COUNCIL ON COURT PROCEDURES

Saturday, March 4, 1989, Meeting
9:30 a.m.

Oregon State Bar Offices
5200 SW Meadows Road
Lake Oswego, Oregon

A G E N D A

1. Approval of minutes of meeting of February 11, 1989
2. Report on budget hearing (Henry Kantor)
3. Chairer's report on meeting with State Court Judgment Subcommittee
4. Other bills pending in the legislature (Executive Director's memorandum)
5. Discussion of agenda for next biennium
6. Future meeting schedule
7. NEW BUSINESS

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PUBLIC NOTICE

Copies sent to: The Oregonian; Associated Press, 40 State Capitol Building, Salem, Oregon; United Press International, 40 State Capitol Building, Salem, Oregon; Oregon State Bar.

2/20/89

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of March 4, 1989

Oregon State Bar Building

Lake Oswego, Oregon

Present:	John H. Buttler	R. L. Marceau
	L. G. Harter	R. B. McConville
	Bernard Jolles	James E. Redman
	Henry Kantor	Laurence Thorp
	John V. Kelly	George Van Hoomissen
Absent:	Richard L. Barron	Richard B. Noble
	Lee Johnson	Steven H. Pratt
	Winfrid Liepe	J. Michael Starr
	Paul J. Lipscomb	Martha Rodman
	Jack L. Mattison	Wm. F. Schroeder
	Douglas K. Newell	Elizabeth H. Yeats

(Also present was Fredric R. Merrill, Executive Director.)

The meeting was called to order by Chairer Ronald Marceau at 9:35 a.m.

The February 11, 1989 minutes were approved as submitted.

Henry Kantor reported on the Council's budget hearing before the Joint Legislative Committee on Ways and Means. Henry reported that the Council's budget was well received, and the Ways and Means Committee approved the Council's budget.

Ron Marceau reported on the February 17, 1989 meeting with the Bill Linden group at the Judicial Department on the civil judgments bill.

The Council discussed the PROPOSED AMENDMENT to HB 2117 submitted by the Department of Justice (attached hereto as Exhibit 1). Points made during the discussion were that because these proposals deal with ORS 20.220 and appeals from attorney fees or cost awards, the Council really did not have jurisdiction to comment on the proposals. However, to the extent the proposed amendment to ORS 20.220 would describe an "order under ORCP 68 C(4)" instead of the existing term "judgment", the Council should convey its thoughts on this aspect of the proposed amendment. The following motion by Judge McConville, seconded by Bernard

Jolles, passed unanimously: That the Council reaffirm its position on SECTION 2 of HB 2127 and oppose any revision to ORCP 68 at this time. The Council will thoroughly review ORCP 68 during the next biennium as part of a comprehensive review of the entire area of rendition, entry, and docketing of judgments. The Chairer and Executive Director were directed to contact the Court Administrator and the Department of Justice in an effort to convince them to join with the Council in obtaining the withdrawal of the proposed amendments in HB 2127 that relate to ORCP 68.

The Council discussed other bills which have been submitted to the legislature by other groups which would amend the ORCP (these other bills are set out in Fred Merrill's February 23, 1989 memorandum and Henry Kantor's February 24, 1989 letter (attached hereto as Exhibits 2 and 3, respectively). The Council specifically discussed HB 2363 relating to FAX service where Council opinion had been requested by the House Judiciary Committee.

The consensus of the Council was that these legislative efforts to amend the ORCP without first having submitted the matters to the Council are not the best way to improve the oRCP and are confusing and unhelpful to the legislature. To deal with this situation, the Chairer shall reaffirm the Council's functio and role by communicating to the President of the Senate, Speake of the House, and the respective chairers of the legislative judiciary committees the following:

- The original purpose of the Council (i.e. to avoid the confusion and contention of competing bar groups for procedural revision).

