

### 2009 LEGISLATION ALERTS

#### GENERAL PRACTICE

##### SCRA ACTIONS ORS 36.405

###### 2009 OR LAWS CH 83 (HB 2303)

HB 2303 supplements the federal Servicemember's Civil Relief Act, 50 USC App. §§ 501–596 (SCRA), which protects servicemembers on active duty in any judicial or administrative proceeding. State actions brought under its provisions are not subject to court-ordered arbitration unless the parties stipulate to it in writing after the action is commenced. If the servicemember resides in or is a resident of Oregon, forum selection clauses designating a forum other than Oregon are voidable. Servicemembers in Oregon may be entitled to attorney fees. Additional damages are available if the opposing party was properly notified of and failed to remedy the violation of SCRA within the time allotted prior to the commencement of the action; if the opposing party's conduct was willful, treble damages are available (including damages for emotional distress).

*Effective date: May 8, 2009*

*The new provisions apply only to conduct that violates SCRA that occurs on or after the effective date.*

##### PERSONAL INFORMATION ON JUDGMENT DOCUMENTS ORS CH 18

###### 2009 OR LAWS CH 230 (SB 240)

SB 240 amends ORS 18.042 and ORS 18.607 by requiring only the last four digits

of the debtor's Social Security number and driver's license number on a judgment document for a judgment in a civil action, or on a writ of garnishment, respectively. The bill amends ORS 18.170 by changing the form of a lien record abstract to require that limited information.

ORS 18.668 is amended to allow a garnishor or the garnishor's attorney to disclose the full Social Security number to identify the debtor. A garnishee is not liable to any person for using such information to identify a debtor. The bill amends ORS 18.830 by changing the form used for obtaining a writ of garnishment to reflect the amendments to other statutes.

*Effective date: June 4, 2009*

*Sections 3 and 5 apply only to writs of garnishment issued on or after the effective date.*

##### DE NOVO REVIEW ORS 2.570, 19.360, 19.415, 183.650, 419A200, 421.628, 545.579

###### 2009 OR LAWS CH 231 (SB 262)

SB 262 provides that de novo review in equity cases (other than parental rights termination proceedings) is now discretionary, rather than automatic.

*Effective date: June 4, 2009*

*The amendments to ORS 19.415 apply only to appeals for which a notice of appeal is filed with the court of appeals under ORS 19.240(3) on or after the effective date.*

#### 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.

**CONFIDENTIAL INFORMATION**  
**ORS 1.002**  
**2009 OR LAWS CH 47 (SB 268)**

SB 268 addresses the conflict between the court's need to separately identify individuals and the privacy interests and identity theft risks born by those who access our courts. This bill authorized the Chief Justice to establish procedures concerning sealed records and allows the exclusion of information from the public that is not subject to disclosure under Oregon's public records statute received absent a finding of "good cause."

A revision to UTCR 2.120 to segregate certain confidential information is further revised by new UTCR 2.130 "Family Law Confidential Information Form," which must be filed on behalf of both parties each time a new case is filed. The standardized form restricts public access (but not access by parties and their attorneys) to dates of birth, Social Security numbers, drivers' license numbers, e-mail and U.S. mail addresses, employer addresses and phone numbers for the parties, and dates of birth and Social Security numbers for children. The form also includes a Request to Prevent Disclosure of mailing addresses to the opposing party and his/her attorney.

*Effective date: January 1, 2010*

**OFFICE OF ADMINISTRATIVE HEARINGS**  
**ORS 183.600 – 183.690**  
**2009 OR LAWS CH 866 (SB 274)**

Among other provisions relating to administrative law issues, SB 274 changes the standard for when agencies change the findings of an Administrative Law Judge (ALJ). Previously, an agency could only change findings of fact by a "preponderance of the evidence" standard; now, the standard is "clear and convincing evidence."

