this section and ORS 177.170. The report shall also list the number and nature of any positive reports received relating to state agencies, state employees or persons under contract with state agencies.

SECTION 2. (1) A local government body or local service district may establish a telephone line that is available to public employees and members of the public for the purpose of reporting waste, inefficiency or abuse by the local government body or local service district, employees of the local government body or local service district, or contractors of the local government body or local service district.

(2) If a local government body or local service district chooses to establish a local government waste hotline under subsection (1) of this section:

(a) The local government body or local service district shall also accept reports of waste, inefficiency or abuse by the local government body or local service district, employees of the local government body or local service district, or contractors of the local government body or local service district by any other method; and

(b) The local government body or local service district shall prepare written or electronic notices that explain the purpose of the local government waste hotline and that prominently display the telephone number for the hotline. The notice shall be posted in local government body or local service district offices.

(3) As used in this section and section 3 of this 2011 Act, "local government body" and "local service district" have the meanings given those terms in ORS 174.116.

SECTION 3. (1) If a local government body or local service district chooses to establish a local government waste hotline under section 2 of this 2011 Act, the local government body or local service district shall establish written policies and procedures for logging all reports of waste, inefficiency or abuse received through the hotline or received through any other method.

(2) Except as provided in subsection (5) or (6) of this section, the identity of any person calling the hotline or otherwise making a report under section 2 of this 2011 Act is confidential. A person making a report under section 2 of this 2011 Act may waive the confidentiality otherwise granted under this subsection.

(3) The local government body or local service district shall conduct an initial investigation of each report of waste, inefficiency or abuse made under section 2 of this 2011 Act, following the written policies and procedures established under subsection (1) of this section. The local government body or local service district may audit any agency of the local government body or local service district if it appears that officers or employees of the agency, or persons under contract with the agency, are engaging in activities that constitute waste, inefficiency or abuse.

(4) An investigation of a report of waste, inefficiency or abuse received under section 2 of this 2011 Act is confidential unless the local government body or local service district finds that waste, inefficiency or abuse has occurred and reports these determinations as provided under subsection (5) or (6) of this section. If the local government body or local service district finds that waste, inefficiency or abuse has occurred, the investigation and any determinations made are confidential until the investigation described in subsection (3) of this section is complete.

(5) Notwithstanding subsections (2) and (4) of this section:

(a) If the local government body or local service district determines during the investigation that a violation of any provision of ORS chapter 244 may be occurring or may have occurred, the local government body or local service district shall notify the Oregon Government Ethics Commission of the potential violation; and

(b) If the local government body or local service district determines during the investigation that fraud or other criminal activity may be occurring or may have occurred, the local government body or local service district shall notify the appropriate law enforcement agency of the potential fraud or other criminal activity.

(6) Subject to the confidentiality requirements of subsections (2) and (4) of this section, upon completion of an investigation under this section:

(a) The local government body or local service district shall determine in writing whether officers or employees of the local government body or local service district, or persons under contract with the local government body or local service district, are engaging in activities that constitute waste, inefficiency or abuse. The written determination may include other information about the nature of the investigation or the local government body's or local service district's determination.

(b) If the local government body or local service district finds that waste, inefficiency or abuse has occurred, upon request of the person who made the report under section 2 of this 2011 Act, the local government body or local service district shall provide the person with a copy of the determination and any other information included by the local government body or local service district.

(c) If the local government body or local service district determines that officers or employees of the local government body or local service district, or persons under contract with the local government body or local service district, are involved in activities that constitute waste, inefficiency or abuse, the local government body or local service district shall notify the governing body of the local government body or local service district of the determi-

nation and deliver a copy of the local government body's or local service district's findings to the governing body.

(7) A written determination prepared under this section is a public record. Following the completion of an investigation, all documents, information or other records relating to the investigation are disclosable public records under ORS 192.410 to 192.505 unless an exemption from disclosure set forth in a provision of law other than this section applies to the records, except that the identity of the person making the report under section 2 of this 2011 Act shall remain confidential.

Passed by House March 17, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 19, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: ORS 192.430, 192.501, 192.502. Oregon's Public Records Law

Bill No./Chapter No. from 2011 Legislative Session: *SB 41/HB 3319*

Effective Date, if other than January 1, 2012: Bills not yet passed

Brief description of the change in law: Senate Bill 41 proposed a number of important changes to Oregon's Public Records Law.