- Suggesting that the best way for the legislature to deal with efforts at revision of the ORCP is to requir that the request be first made to the Council, and onl consider the request if it has been first made to the Council.

- Not take any position promoting or opposing the other ORCP revision bills (with the exception of HB 2127 unless specifically requested by the legislative committees.

- The Executive Director was asked to communicate the substance of the problems which the Council perceived with HB 2363 to the House Judiciary Committee.

The Executive Director presented a brief report on the status of the Council's current budget. There are sufficient funds to pay for approximately one more meeting in Portland

The Chairer pointed out that a Council member has requested that the Council continue its past practice of setting Council meetings around the middle of the month to the extent practicable because other bar committees typically meet the first of the month.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gjh

M E M O R A N D U M

February 23, 1989

TO: **MEMBERS, COUNCIL ON COURT PROCEDURES**

FROM: **Fred Merrill, Executive Director**

RE: **MARCH 4, 1989 MEETING**

Attached is a letter from Bill Linden enclosing copies of the amendments to HB 2127, which resulted from the meeting reported in Ron Marceau's memorandum.

In addition to HB 2127 and SB 389, which have previously been furnished to you, copies of nine other bills amending the ORCP which have been submitted to the legislature are attached: SB 273, SB 287, SB 497, SB 499, HB 2342, HB 2363, HB 2425, HB 2458, and HB 2562. These bills will be discussed at the March 4, 1989 meeting.

The only bill, other than HB 2127, where there has been any legislative action is HB 2363. House Bill 2363 was the subject of a public hearing in House Judiciary on February 22, 1989. The bill involves facsimile transmission service under ORCP 9. I appeared at the hearing and stated that the Council might be interested in commenting on the subject. The Committee postponed further action on the bill until March 8, 1989 to allow an opportunity for the Council to consider the matter. The legislators were particularly interested in the following questions:

1. Should service be restricted to certain hours of the day?

2. Should facsimile service be available for service upon unrepresented parties?

3. Will any problems of proof of service arise under facsimile transmission service?

Finally, a copy of a letter from Hugh Collins dated January 23, 1989 is enclosed. This should be considered with the other two letters he has submitted (dated January 21, 1989 and February 7, 1989).

REMINDER: THE NEXT MEETING WILL BE HELD AT 9:30 A.M., SATURDAY, MARCH 4, 1989, IN THE STATE BAR BUILDING IN LAKE OSWEGO.

Enclosures

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LYMAN C. JOHNSON
1957 - 1986

TELECOPIER
(503) 388-5410

February 23, 1989

TO: MEMBERS OF THE COUNCIL ON COURT PROCEDURES

Dear All:

Here is what happened at the meeting Fred Merrill and I had with the Bill Linden group about their civil judgments bill (HB 2127) Friday, February 17, 1989:

- Bill Linden was not present. Members of the Linden group present were: Karen Hightower (presiding), Judge Berkeley Smith, George Evans, Jim Murchison, Brad Swank, Peter Kiefer and Jim Nass.

- Fred and gave the group copies of the Council's February 11 meeting minutes (which spell out the action taken by the Council).

- After a couple of hours of sometimes spirited discussion, the Linden group indicated they were willing to accept most of the CCP recommendations.

- The Linden group will revise HB 2127 to eliminate the provision: "If the judgment does not comply with the requirements in subsection A(2) of this rule, it shall not be docketed in the judgment docket as provided under ORS 18.320." The following CCP language will be substituted for this provision:

  "If the judgment does not comply with the requirements in subsection A(2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A(2) of this rule."

  As you can see, the phrase "entered in the register" was substituted for the word "effective" in the recommendation passed February 11 by the CCP. Neither Fred nor I thought this changed what the CCP wanted to

accomplish. The change was made in response to suggestion by the Linden group that the word "effective" wasn't sufficiently specific etc.

