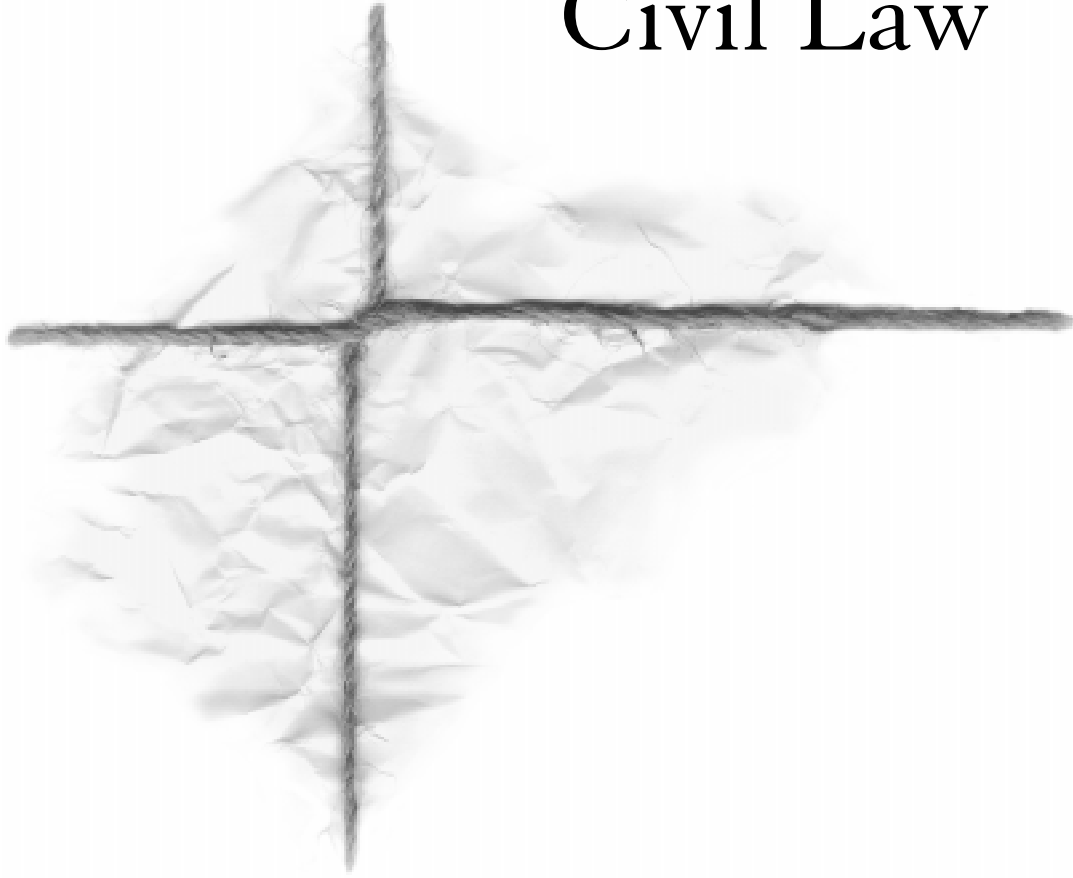


# Civil Law



*Press here to return to Table of Contents*

Summary  
of Major  
Legislation

## Senate Bill 160

*Relating to mediation.*

SB 160 revises laws governing confidentiality of communications made in mediation proceedings. The measure specifies that mediation communications are generally confidential and may not be disclosed to any other person. The measure authorizes disclosure if: (1) the parties to mediation agree; (2) the communications were not made solely for use in mediation; and (3) the communications are not confidential pursuant to state policies (communications relating to abuse of vulnerable persons when made to someone who has a duty to report such abuse and communications which the mediator or a party believes must be disclosed to prevent a party from committing a crime which is likely to result in serious injury or death.) The measure specifies that mediation communications in disputes involving a public body as a party, other than a state agency, are generally confidential unless the body has adopted rules providing for disclosure. SB 160 provides that communications in mediations involving two or more public bodies and a private person as parties are not confidential if laws, rules or policies of any of the public bodies provide that the communications are not confidential.