Timeframes for Response

Current Oregon law does not provide any specific time within which public bodies must complete a response to a public records request. Numerous citizens and media representatives have expressed concern that their requests went unanswered for long periods of time, sometimes without any communication from the public body. Thirty-three states have laws that establish a deadline for responding to public records requests. Senate Bill 41 proposes flexible but clear deadlines:

Receipt of a request must be acknowledged within two working days. Response must be completed within ten working days; a public body can self-extend this deadline by ten additional business days, and can obtain a longer extension from the Attorney General (state government) or District Attorney (local government) if needed. If records are requested for litigation or commercial purposes, these timeframes do not apply.

Limits on Hourly Fees

Current law permits fees that are "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." Fee structures under this standard vary greatly, and it is possible to use fees to effectively shield public records from disclosure. In one example, the Oregon Court of Appeals concluded that a public body was unreasonably assigning to professionals work that could be done by lower-paid staff, resulting in excessive fees. Several states around the country permit only copy costs to be charged to requesters. Some permit the cost of staff time to be charged in limited circumstances, and some forbid charging staff time to media or scholarly requesters. Others, like Oregon, permit staff time to be charged. A few states have balanced public access with a public body's business needs by capping the hourly rate chargeable to public records requesters. Senate Bill 41 adopts such a cap for Oregon:

- The hourly charge for staff time may not exceed three times the state minimum wage.

- This cap will not apply to time an attorney spends reviewing records and removing exempt information, or to requests made for litigation or commercial purposes.
- Public bodies are not required to provide documents to requesters with an outstanding balance from previous requests.

Exemptions

When originally enacted in 1973, the public records law included 55 exemptions from its disclosure requirements. In the decades since its enactment, that number has ballooned to over four hundred. Those exemptions are scattered throughout the Oregon Revised Statutes. Moreover, the exemptions do not always give similar treatment to similar information; a record that is subject to disclosure if obtained or created in one context may be exempt from disclosure in a different context. These facts make the law very difficult to administer, and make it difficult for requesters to know what sorts of records they can expect to receive in response to a request. Senate Bill 41 attempted to address this problem:

- Exemptions are reorganized into ten category-based exemptions.
- Redundant or very similar exemptions, such as for business records and for health records, are combined, eliminating over 100 duplicative exemptions.
- A handful of exemptions are substantively amended. For example, records of complaints to the Secretary of State's Waste, Fraud and Abuse Hotline become public following conclusion of any investigation by the Secretary of State. Also, disciplinary records of unrepresented managers are subject to disclosure.
- A public interest test, heavily weighted in favor of nondisclosure, is created for many exemptions that are currently absolute.
- Public bodies and public officials are immunized from liability for good-faith disclosure of records in most circumstances.

Brief statement of why this might be significant to some attorneys:

Oregon's Public Records Law is out-of-date, confusing, and expensive. In a 2007 national study of state open records laws, Oregon received an F. These changes are the product of an eighteen-month process of meeting with Oregonians and representatives of Oregon government, and reviewing public records laws from around the country. Senate Bill 41 attempted to remedy a number of shortcomings in a manner consistent with other states.

Comments, questions, observations:

In addition to the above, Senate Bill 41 requires the Attorney General to make training materials freely available to educate public employees about the law.

Prepared by: Fred Boss

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative/ORCP Update

General Subject Matter: Civil Filing Fees

Bill No.: HB2710 (ORS 161.351, ORS 161.327, ORS 161.332, ORS 161.336, ORS 161.341, ORS 161.346, ORS 161.370, and ORS 161.390)

Effective Date: October 1, 2011

Brief description of the change in law: A tiered system of filing fees replaces the complicated matrix the courts were applying in civil actions. In the case of civil tort or contract actions the following tiered system applies:

| | |
|--|------------------------|
| Amount pled: \$10,000.00 | Filing fee: \$150.00 |
| Amount pled: \$10,000.00+-less than \$50,000.00 | Filing fee: \$240.00 |
| Amount pled: \$50,000.00-less than \$1,000,000.00 | Filing fee: \$505.00 |
| Amount pled: \$1,000,000-less than \$10,000,000.00 | Filing fee: \$755.00 |
| Amount pled: \$10,000,000.00 or more | Filing fee: \$1,005.00 |