- In addition, section 6 of HB 2127 (which amends 18.320(1)) will be changed by deleting the following:

  "If the separate section does not exist, or does not comply with ORCP 70A. (2) and (3), the clerk shall not docket the judgment in the judgment docket unless otherwise instructed by the court."

  ORS 18.320(1) will then read:

  "Immediately after the entry <u>in the register</u> of judgment <u>for the payment of money</u> in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. <u>The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70A. (2) and (3) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom</u>."

- The primary effect of the above changes is to eliminate the existing command of HB 2127 that non-complying judgments "shall not be docketed". Instead, HB 2127 will direct that the judge not sign non-complying judgments. If a non-complying judgment is signed by a judge it will be docketed to the extent it can be docketed. Notice will be sent by the clerk indicating whether the judgment was docketed. If it has not been docketed the attorney will have notice of that fact.

- The Linden group resisted increasing the time for response to a motion seeking satisfaction of judgment from 14 to 28 days as recommended by the CCP. They suggest 21 days which seems OK to me.

- There was also resistance to taking the ORCP 68 changes out of HB 2127. These ORCP 68 changes will stay in the bill for now but Bill Linden will tell the legislative committee that he has no objection to deleting them at the CCP's request. Fred Merrill will make this request and explain why.

Bill Linden called today and assured me these changes have been plugged into HB 2127. I believe Bill wants to be cooperative. I am enclosing a copy of his February 22, 1989 letter which explains what his group did in revising HB 2127.

The revised HB 2127 will be heard by the house judiciary subcommittee February 27 at 1:30 p.m. Fred will be there.

Here is the bottom line of all this as I see it: The CCP's main objective has been accomplished. The clerks will not be commanded to not docket non-complying judgments. There really isn't any way to avoid the problem and consequences of a judgment that does not contain the required information for docketing. It simply cannot be docketed. At least HB 2127 will require that notice of non-docketing be given.

Sincerely,

R. L. MARCEAU

RLM:dlh

Encl.

cc: Fred Merrill
Kirk Hall, Esq., PLF
Timothy J. Vanagas, Esq., OTLA
Toby Graff, Esq., OSBO Practice & Procedure
Gene Buckle, Esq., OADC

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DOLORES EMPEY

OF COUNSEL
WILLIAM L. DICKSON
WM. A. GALBREATH
HENRY KANTOR

PHILIP A. LEVIN
(1928-1967)

February 24, 1989

Professor Fredric R. Merrill
Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene, Oregon 97403

Re: Council on Court Procedures

Dear Fred:

While I was down at the Legislature last Monday, I came across some legislation of which you may or may not be aware. If possible, I would appreciate you giving a brief report at our next meeting on the status of all legislation which could effect either the Council or the Oregon Rules of Civil Procedure.

S.B. 289 deals with court discretion in establishing docket priorities for certain types of cases. This bill seeks to add a statute to ORS Ch. 1. It may be that the discretion for court docketing should be addressed by the Council. For your information, this bill was introduced at the request of the State Court Administrator, had a public hearing on February 17 and had a work session on February 22 in the Senate Judiciary Committee.

You already are aware of S.B. 389, which was introduced at the request of the Oregon Psychological Association. Apparently, this bill has been referred to Senate Judiciary but has had no action yet.

S.B. 497 seeks to amend ORCP 18. It was introduced at the request of the Oregon Trial Lawyers Association and has been referred to Senate Judiciary without action.

S.B. 499 seeks to amend ORCP 52 A. It was introduced at the request of the OTLA and has been referred to Senate Judiciary without action.

S.B. 512 seeks to amend ORS Ch. 82 as to interest but deals with accrual of judgments and refers to class actions under ORCP 32. It was introduced at the request of the OTLA and has been referred to Senate Judiciary without action.

H.B. 2342 is the court consolidation bill introduced at the request of the Judicial Department. Section 81 of the bill seeks to amend ORCP 21 G. Section 82 of the bill seeks to amend ORCP 81 A. The bill has been referred to House Judiciary. I do not know if there has been any action taken.