The measure specifies that mediation agreements involving a public body, other than a state agency, and a workplace interpersonal dispute are confidential unless the public body adopts a policy providing for disclosure. It further specifies that any term of an agreement requiring expenditure of public funds, other than expenditures of \$1,000 or less for employee training or purchases of equipment which remains property of the public body, may not be made confidential. Under the measure, communications and agreements in mediations involving only public bodies as parties are not confidential except to the extent they are exempt from disclosure under public records disclosure statutes. In any civil action in which a public body is a party, any other party to the action may require that the matter be submitted to mediation by the court with costs allocated to the parties.

The measure authorizes civil actions for damages and injunctions for disclosure of confidential mediation communications, limiting damage actions to cases of bad faith disclosure. The measure limits civil liability of mediators and mediation programs for disclosure of confidential mediation communications. The measure requires the Attorney General to establish a collabora-

tive dispute resolution pilot program.

Effective Date: October 4, 1997

## Senate Bill 267

*Relating to business entities.*

SB 267 adjusts liability standards of professional corporations and makes technical corrections to clarify current law. The measure identifies those to whom professional corporation statutes apply. It provides that regulatory boards governing professional corporations may adopt rules for professional corporations in addition to statutory provisions contained in the measure. The measure permits a professional operating agreement to provide for indemnification of members, managers, employees or agents for conduct or omissions. SB 267 establishes specific requirements for shareholders and officers of professional corporations organized for the purpose of practicing medicine. It permits certain non-professionals to be shareholders of professional corporations organized for the purpose of practicing medicine and, for a limited time, permits proxy voting. The measure restricts sales and transfers of shares in professional corporation organized for the purpose of practicing medicine and provides a corporation the right to redeem shares in certain circumstances. The measure specifies a process for determining the disposition of corporate shares of a shareholder of a professional corporation organized for the purpose of practicing medicine and provides a method of determining the price for sale or redemption of shares in such corporation.

Effective Date: October 4, 1997

## Senate Bill 268

*Relating to partnerships.*

SB 268 revises Oregon partnership law, recognizing a partnership as an entity separate from its partners. The measure amends existing law dealing with dissolution of partnership, enforcement of judgments against partnership and accounting in actions between partners. It clarifies existing law by recognizing the effect of partnership agreements and defining the fiduciary duties of partners. It establishes liability limits for vicarious liability of limited liability partnerships and sets fees to be charged for administrative actions.

Under current law, the status of partnerships as entities separate from the partners is unclear.

Existing law requires dissolution of a partnership when a partner leaves. Also, current law allows a judgment creditor to pursue an individual partner's assets regardless of the partnership's ability to pay the judgment. The specifics of a partner's fiduciary duties are primarily set out in various court decisions rather than in statute.

Effective Date: August 5, 1997

## Senate Bill 599

*Relating to judges.*

SB 599 permits the Commission on Judicial Fitness and Disability to enter into a written agreement whereby a judge consents to censure, suspension or removal. The measure requires submission of the agreement to the Supreme Court for review and permits the Supreme Court to approve the agreement and impose disciplinary measures agreed upon or to disapprove the agreement. The measure authorizes the Supreme Court to hold a hearing and impose discipline if agreement is disapproved. The measure specifies that the agreement to discipline is not a public record until submitted to the Supreme Court.

Under the Oregon Constitution, Art. VII (Amended) § 8, the Supreme Court is charged with the supervision and discipline of judges. The Commission on Judicial Fitness and Disability investigates allegations of misconduct or disability made against a judge. The commission then makes recommendations to the Supreme Court as to whether a judge should be suspended, removed or censured.