In probate and protective proceedings a similar structure applies when filing a petition for appointment of a personal representative of an annual or final accounting:

| | |
|---|-----------------------|
| Value of estate: less than \$50,000.00 | Filing fee: \$240.00 |
| Value of estate: \$50,000.00-less than \$1,000,000.00 | Filing fee: \$505.00 |
| Value of estate: \$1,000,000.00-less than \$10,000,000.00 | Filing fee \$755.00 |
| Value of estate: \$10,000,000.00 or more | Filing fee \$1,055.00 |

There is an aberration for annual or final accountings for estates worth less than \$50,000.00, and then the filing fee is \$30.00

There is a filing fee for domestic relations cases of \$260.00 that applies in dissolutions; annulments; separations; and proceedings under ORS 108.110, ORS 109.100, ORS 109.103, and ORS 109.124-ORS 109.230.

The filing fee for guardianships, changes of name, and changes of gender is \$105.00.

There is a "standard filing fee" of \$240.00 for any Complaint or Answer that is filed in a case claiming equitable remedies, an interpleader, an appeal of a conviction or Municipal Court violation, and adoption, a trust issue, a proceeding for judicial review or agency order, a declaratory judgment, or any other civil action for which a fee is not already set.

In addition, Small Claims Court can handle cases up to \$10,000.00 in value (no longer just \$7,500.00).

The fees for filing motions have also changed, with a \$100.00 fee for a summary judgment motion, an ORCP 64 motion for new trial, an ORCP 63 motion for judgment notwithstanding the

verdict, a preliminary injunction, a motion for contempt of court remedies (not domestic relations), and a motion for relief from judgment. A Motion for expedited parenting time under ORS 107.434 and a domestic relation motion for contempt of court remedies cost \$50.00. A \$150.00 fee applies to a motion for supplemental judgment (not under ORCP 68, 69, or 71) and concurrent motions for supplemental judgment and contempt of court.

The caption must set forth the law that sets the filing fee or, if it is a tort or contract action, it must set forth the amount in controversy in the caption.

Brief statement of why this might be significant to some attorneys: Under the old system, depending on the number of parties included in litigation and the amount pled, it could cost thousands of dollars to file a lawsuit or an answer, which made access to justice difficult for many and created a system where lawyers wanted to leave out parties to avoid additional costs.

Comments, questions, observations: Under the new system there is an incentive for filing a case that falls within the amounts required to attend mandatory arbitration. This may increase the number of cases pled for less than \$50,000.00 and going to arbitration, thereby

General Subject Matter: Summons

Bill No.: HB2667 (ORCP 7)

Effective Date: June 17, 2011

Brief description of the change in law: The language required in Summons was revised to include the following contact information for the Oregon State Bar Lawyer Referral Service. "If you need help in finding an attorney, you may [call] contact the Oregon State Bar's Lawyer Referral Service [at] online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636."

Brief statement of why this might be significant to some attorneys: In the past, the website was not required on Summons, now lawyers need to ensure their forms are updated to include that information.

Comments, questions, observations: While it is important to be aware of the change, since ORCP 7 states a Summons "may" have language substantially as set forth therein it is questionable what the Court would do if the summons did not contain all the language set forth above.

General Subject Matter: Punitive Damages

Bill No.: HB 3525 (ORS 31.735)

Effective Date=: August 2, 2011

Brief description of the change in law: If a party prevails on a punitive damage award, the prevailing party is only entitled to keep 30% of the award (rather than the 40% the prevailing party used to be entitled to keep). The change earmarks the additional 10% for a "Courthouse Capital Improvement Trust Fund".

Brief statement of why this might be significant to some attorneys: The diminishing return on punitive damages is highly relevant when counseling clients as to whether to settle. This further reduction in the amounts prevailing parties are entitled to keep increases the importance of that analysis.

Comments, questions, observations: With punitive damages now based on the amounts of the awards, rather than the amount necessary to punish the offender, it seems lawyers will be able to use formulas with their clients to determine the best outcome for the client, which likely will not align with the best outcome for society, the state, or the Court.