*Effective date: August 4, 2009*

*Section 7 applies only to hearings for which an ALJ is assigned from the Office of Administrative Hearings on or after the effective date. Section 10 applies to all contested case hearings conducted by the Secretary of State on or after the effective date.*

**ATTORNEY FEES IN SMALL TORT ACTIONS**  
**ORS 20.080, 20.082**  
**2009 OR LAWS CH 487 (SB 306)**

SB 306 modifies the law allowing an award of attorney fees in small tort actions. First, it increases the length of time – from 10 days to 30 days (20 days for small contracts) – between when a demand for payment must be made and when a corresponding lawsuit is filed. Second,

the bill increases the demand limit amount from \$5,500 to \$7,500 initially and further mandates an increase to \$10,000 in 2012. Third, the bill adds a requirement that a plaintiff provide certain documentation along with the notice to the defendant such as medical records and records of property damage. SB 306 also requires a plaintiff to provide such documentation to the defendant's insurer if known. The obligation of a plaintiff to provide supporting documentation continues until litigation.

*Effective date: January 1, 2010*

*The amendments apply to all causes of action, whether arising before, on, or after the effective date, except for an action that was filed before the effective date. The amendments also apply to all contracts, whether entered into before, on, or after the effective date, except for an action on a contract filed before the effective date.*

*The increase to \$10,000 becomes operative on January 1, 2012, and applies to all causes of action, whether arising before, on, or after the operative date, except for an action filed before the operative date.*

**MILITARY DISCHARGE RECORDS**  
**ORS 192.502, 408.420; SB 96**  
**2009 OR LAWS CH 500 (SB 618)**

SB 618 amends ORS 192.502 to exempt from disclosure public records that certify or verify an individual's discharge or other separation from military service except in limited circumstances. Section 3 requires county clerks to permit inspection of such records if the request is in writing and includes the requester's contact information and the name, date of birth, and last four digits of the Social Security number of the veteran.

The request must be made by the military veteran or his or her spouse, legal guardian, or personal representative, a county veterans' service officer, a representative of the Department of Veterans Affairs, or a licensed funeral establishment seeking to establish veteran burial benefits. The county clerk must maintain a copy of the request for at least 10 years from the date of the request's receipt. The records at issue apply only to discharge papers recorded by the county clerk at the veteran's request.

*Effective date: June 24, 2009*

*The public records exemption of discharge records from disclosure took effect on the effective date. The provisions governing inspection of final discharge records under Section 3 become operative on January 1, 2010.*

**ABANDONED PROPERTY; IOLTA ACCOUNTS**  
**ORS 98.352 – 98.392**  
**2009 OR LAWS CH 462 (SB 687)**

Under former ORS 98.352, money presumed abandoned in an IOLTA account would escheat to the Department of State Lands (DSL) and ultimately be deposited into the Common School Fund Account with the State Treasurer. SB 687 amends ORS 98.352 to require that holders of abandoned IOLTA account funds report that information to the DSL. Thereafter, pursuant to amended ORS 98.386, such funds must be delivered to the Oregon State Bar. The bar may use the money only: (1) to fund legal services provided through the Legal Services Program established under ORS 9.572; (2) to pay for expenses incurred in administering the Legal Services Program; and (3) to pay claims made by persons who allege an interest in the abandoned property, as provided by ORS 98.392. DSL and the bar must adopt rules for the administration of claims made under ORS 98.392.

*Effective date: January 1, 2010.*

**Practice Tip:** Notwithstanding the changes made by SB 687, OSB Formal Op No 2005-48 remains a good starting point for lawyers to understand their obligations with respect to unclaimed funds in their trust accounts.

**PREVAILING PARTY ATTORNEY FEES**  
**ORS 20.083, 20.096**  
**2009 OR LAWS CH 285 (SB 745)**

SB 745 allows an award of attorney fees for claims based on an express or implied contract regardless of whether the prevailing party was a party to the contract. The bill is a response to two appellate court cases, *Dess Properties LLC v. Sheridan Truck & Heavy Equipment LLC* and *Autolend, IAP Inc. v. Auto Depot Inc.*, in which the court found that the defendant was not allowed to recover attorney fees under ORS 20.083 and ORS 20.096 because the defendant was not a party to the contract. These cases were problematic for victims of identity theft because they become the defendant in a case and do not have a contract with the plaintiff.

*Effective date: June 16, 2009*

*The amendments apply to **all** contracts, whether entered into **before**, on or after June 16, 2009, except for an action on a contract in which a judgment was entered before June 16, 2009.*

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