Effective Date: October 4, 1997

## House Bill 2262

*Relating to appeals.*

HB 2262 eliminates the automatic stay of a trial court judgment when a losing party appeals a judgment to the Oregon Court of Appeals. The measure clarifies a trial court's authority to grant, deny, and impose terms on a stay pending appeal and clarifies the procedure for appellate review of stay decisions. The measure allows the filing of a "supersedeas undertaking" pending appeal that will stay the judgment of the trial court pending appeal. HB 2262 authorizes appellate review of temporary support orders and custody orders pending appeal and requires that an appellant seeking a stay of a marriage dissolution judgment pending appeal must comply with the appropriate statutes governing appeals.

The measure also authorizes a trial court to modify its judgment pending an appeal to an appellate court, if the modification is based on a change of circumstances.

Effective Date: October 4, 1997

## House Bill 2318

*Relating to encumbrances.*

House Bill 2318 prohibits a person from accepting an invalid claim or encumbrance against a federal, state, or local official based on the performance or nonperformance of the official's duties, unless accompanied by a court order. The measure allows an assistant United States attorney, on behalf of a federal official, or the assistant attorney general, on behalf of a state or county employee, to file an invalid claim of encumbrance to clear title. It sets forth a procedure in the appropriate circuit court for the clearing of title in the appropriate circuit court. This procedure is not valid against banks and other lenders.

In recent years, groups have filed bogus liens against the property of federal, state, and local officials and employees. These liens make it difficult for the owners to transfer or sell their property, requiring them to go to court to clear title, which may involve considerable time and expense.

Effective Date: June 10, 1997

## House Bill 2350

*Relating to the jurisdiction of small claims departments.*

HB 2350 increases small claims court jurisdiction from \$2,500 to \$3,500, effective January 15, 1998, and increases the jurisdictional amount to \$4,000 on January 1, 2002. Currently, only claims of less than \$2,500 may proceed through small claims courts. This jurisdictional limit was last raised in 1987.

A proceeding in small claims court is a less formal proceeding that allows individuals to proceed on their own to seek recovery on claims owed them. Parties in a small claims action are not represented by attorneys and the rules of evidence and procedure are less formal than they would be in district or circuit court.

Effective Date: January 15, 1998

## Measures Vetoed by the Governor Senate Bill 266

*Relating to civil actions.*

SB 266 permits a contribution claimant to give notice of an act or omission under the Oregon Tort Claims Act. The measure specifies that such notice gives a public body notice of all claims arising out of the act or omission, including claims for contribution or indemnity. The measure raises from 25 to 35 the percentage of fault making a defendant liable for reallocation of portion of judgment.

A contribution claim is a claim made by a tortfeasor against other joint tortfeasors seeking to require the joint tortfeasors to pay their proportional share of a damage award. Current case law holds that the state may be liable for a contribution claim, but only if notice of the claim is given to the state by the plaintiff. Notice by any other person, including a defendant, is insufficient. In some situations the plaintiff may have no reason to give notice to the state. Regarding joint and several liability, current law provides that if more than one defendant is adjudicated to be at fault in a civil lawsuit, one or more defendant cannot pay his share of the judgment, and the plaintiff proves this to the court within one year of entry or judgment, the portion of the judgment which is against the insolvent defendant will be reallocated among all defendants who were found to be more than 25 percent at fault.

### Governor's Veto Message (August 8, 1997):

*I am returning herewith SB 266, unsigned and disapproved.*

*This bill represents a further attempt to deny Oregon citizens full access to justice through the courts. Under current Oregon law a jury verdict against multiple parties is set out in percentages of fault. If one of the parties is legally unable to pay, the remaining parties may have their responsibilities "re-allocated" to cover the damage.*

*SB 266 would result in a party responsible for at least 30% of the damage escaping responsibility in a reallocation. This would leave many deserving Oregonians without compensation for their injuries or property damage, even after a jury has reviewed all the evidence.*

## Major Legislation Not Enacted Senate Bill 577

*Relating to marriage.*

SB 577 would have defined marriage as a civil contract between a male and a female, both of whom are at least 17 years of age. The measure would have prohibited the recognition of same-sex marriages created in other jurisdictions. A House committee amended the measure to include a referral to voters.