General Subject Matter: Offer to Allow Judgment

Relevant Laws: ORCP 54 & ORCP 9

Effective Date: January 1, 2012

Brief description of the change in law: All Offers to Allow Judgment under ORCP 54E must be served on the opposing party at least 14 days before trial (rather than ten) and the opposing party has seven days to respond (rather than three). If the Offer is denied, the Offer should not be filed with the Court until the case has been adjudicated.

Brief statement of why this might be significant to some attorneys: If a lawyer doesn't file the ORCP 54E Offer within 14 days before trial it will be moot. In addition, the law has changed and now the denied Offer does not need to be filed until the case is adjudicated.

Comments, questions, observations: This has eliminated the advantage some lawyers took of late Friday night offers that left only one business day to respond.

General Subject Matter: Discovery of Electronically Stored Information

Relevant Laws: ORCP 43

Effective Date: January 1, 2012

Brief description of the change in law: Electronically stored information may be included in a request for production and specify the manner in which said information is to be provided. If the requestor does not specify the manner in which to provide the information, the responding party must produce the information in the "form in which it is ordinarily maintained on in a reasonably useful form.

Brief statement of why this might be significant to some attorneys: Now all information stored electronically is discoverable in litigation, no matter which Court.

Comments, questions, observations: This is not a change for many lawyers, but it does open up the field of metadata and whether electronically stored information will eventually include the metadata too.

General Subject Matter: Judgments by Default

Relevant Laws: ORCP 69

Effective Date: January 1, 2012

Brief description of the change in law: A party applying for a default must first file a Motion for Order of Default with an Affidavit or Declaration that shows the following: the party to be defaulted was served with Summons; the party to be defaulted failed to appear; whether the party to be defaulted provided written notice of intent to appear was provided; whether written notice of intent to file a default was filed and served on the party to be defaulted 10 days prior to filing the motion; and whether the party to be defaulted is a minor, incapacitated, a protected person, or in the military.

Then, to get a Judgment of Default, the party must show the following: it was granted an Order of Default (or it moved for said order simultaneously); the relief sought; and whether costs, disbursements, or attorney fees are allowed.

Brief statement of why this might be significant to some attorneys: If a Judgment of Default is filed without a Motion for an Order of Default and an Order of Default, that Judgment will not be entered.

Comments, questions, observations: This may add a little more time for the party to be defaulted to respond, but that is questionable since both documents can be filed at the same time.

Reference materials:

1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).
2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).
3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).
4. Oregon Courts, Oregon Judicial Department website: http://courts.oregon.gov/OJD/docs/courts/circuit/Fee_Schedule_Public.pdf, "Courts/Circuit Courts/Notice of State Filing Fee Changes Effective October 1, 2011"
5. Oregon Council on Court Procedures website: http://legacy.lclark.edu/~ccp/Content/Promulgations/PROMULGATED_AMENDMENTS_TO_ORCP_2010_w_leg_changes_to_orcp_7.pdf, Most Recent ORCP Amendments, Amendments to Oregon Rules of Civil Procedure Effective January 1, 2012.

Prepared by: Keri Trask Lazarus

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: LAND USE ~ Measure 49 amendment, Digital Outdoor Advertising, and Grant County Guest Ranch.

Bill No./Chapter No. from 2011 Legislative Session:

HB 3620, Ch. 612, amends Measure 49 ~ SB 639, Ch. 562, Outdoor Advertising ~ HB 3465, ch. 686, Grant County Guest Ranch.

Effective Date, if other than January 1, 2012:

HB 3620 effective January 1, 2012 ~ SB 639 effective September 29, 2011 ~ HB 3465 effective August 2, 2011.

Brief description of the change in law:

HB 3620 ~ For the determination of a claimant's acquisition date under ORS 195.328, previously if a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date was the date the claimant reacquired ownership of the property. HB 3620 now provides a window of 10 days for a claimant to reacquire the property and retain the original acquisition date (essentially ignoring the limited time duration conveyance).

SB 639 ~ Amending ORS 377.710 to define "digital billboard" and to set parameters/restrictions on outdoor advertising through the use of digital billboards.

HB 3465 ~ Provides additional development/expansion rights to an existing guest ranch in Grant County (and only to said existing guest ranch in Grant County).

For more information:

- 1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
- 2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).**
- 3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**

Prepared by: ~ *Andrew U. Shull*

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: Energy and Environmental Law--Wolves.

