

## 2009 LEGISLATION ALERTS

### BUSINESS LAW

#### ANTITRUST / TRADE REGULATION

##### CUSTOMER AUTHORIZATION OF VEHICLE REPAIRS ORS 646.608

2009 OR LAWS CH 133 (HB 2268)

HB 2268 imposes specific requirements for approved estimates before proceeding with motor vehicle repairs, including procedures for approval of a modified estimate if the work changes. Failure to comply is an unfair trade practice under ORS 646.608.

*Effective date: January 1, 2010*

*The bill applies to estimates a vehicle repair shop prepares or work it performs on a motor vehicle on or after the effective date.*

##### AMENDMENTS TO ANTITRUST LAWS ORS 646.780

2009 OR LAWS CH 304 (HB 2584)

HB 2584 provides that certain antitrust actions that could previously only be brought by the state because the plaintiff only dealt with the defendant indirectly may now be brought by private party plaintiffs. The state will be a preferred plaintiff in certain class actions, and a plaintiff filing an antitrust class action under ORS 646.780 will be required to notify the attorney general.

*Effective date: January 1, 2010*

*The amendments apply to actions commenced on or after the effective date.*

#### DISABLED VETERANS AND

#### SERVICEMEMBERS

##### ORS 646.605, 646.608

2009 OR LAWS CH 215 (HB 3020)

HB 3020 makes it an “unconscionable tactic” under ORS 646.605 to knowingly take advantage of a disabled veteran, a disabled servicemember, an active duty servicemember, or a spouse of any of them. The bill also provides for state law enforcement (as unfair trade practices under ORS 646.608) of the consumer protection provisions of the Servicemembers Civil Relief Act, 50 USC Appendix 501 et seq. as in effect on January 1, 2010.

*Effective date: January 1, 2010*

*The amendments apply to actions taken before, on, or after the effective date.*

#### ATTORNEYS FEES / UNFAIR TRADE PRACTICES

##### ORS 646.638

2009 OR LAWS CH 327 (HB 3111)

HB 3111 amends ORS 646.638(3) to limit the circumstances in which a court may award attorney’s fees to a prevailing defendant in actions to recover damages for alleged practices declared unlawful under ORS 646.608. Under the bill, the court may award attorney fees only if it finds there was no objectively reasonable basis for bringing the action or asserting the ground for appeal.

*Effective date: January 1, 2010*

December 2009

Issue 109

#### CONTENTS

Antitrust / Trade  
Regulation  
Page 1

Business Organizations  
Page 2

Business Regulation  
Page 3

Trademarks  
Page 3

Uniform Commerical  
Code  
Page 3

#### DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

## BUSINESS ORGANIZATIONS

### REINSTATEMENT OF NONPROFIT CORPORATIONS ORS 65.654

2009 OR LAWS CH 339 (HB 2086)

HB 2086 allows nonprofit corporations that have been administratively dissolved for more than five years to request a waiver of the five-year limitation on reinstatement. The Secretary of State is preparing rules to establish standards for waivers. If a waiver is granted, reinstatement, once completed, is retroactive to the date of administrative dissolution. More nonprofits have identified this problem because of new tax return filing requirements for small nonprofits that were previously not required to file returns.

**Practice Tip:** A better solution is to avoid administrative dissolution in the first place by careful procedures, so that even volunteer officers can keep the nonprofit corporation current with the Secretary of State. If renewal notices are sent to the lawyer's office (which is not recommended unless the lawyer will have frequent contact with the client), the lawyer should include renewal dates in a tickler system and establish procedures for contacting the client when renewal is due.

*Effective date: June 18, 2009*

*The amendments apply to nonprofit corporations administratively dissolved **before**, on, or after the effective date.*

### MERGER OF PARENT AND SUBSIDIARY ("SHORT FORM" MERGERS) ORS 60.491, 60.554

2009 OR LAWS CH 355 (HB 2304)

Previously, minority shareholders in a subsidiary corporation that was owned 90 percent or more by a parent corporation were given 30 days' advance notice of a merger of the parent corporation and the subsidiary (a "short form" merger). Now, under HB 2304, notice must be given no later than 10 days after the merger is effective. If the subsidiary is the surviving corporation (i.e., the parent is merged into the subsidiary, instead of vice versa), the parent must also give notice to each shareholder of the parent, as well as to each shareholder of the subsidiary.

*Effective date: January 1, 2010*

*The amendments apply to mergers consummated under the provisions of ORS 60.491 on or after the effective date.*

## VOTING BY VOTING GROUPS ORS 60.441

2009 OR LAWS CH 13 (HB 2305)

Oregon corporations with multiple classes of stock may have different voting requirements for approving amendments to articles of incorporation. Previously, affected classes always voted separately. Under HB 2305, two or more classes subject to the same impact will vote together as a single voting group.

