

2016 Oregon Legislative Session

The 2016 Oregon Legislature passed a small number of bills that may be of interest to practitioners. The descriptions of the bills are taken from the Senate and House Staff Measure Summaries and are not intended as complete analyses of the bills. The PLF has not independently researched or verified the accuracy of the descriptions. Attorneys should use the list as a starting point for their research. Bills are effective January 1, 2017, unless otherwise noted.

To view the full text of a bill or a measure's history, go to www.oregonlegislature.gov and click on 2016 Regular Session. You can search by specific measure number.

Senate Bills

VETERANS: SB 1524 – Persons with medical marijuana cards are currently required to see a physician annually to maintain their eligibility. This bill exempts eligible veterans from the annual medical examination requirement applicable to medical marijuana cardholders who are assigned a total and permanent disability rating due to a service-connected disability (unable to secure or follow substantially gainful occupation) or determined to be 100 percent permanently disabled as a result of injury or illness incurred or aggravated during active military service. (Effective date: January 1, 2017.)

LABOR AND EMPLOYMENT: SB 1532 – This bill establishes a two-tier, state-mandated minimum wage rate. It raises the base minimum wage to \$13.50 per hour by July 1, 2023. It establishes a higher minimum wage (\$14.75 by 2023) for employees working within the urban growth boundary of the Portland metropolitan area and a lower minimum wage (\$12.50 by 2023) for those working in 18 nonurban counties. It adjusts the base minimum wage annually for inflation starting July 1, 2023. It sets the Portland metropolitan area minimum wage after June 30, 2023, to be no less than \$1.25 more than base minimum wage, and sets the nonurban minimum wage after June 30, 2023, to be no less than \$1.00 less than base minimum wage. (Effective date: March 2, 2016.)

ESTATE PLANNING: SB 1554 – Oregon laws do not specifically address access to digital data after the death of a user, leaving providers of digital services and estates of deceased users grappling with access to digital communications or documents. This bill is the Revised Uniform Fiduciary Access to Digital Assets Act. It allows a fiduciary, such as a personal representative, trustee, or conservator, to access to [sic] certain digital content of a user while limiting undue access. The measure allows companies that hold electronic user data to offer users a choice on what they would like done with the data should the user become inactive or a request for the communications is received. This user choice trumps all other indicators or documents, such as instructions in a will. The measure lays out what a fiduciary must provide to a custodian in cases in which a user consents to disclosure or if a court orders disclosure. It also specifies the procedure for a fiduciary to request content of communications in cases in which a user has not made a choice or has chosen not disclose. The measure allows the fiduciary to receive a catalogue of communications that the user had made, including to/from, email addresses, and date and time. (Effective January 1, 2017.)

CRIMINAL LAW: SB 1567 – This bill makes impersonation a Class A misdemeanor. Impersonation is when a person intentionally poses as an individual without permission and with the intent to injure the individual by communicating to a third party with the intent to deceive the third party that the person is the individual. This impersonation is currently not prohibited in the criminal code of Oregon. Identity

theft does not prohibit this criminal conduct as it only applies to acts that defraud or deceive to gain an unwarranted advantage. This conduct is also not prohibited by Computer Crime as that statute contains financial elements. The bill also creates a statutory private cause of action for victims harmed by this impersonation. (Effective date: January 1, 2017.)

LABOR AND EMPLOYMENT: SB 1587 – This bill specifies the information that must be included on an itemized paystub. It requires employers to maintain time and pay records of employees for not less than the period required by the Fair Labor Standards Act and allows the employee to inspect and receive a certified copy of time and pay records within 45 days of request. (Signed by the governor: April 4, 2016. Declaring an emergency and effective on passage.)

CRIMINAL LAW: SB 1600 – This bill allows an unlimited statute of limitations for first-degree sex crimes when there is additional corroborating evidence of the crime. This corroborating evidence can be through non-DNA physical evidence, such as a videotape or recording; a confession by the defendant to that particular crime; statements made by the victim that are made close in time to the alleged crime; or when multiple victims come forward alleging crimes similar enough to be on the same charging instrument. The amendments apply to offenses committed before, on, or after the effective date, but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date. (Effective date: January 1, 2017.)

House Bills

CORPORATIONS: HB 4038 – Voting requirements for both shareholders and members of cooperative corporations are set forth in ORS Chapter 62. This bill allows shareholders of cooperatives to vote by electronic means, provided that the method of voting complies with Oregon's Uniform Electronic Transactions Act. The bill also clarifies the existing statutory ability of members to vote by electronic means, bylaws permitting, if the member consents to receiving an electronic ballot. The amendments apply to shareholder voting and member voting that occurs on or after the effective date. (Effective date: February 29, 2016.)

CORPORATIONS: HB 4058 – Disclosures required for securities transactions are set forth in ORS chapter 59 and 15 U.S.C. 78m(d). Disclosure requirements provide boards of directors with information about the identity of individuals (or corporations) purchasing blocks of publicly traded stock. This bill amends ORS 60.237 to permit corporations with shares that are registered under Oregon or federal securities law to reject specified actions if a shareholder has not complied with public disclosure requirements of Oregon or federal securities law. These actions include shareholder votes, consent, waivers, and proxy authorizations. The bill also provides that a corporation must reject actions of all shareholders not in compliance with disclosure requirements and accept actions once shareholders become compliant. (Signed by the governor: March 14, 2016. Declaring an emergency and effective on passage.)