Bill No./Chapter No. from 2011 Legislative Session: House Bill 3560 (chapter 690, Oregon Laws 2011).

Effective Date, if other than January 1, 2012: August 2, 2011

Brief description of the change in law: Directs State Department of Agriculture to establish and implement wolf depredation compensation and financial assistance grant program to compensate persons who suffer loss or injury to livestock or working dogs due to wolf depredation. Provides financial assistance to persons who implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock.

Creates Wolf Management Compensation and Proactive Trust Fund. Continuously appropriates fund moneys to department for purposes of establishing and implementing program. Appropriates \$100,000 from General Fund to department to implement program.

Brief statement of why this might be significant to some attorneys: Relevant for attorneys whose clients own livestock or working dogs. Bill introduced at request of Oregon Cattlemen's Association. Passed House 60-0, Passed Senate 27-0 (3 excused).

Comments, questions, observations: House Bill 3560 was one of five bills related to wolves introduced in the 2011 Regular Session.

For more information:

- 1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
- 2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).**
- 3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**

Prepared by: Doug Tookey

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: Energy and Environmental Law--Beverage containers.

Bill No./Chapter No. from 2011 Legislative Session: House Bill 3145 (chapter 277, Oregon Laws 2011)

Effective Date, if other than January 1, 2012:

Brief description of the change in law: Changes definition of "beverage" and "beverage container." Specifies application of laws regulating redemption of beverage containers. Expands application of such laws one year after date on which Oregon Liquor Control Commission determines that at least 60 percent of beverage containers are returned or on January 1, 2018, whichever comes first.

Increases refund value for beverage containers by specified date following determination by commission that, in each of two previous calendar years, less than 80 percent of total number of beverage containers sold in Oregon were returned.

Requires commission to create one pilot project for establishment of beverage container redemption center.

Brief statement of why this might be significant to some attorneys: Relevant for attorneys whose clients engage in the sale of beverages in beverage containers. Passed House 47-12 (1 excused), Passed Senate 19-11.

Comments, questions, observations: Provisions of ORS 459A.700 to 459A.740 were last amended during the 2007 Regular Session (see chapter 303, Oregon Laws 2007).

For more information:

1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).
2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).
3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).

Prepared by: Doug Tookey

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: ~ *Business Law: Changes to director indemnification*

Bill No./Chapter No. from 2011 Legislative Session: ~ *HB 2681*

Effective Date, if other than January 1, 2012: ~ *June 2, 2011*

Brief description of the change in law: ~ *Under ORS 60.391, a corporation may indemnify a director named in a legal proceeding for expenses incurred by the director in connection with the legal proceeding. The bill now prevents the corporation from amending its bylaws or articles to eliminate or alter the director's rights to indemnification after the director's conduct which led to the proceeding has occurred. However, a corporation may eliminate or alter the indemnification if the corporation's bylaws or articles provide for such alteration or limitation at the time the director's conduct occurs.*

Brief statement of why this might be significant to some attorneys: ~ *An attorney's articles of incorporation or bylaws forms should contain a drafting option allowing the corporation the right to eliminate or alter indemnification to a director for his or her costs relating to legal proceeding in which the director is named a party.*

Comments, questions, observations: ~ *Some advance planning by providing for the Board's discretion to eliminate or alter a director's right to indemnification will give the Board flexibility preventing the board from having to pay a director's legal fees and costs should the director be named in a lawsuit for conduct arising from his or her position as a director.*

For more information:

- 1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
- 2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).**
- 3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**
- 4. See also: *Schoon v. Troy Corp.*, 948 A.2d 1157 (2008).**

Prepared by: ~ *Bill Weidner*

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: ~ *Business Law*

Bill No./Chapter No. from 2011 Legislative Session: ~ *Senate Bill 292, Adds a new section to ORS 646.605 to 646.652.*

Effective Date, January 1, 2012:

Brief description of the change in law:

- SB 292 attempts to protect consumers in scenarios where they have been offered a risk free trial, membership, or product and as a result they may incur hidden or automatic charges, their account information shared with a third party, or difficulty getting out of the agreement.
- The bill creates new disclosure and consent requirements for free offers to consumers that result in a financial obligation by the consumer or the consumer providing billing information.
- The bill requires that before a consumer enters into an agreement, the seller must provide the consumer with clear and conspicuous information regarding the terms of the offer.
- The bill outlines various information that must be supplied to consumers, including the cost to the consumer, whether they must engage in affirmative acts to reject the offer, whether by accepting the offer the consumer will be obligated to continue accepting goods, and a toll free telephone number they can call if they wish to cancel.
- To impose a financial obligation on the consumer, the seller must comply with the disclosure requirements mentioned above and the consumer must affirmatively consent, the seller must also obtain the consumer's billing information directly from the consumer or the consumer must consent to their billing information being provided to a third party.
- Violation of the act results in penalties under Oregon's Unlawful Trade Practices Act

Brief statement of why this might be significant to some attorneys:

- Relevance to DOJ attorneys

-Creates explicit new requirements for telemarketers or persons who offer these types of free offers.

Comments, questions, observations:

-Bill seems to leave open the question of whether affirmative consent is verbal or written, language of the bill would seem to suggest a verbal assent would suffice.

-Trivia: Bill was carried by Rep. Suzanne Bonamici who is running for the Congressional Seat vacated by David Wu

For more information:

1. **Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
2. **Oregon State Legislature website: _____, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).**
3. **Oregon State Legislature website: _____, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**
4. ~ [Other potentially relevant materials, such as a case cite, historical materials, etc.]

Prepared by: ~ *Presenter's name*

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: Unpaid Leave and Reasonable Accommodation for Harassment

Bill No./Chapter No. from 2011 Legislative Session: ORS 659A.270, 659A.272, 659A.280; 2011 OR LAWS CH 687 (HB 3482)

Effective Date, if other than January 1, 2012: August 2, 2011

Brief description of the change in law: This bill adds "victim of harassment" to the list of things for which employees are entitled to unpaid leave and reasonable accommodation. Previously, this statute included stalking, sexual assault, and domestic violence.

Brief statement of why this might be significant to some attorneys: This amendment entitles an employee who is a victim of harassment (as defined in ORS 166.065) to take a reasonable amount of unpaid leave to deal with the harassment. It also requires the employer to make reasonable safety accommodations (very broadly defined) to the workplace in order to protect an employee from "actual or threatened" harassment, unless the accommodation would be an "undue hardship" as defined in ORS 659A.121.

Comments, questions, observations: HB 3482 provides a good opportunity for employers, and their attorneys, to review the many obligations placed on employers to provide unpaid leave and accommodations to their employees. Employers especially need to review their policies and training to ensure compliance with these statutes.

While the Oregon Family Medical Leave Act and the Oregon Military Family Leave Act apply only to employers with 25 or more employees, the Victims of Domestic Violence, Sexual Assault, Stalking, and Harassment Act applies to employers with as few as 6 employees. Although the other acts have specific notice requirements, only "reasonable" notice is required in cases of harassment. The only limit on harassment leave is that the amount be "reasonable."

In addition, the employee may request reasonable safety accommodations and the employer must provide these unless doing so would be an "undue hardship." This would seem to provide an opportunity for significant liability on the part of the employer should the reasonable accommodation be denied or ineffective. This requirement for accommodation could easily be more significant and more costly for employers than the unpaid leave.

The act allows employers to request certification or verification that the employee is entitled to the unpaid leave. If the employer chooses to require such certification it would be advisable to have a written policy in place so that all employees will be treated equally without requiring certification from some, but not from others. The same logic would apply to requests for reasonable safety accommodations. It seems prudent for an employer to have a policy asking for a written request for an accommodation. The statute is silent on how such a request might be made. If the employer does not have a written policy, I can imagine a situation where an employee, or his heirs, claimed that an oral request was made and denied.

For more information:

1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).
2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).
3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).
4. ~ *[Other potentially relevant materials, such as a case cite, historical materials, etc.]*

Prepared by: ~ *Alvin D. Files*

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: Unpaid Leave and Reasonable Accommodation for Harassment

Bill No./Chapter No. from 2011 Legislative Session: Amends ORS 10.090 and 659A.885; repeals 10.992; 2011 OR LAWS CH 118 (HB 2828)

Effective Date: January 1, 2012

Brief description of the change in law: An employer who employs 10 or more persons commits an unlawful employment practice under ORS chapter 659A if the employer ceases to provide health, disability, life or other insurance coverage for an employee during times when the employee serves or is scheduled to serve as a juror. The employer must continue paying the employer portion of insurance premiums. It implies that the employer should advance the employee portion of the insurance cost, if the employee fails to do so. The repealed section (ORS 10.992) was a penalty provision which is superseded by this bill's unlawful employment practice penalties.