You already are aware of H.B. 2363, regarding service by facsimile. This bill was sponsored by House Judiciary and had a public hearing and possible work session on February 22.

H.B. 2425 seeks to amend ORCP 18 B. It was introduced at the request of the OTLA and has been referred to House Judiciary without action.

H.B. 2562 seeks to amend ORCP 3. It was introduced at the request of the Oregon Collectors Association and has been referred to House Judiciary without action.

On an unrelated matter, enclosed please find a copy of a letter from attorney Mike Greene, which was also sent to Ron Marceau, regarding ORCP 43 B. This concerns new business.

Very truly yours,

Henry Kantor

Henry Kantor

HK:jr
Enclosure
cc: Mr. Ronald L. Marceau (w/o enclosure)

Rosenthal & Greene, P.C.

ELDEN M. ROSENTHAL
MICHAEL A. GREENE
Attorneys at Law

Suite 1907, Orbanco Bldg · 1001 SW Fifth Avenue · Portland, Oregon 97204-1165 · (503) 228-3011

February 13, 1989

Ronald L. Marceau
Marceau, Karnopp, et al.
835 NW Bond Street
Bend, OR 97701

Henry Kantor
Pozzi, Wilson, et al.
910 Standard Plaza
1100 SW 6th Avenue
Portland, OR 97204

Re: Council on Court Procedures: Timing of Discovery, ORCP Rule 43B

Gentlemen:

I have recently encountered a problem with ORCP Rule 43B and the requirement that a "defendant shall not be required to produce or allow inspection or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time period."

As you are aware, the general litigation practice throughout Oregon is to produce all documents and then proceed to take depositions. However, I have experienced a defense tactic in trying to exploit the 45 day period of ORCP 43B. In my case a request for production of documents was served with the complaint yet the defendant tried to notice the deposition of the plaintiffs prior to the expiration of 45 days from service. Defendants refused to produce documents and indeed moved for a protective order. The court denied the protective order for a number of reasons including the unfair exploitation of the 45 days waiting period of Rule 43B.

I pointed out to the court that the waiting period was to protect defendants while they obtained an attorney, not to be exploited to give any advantage in the timing of discovery by the defendants. My suggestion would be that you ought to consider a change in Rule 43B to prevent this exploitation. None of the other discovery rules contain such a limitation, but rather rely on "reasonable" time standard.

I would appreciate the Council's consideration of this change in order to eliminate the opportunity for litigation gamemanship during the discovery process.

Thank you for your consideration of this matter.

Very truly yours,

Michael A. Greene

Michael A. Greene

MAG/rl

B. WILLIAM LINDEN, JR.
State Court Administrator

(503) 378-6046
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JUDICIAL DEPARTMENT
Supreme Court Building
Salem, Oregon 97310

February 16, 1989

Kirk R. Hall
Professional Liability Fund
P.O. Box 1600
Lake Oswego, OR 97035-0889

Dear Kirk:

I received a copy of your February 9, 1989 memorandum regarding HB 2127 from the Council on Court Procedures at their meeting on February 11, 1989. I feel compelled to respond to your comments.

You stated that HB 2127 has the effect of "shifting" responsibility for the maintenance of accurate judgment dockets from the various clerks' offices to attorneys and judges. The fact is, the responsibility already rests on the parties to provide an accurate summary of any money judgment submitted to the court pursuant to ORCP 70. This judgment "summary" is used by the court clerk to docket the money judgment in the judgment docket. HB 2127 merely fills in some of the holes that currently exist with this law; holes which attorneys should have a great interest in filling.

Currently, the court is not required to notify the parties when a money judgment is docketed. There are times when court clerks are unable to docket money judgments because the information which must be docketed has not been supplied by the parties. In this situation, any notice received from the court is purely the result of courtesy.