LABOR AND EMPLOYMENT: HB 4067 – This bill expands ORS 659A.199, Oregon's whistleblower statute, to include an affirmative defense to criminal or civil charges brought about as a result of an employee's good faith and objectively reasonable disclosure of information that the employee believes shows a violation of state, federal, or local law, regulation, or rule, so long as disclosure is to a state regulatory agency, law enforcement, a manager at the same employer, or a licensed attorney in furtherance of obtaining legal advice on the alleged violation. It requires the information disclosed to be accessed lawfully for protections. It also requires allegations against coworkers or supervisors to be related to the course and scope of employment. The bill prohibits an attorney who discloses information relating to

the representation of a client from using the defense and applies attorney rules of professional conduct to the disclosures. It also clarifies that the attorney-client privilege extends to the information disclosed, if applicable. It requires disclosure of certain protected information, such as the federal Health Insurance Portability and Accountability Act (HIPAA) protected information, only in accordance with federal law. (Signed by the governor: March 29, 2016.)

JUVENILE LAW: HB 4074 – House Bill 2320 (2015) provided a hearing on the issue of reporting as a sex offender for juveniles found to be within the jurisdiction of the juvenile court. It also amended ORS 163A.025, which governs the reporting requirements, to apply to juveniles who have been ordered to report following this hearing. An unforeseen consequence of this latter provision is that it negated the registration requirements for juveniles adjudicated prior to August 12, 2015, the effective date of HB 2320. This bill (HB 4074 (2016)) corrects this error and also addresses procedural issues related to these hearings. Additionally, the bill provides that persons or entities must file a motion requesting inspection or copying of the juvenile court file, including an affidavit explaining why inspection or copying is needed, the relevancy to the juvenile court proceeding, and how the inspection or copying balances the following interests: the child or family members affected by inspection, other parties or victims, the person or entity requesting the records, and the public. Several sections of the bill become operative September 30, 2016. (Signed by the governor: April 4, 2016. Declaring an emergency and effective on passage.)

FINANCIAL INSTITUTIONS: HB 4094 – Currently, Oregon criminal laws treat financial institutions as conspirators by association with their marijuana business clients. Moreover, state-chartered financial institutions maintain federal depository insurance and need to be in compliance with federal requirements and criminal concerns. This bill is intended to provide financing and other financial services for Oregon's legal marijuana businesses by exempting the financial institutions providing such services from Oregon criminal laws. It requires the OLCC, Oregon Health Authority, and Department of Revenue to provide information on the license and permit holders in the marijuana programs they regulate when requested by a financial institution so that the financial institutions can comply with federal guidelines disseminating, releasing, or make this information available to others. (Signed by the governor: April 4, 2016. Declaring an emergency and effective on passage.)

ESTATE PLANNING: HB 4102 – Oregon's probate statutes have not undergone a thorough review since adoption in 1969. This bill encompasses the work done by the Probate Modernization Work Group and modernizes Chapter 111, which largely deals with general provisions related to intestacy, wills, and estate administration. It also corrects some technical errors. (Signed by the governor: March 14, 2016. Declaring an emergency and effective on passage.)

CONSTRUCTION: HB 4121 – The Construction Contractors Board has always operated a dispute resolution services program. Prior to 2011, the contested case process involved hearings through the Office of Administrative Hearings (OAH). Senate Bill 939 (2011) simplified the process to require customers filing complaints against residential contractors to obtain a court judgment if mediation failed instead of holding an administrative hearing. After receiving a court judgment, the customer submits the judgment to the Board and the contractor or contractor's surety is responsible to make payment. This bill makes permanent the new process that would otherwise sunset July 1, 2017. (Signed by the governor: April 4, 2016.)

DOMESTIC RELATIONS: HB 4127 – This bill establishes state policy that privileges, immunities, rights, benefits, and responsibilities governed by law apply equally to married persons of same or opposite sex.

It updates statutes pertaining to marriage with gender neutral language. (Signed by the governor: March 14, 2016. Declaring an emergency and effective on passage.)

CRIMINAL/IMMIGRATION LAW: HB 4128 – This bill does several things to prevent “notario” fraud. First, it expands the crime of obstructing governmental or judicial administration to include acting as notary public or immigration consultant without authorization and with intent to defraud. It also expands the crime of theft by extortion to include compelling or inducing a person to refrain from reporting unlawful conduct to law enforcement. In addition, it adds the reporting of immigration status as a means of inducing or compelling for extortion. It also imposes additional restrictions and requirements for becoming a notary public; namely, a person is not qualified to be a notary public if they have been convicted of impersonating a notary public, obstructing governmental or judicial administration, or of engaging in the unlawful practice of law. A person is also not qualified to be a notary public if a court has found that the person practiced law without a license, engaged in an unlawful trade practice or has entered into an assurance of voluntary compliance for comporting to be an immigration consultant without being a member of the Oregon State Bar. The amendments apply to applications for commission as a notary public made on or after the effective date. (Signed by the governor: March 14, 2016.)

LANDLORD-TENANT: HB 4143 – Under current Oregon law, rent may not be increased without a 30-day written notice in the case of a month-to-month tenancy or a seven-day written notice in the case of a week-to-week tenancy. This bill requires landlords to give at least 90 days’ notice prior to terminating tenancy of residents in occupancy more than one year. It prohibits landlords from increasing rent during the first year of occupancy, and it requires at least 90 days’ notice prior to an increase in rent after the first year of occupancy for month-to-month tenants. It requires at least seven days’ notice prior to rent increases in the case of week-to-week tenants. It specifies the content of notice of rent increases. It specifies certain tenancies for which tenancy can be terminated without cause within 30 days during the first year of occupancy, or with 60 days’ notice after the first year of occupancy. It exempts the landlord from the 90-day notice requirement prior to termination of a month-to-month tenant if the landlord dies, suffers disability, or becomes incapacitated. The bill also preempts local government ordinance, provision or regulation that exceeds rent increase or termination notice required by state. (Signed by the governor: March 15, 2016. Declaring an emergency and effective on passage.)