Brief statement of why this might be significant to some attorneys: Employers may need to amend their policies on jury duty. The employee is required to notify the employer "in compliance with the employer's policy for notification." This gives employers an opportunity to require written notice that the employee will be away from work for jury duty. Covered employers will be required to maintain insurance for employees serving on juries. Payroll policies may need to be reviewed to insure that funds are provided to pay the employee portion of the insurance coverage since the employee may not be due any wages to fund the employee portion of the insurance cost.

Comments, questions, observations: While jury service benefits all of society, the burden falls most heavily on the persons who are called to serve, on their families and on their employers.

For more information:

1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).
2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).
3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).

Prepared by: ~ Alvin D. Files

Comparison of Various Oregon Statutes Pertaining to Unpaid Leave for Employees

Statutory Reference: ORS 659A

| Name of Statute Providing Unpaid Leave | Statutory Sections | Maximum Leave | Employer Definition | Employee Definition | Notice to Employer |
|---|--------------------|--|---|---|---|
| Military Family Leave Act | 090-099 | 14 days per deployment | Employs 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which leave is taken, or the year immediately preceding the year in which the leave is to be taken | An individual who performs services for compensation for an employer for an average of at least 20 hours per week. | Within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment |
| Family Medical Leave Act | 150-186 | 12 weeks per each one year period, can stack an additional 12 weeks for birth or adoption of child | Employs 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which leave is taken, or the year immediately preceding the year in which the leave is to be taken | Employee who worked an average of at least 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence (but see exceptions in 156) | 30 days unless emergency, if employer requires |
| Crime Victim Leave | 190-198 | Reasonable (may limit for "undue" hardship, see 192) | Employs 6 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave or in the year immediately preceding the year | 25 hours per week for at least 180 days | Reasonable |
| Victims of Domestic Violence, Sexual Assault, or Stalking (+Harassment) | 270-285 | Reasonable (may limit for "undue" hardship, see 275) | Employs 6 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave or in the year immediately preceding the year | 25 hours per week for at least 180 days | Reasonable |

Willamette Valley Inns Of Court

Thursday, January 12, 2012

Legislative Update

General Subject Matter: ~ *Business / Consumer Law*

Bill No./Chapter No. from 2011 Legislative Session: Senate Bill 292, adding to and amending ORS 646.605 to 646.652

Effective Date, January 1, 2012

Brief description of the change in law: The bill will protect consumers in scenarios where they have been offered a free trial or membership and as a result of accepting the offer they will incur a financial obligation. The bill also protects consumers from having their billing information disclosed to third parties in relation to these offers.

There are various disclosures a person must make to a consumer before they can accept the offer. Examples of the disclosures include informing consumers a financial obligation will result if cancelation does not occur in a specific time period and what steps the consumer must engage in to reject the offer. If a consumer's billing information will be shared with third parties, the person must disclose this as well and the billing information must be obtained from the consumer. Finally, the bill requires consumers to give affirmative consent to the terms of the offer before they can accept it.

Brief statement of why this might be significant to some attorneys: The law creates new disclosure and acceptance requirements for free offers. Persons offering free trials or memberships must take much more proactive efforts to inform consumers of the terms of the offer and get the consumer's affirmative consent before the consumer can be enrolled in the free offer. Violation of these requirements results in penalties under Oregon's Unlawful Trade Practices Act.

- 1. Oregon State Bar Association: 2011 Oregon Legislation Highlights (Bar Books).**
- 2. Oregon State Legislature website: http://www.leg.state.or.us/bills_laws/, 2011 Regular Session, Advance Sheets of Oregon Laws 2011 (organized by chapter number).**
- 3. Oregon State Legislature website: <http://www.leg.state.or.us/comm/>, "Staff Measure Summaries/Fiscal & Revenue Impact Statements" (searchable by bill number).**

Prepared by: Anthony Geltosky