HB 2127 fills in this hole by <u>adding</u> a notice requirement for the court. On the date that the judgment is entered, the court must send notice to the parties that: 1) the judgment was entered (a current requirement); and 2) whether or not the judgment was docketed. In this way, the attorney will be immediately alerted that there is a problem with the money judgment. An amended judgment can then be filed to correct the problem. This should actually reduce attorney liability. HB 2127 does not create "new traps" for attorneys; it fills in the traps that currently exist.

Further, HB 2127 improves the current liability situation by clarifying exactly what information will be docketed in the judgment docket. HB 2127 makes it absolutely clear that court clerks will docket money judgments only from the information supplied in the money judgment section directly above the judge's signature. Since it is the parties who supply this information, the parties will always know precisely what information will be docketed. Currently, it is unclear whether court clerks are docketing money judgments from the judgment summary supplied by the attorney or from the body of the money judgment, signed by the judge.

In effect, HB 2127 allows the attorney who drafts the money judgment to direct the court clerk what to enter in the judgment docket. This gives the parties more control over the process and leaves fewer things to chance.

Attorneys are currently liable for any losses resulting from poorly drafted judgments. HB 2127 should improve this situation in two major respects: 1) it provides prompt notice to the attorney that there is a problem with the judgment; and 2) it establishes clear, noninterpretive standards by which money judgments can be measured. If HB 2127 passes, court clerks would simply flip to the end of a judgment and determine whether the judgment contains a money judgment section. If a money judgment section exists, the clerk will docket the judgment from the money judgment section. If the money judgment section does not exist, the attorney will be immediately notified that the judgment was not docketed in the judgment docket.

Finally, HB 2127 does not create unduly complicated requirements. If the judgment is a judgment for the payment of money, it must include a separate "money judgment" section directly above the judge's signature which identifies the judgment creditor, the judgment debtor, the amount of the judgment, the rate of interest and how that interest rate is to accrue, and, if attorney fees, costs, and disbursements are awarded, the amount of such costs. What is so complicated about that?

The Judicial Department has proposed an amendment to HB 2127 which is intended to clarify that a court clerk may docket information provided in the money judgment section which is not presented in

exactly the same order specified in ORCP A (2) and (3). Attached is a copy of all the proposed amendments to HB 2127 for your convenience.

In sum, I believe that HB 2127 is a significant improvement over the current liability situation for attorneys.

Sincerely,

R. William Linden, Jr.
State Court Administrator

RWL:KH:dc/E1D89232.F

Attachment

cc: Ron Marceau
Fred Merrill
Bob Oleson

(At the request of the Oregon Judicial Department)

PROPOSED AMENDMENTS TO HB 2127

On page one of the printed bill, in line 2, after "18.320," insert "23.030," and after "24.125" insert "416.440".

In line 17, after "shall" insert "be entered in the register but it shall".

On page 6, after line 32, insert:

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

On page 8, after line 14 insert:

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as an attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements.".

On page 8, in line 38, before the period insert "(1) and (2)".

On page 9, after line 5, insert:

"SECTION 9. ORS 23.030 is amended to read:

" 23.030. Except as otherwise provided in this section, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property[,]:

(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located.

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470.[, along with]

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A (1) and (2).

(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

(a) Lien effect[,];

(b) Ability to be renewed pursuant to ORS 18.360[,]; and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment.".

In line 6, after "SECTION" delete "9" and insert "11".

LAW OFFICES OF
PAUL J. RASK
2ND FLOOR, MAYFAIR PROFESSIONAL BLDG.
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(503) 239-7862

Wednesday. 22 February 1989

Frederic R. Merrill, Executive Director
Council on Court Procedures
University of Oregon
School of Law
Eugene, Oregon 97403

Re: ORCP 47 -- Summary Judgment

Dear Mr. Merrill:

Is the summary judgment the efficient procedure it was meant to be? Does it neatly tuck away non-issue cases, removing the clutter from the calander so that the court can get on with triable issues? Is it the snappy, rapid transit freeway that leads quickly to a judgment?