*Effective date: January 1, 2010*

*The amendments apply to shareholder voting that occurs on or after the effective date.*

## FOREIGN ENTITY DEFINITIONS; NATIVE TRIBES ORS 60.001, 62.015, 63.001, 65.001, 70.005, 648.005

2009 OR LAWS CH 14 (HB 2312)

HB 2312 amends definitions in the Oregon Business Corporation Act, the Oregon Cooperative Corporation Act, the Oregon Limited Liability Company Act, the Oregon Nonprofit Corporation Act, the Uniform Limited Partnership Act, and Oregon's Assumed Business Name statutes. The purpose of the bill is to make it clear that a business entity organized under the laws of a federally recognized Native American or American Indian tribal government is to be recognized as a foreign business entity just as an entity organized under the laws of another state of the United States would be recognized.

The bill also amends other definitions to correct or clarify grammar or usage, but without substantive changes.

*Effective date: March 12, 2009*

## SPECIAL MEETINGS OF SHAREHOLDERS OF PUBLIC COMPANIES ORS 60.204

2009 OR LAWS CH 362 (HB 2353)

The threat of calling a special shareholders' meeting will no longer be available as a tool for dissident shareholders in publicly traded corporations organized in Oregon unless the articles of incorporation or bylaws grant that right. HB 2353 also provides that the articles or bylaws may specify what percentage of votes entitled to be cast on an issue proposed for consideration at the special meeting will be necessary to require the corporation to hold the meeting. The definition of publicly traded corporation is based upon trading on an established exchange or securities market regulated by a state, U.S., or foreign government.

**Practice tip:** Counsel to publicly traded corporations should review bylaw provisions relating to special

meetings of shareholders with their boards of directors in view of this statutory change.

*Effective date: January 1, 2010*

*The amendments apply to special meetings called for or demanded on or after the effective date.*

## **PRIVACY OF IDENTIFICATION DOCUMENTS** **2009 OR LAWS CH 546 (HB 2371)**

To protect the privacy of the personal information contained in modern driver's licenses and government-issued identification cards, HB 2371 imposes restrictions on private and governmental uses of such information and provides a private remedy against an entity that uses an individual's protected information in violation of the act.

**Practice tip:** This bill details the permissible uses of protected information. Practitioners should carefully examine the provisions of this bill.

*Effective date: January 1, 2010*

---

## **BUSINESS REGULATION**

### **TOWING UNLAWFULLY PARKED MOTOR VEHICLES** **ORS 90.485, 98.812, 98.854, 98.856** **2009 OR LAWS CH 622 (HB 2578)**

HB 2578 imposes additional requirements on "towers," landlords, and apartment operators in connection with towing unlawfully parked vehicles.

*Effective date: January 1, 2010*

### **EXCHANGE FACILITATORS** **2009 OR LAWS CH 858 (HB 3484)**

HB 3484 creates a regulatory structure for "exchange facilitators," who are persons in the business of assisting customers with complying with IRS requirements for tax-free exchanges of property, particularly deferred tax-free exchanges of real property. The bill also creates a private right of action against exchange facilitators.

*Effective date: January 1, 2010*

*Sections 1 through 6 are repealed on January 2, 2014.*

---

## **TRADEMARKS**

### **STATE TRADEMARKS AND SERVICE MARKS** **ORS 647.005 – 647.115** **2009 OR LAWS CH 459 (SB 636)**

SB 636 makes extensive changes to Oregon's trademark statute, bringing it in line with federal law and the 2007 revisions to the Model State Trademark Bill. It revises the application requirements, the approval process, renewals,

infringement, and remedies. A trademark or service mark may now be renewed up to 180 days before expiration, but the Secretary of State will no longer be required to send renewal notices 90 days prior to expiration. Remedies may now include treble damages and attorney fees in certain cases, such as actions in bad faith with knowledge. The bill creates remedies for dilution of a "famous mark" and defines dilution.

*Effective date: June 23, 2009*

*Most of the bill's provisions become operative January 1, 2010. The bill applies only to suits, proceedings, or appeals commenced on or after the operative date.*

*A registration that is effective on the effective date will remain in effect for the remainder of the term of registration.*

---

## **UNIFORM COMMERCIAL CODE**

### **RENEWAL NOTICES / FINANCING STATEMENTS** **ORS 79.0515** **2009 OR LAWS CH 597 (HB 2084)**

HB 2084 eliminates the requirement that the Secretary of State send renewal notices to secured parties prior to expiration of every UCC financing statement and agricultural "effective financing statement." Instead, notices of upcoming expirations will be sent electronically and only if requested.

*Effective date: January 1, 2010*

*The amendments apply to all financing statements and effective financing statements, whether filed **before**, **on**, or **after** January 1, 2010.*

**Practice Tip:** Check with the Secretary of State's office prior to January 1, 2010 to determine whether the Secretary of State has issued rules governing the form, contents, timing, contact information, and other details pertaining to requests for expiration notices.

**Practice Tip:** Clients should be reminded to make this request if they desire this service and establish procedures to ensure the notices are identified and acted on. Clients should also review tickler systems to be sure renewal dates are monitored, as the consequences of failure to timely renew may include loss of perfection and loss of priority, with severe consequences. Attorneys are urged to make it clear that monitoring renewal dates is the responsibility of the client and not the lawyer.

---

*The Professional Liability Fund sincerely thanks  
Andrew J. Morrow Jr for assistance with this section  
of the 2009 Legislation Alerts.*