On the whole, I think not. But I haven't made a study of it. I think a thorough study of the efficiency of summary judgments ought to be undertaken by the Council.

In my one-man law office, I find that the summary judgment procedure is one of the mostly costly, ineffective, inefficient, time-consuming, paper-wasting, money-gobbling legal manuevers ever devised by the quick-wit of legal scholars. Its concocters meant well, I'm sure, but it's the proverbial monster now.

How much court time is spent in considering them? How many pro-tem judges have been hired just to handle the deluge of them? How many of the motions are denied and go to trial anyway? How many allowed motions go up on appeal, are turned around and sent back for trial? How thick are the court files and how many additional people has the court administrator had to put on just to keep the files current? We lawyers have a habit of photocopying everything in sight and attaching it to the Motions and Affidavits building bulk, to be sure, but you have to be an Arnold Schwartzenegger to lug the damn file to the courtroom.

The few cases (and without a formal study, I think I am safe in saying "few") where ORCP 47 fully and finally disposes of a non-issue case, may not justify the time and expense it causes the other litigants whose cases tumble around in that system.

Wouldn't our clients be better off without this procedural freeway which now sees an awful lot of traffic but in reality is a meandering detour leading right back to the courtroom?

If I can help in the study, please let me know.

Yours very truly,

Paul J. Rask

PJR:lewp

R. WILLIAM LINDEN, JR.
State Court Administrator

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JUDICIAL DEPARTMENT
Supreme Court Building
Salem, Oregon 97310

February 22, 1989

Fredric R. Merrill
Executive Director
Council On Court Procedures
University of Oregon
School of Law
Eugene, OR 97403-1221

Re: HB 2127

Dear Fred:

I want to thank you for the information and discussion you and Ron Marceau provided the Judgment Committee at their meeting on February 17, 1989. As a result of that meeting, I believe that we have eliminated some of the major differences which we had with the Council on HB 2127.

The Judicial Department will take the following positions on HB 2127 at the February 27 hearing:

1. The Judicial Department agrees to introduce and propose an amendment to Section 1 of the bill which would replace the language on lines 17 and 18 with the following:

> "If the judgment does not comply with the requirements in subsection A(2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A(2) of this rule."

2. The Judicial Department agrees to introduce and propose that Section 6 be amended to delete lines 39 through 41 at page 6.

3. The Judicial Department will not oppose the Council's suggestion that Section 2 be deleted from the bill. However, the Council must propose and explain this amendment to the legislature.

4. The Judgment Committee recommended to me that the satisfaction of judgment procedure in Section 7 of the bill

be amended to allow a party 21 days rather than 28 days to respond. The Committee offered two reasons for their position: 1) the Committee believes that 28 days is too long; the procedure was intended to be summary, 2) the bill already allows the court to grant additional time for response. (Page 7, line 42.) The Judicial Department will, therefore, propose that line 41 at page 7 be amended to replace "14" days with "21" days.

5. The Judicial Department will take no position with regard to the Council's proposal to change the form of Section 1 of the bill.

Enclosed is a draft copy of the amendments which we will propose to the legislature on February 27. Please let me know how the Council decides to proceed.

Sincerely,

R. William Linden, Jr.
State Court Administrator

RWL:KH:klb/E1K89006.F

Enclosure

cc: Ron Marceau
Members of the Judgment Committee

February 27, 1989

PROPOSED AMENDMENTS TO HB 2127
(Offered by the Oregon Judicial Department)

On page 1 of the printed bill, in line 2, after "18.320," insert "23.030," and after "24.125" insert "416.440".

Delete line 18 and insert: "signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(2) of this rule.".

On page 6 of the printed bill, after line 32, insert:

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

In line 39, delete "If the separate section does not exist, or does not comply with ORCP 70 A.(2) and (3),".

Delete lines 40 and 41.

On page 7, at line 41 delete "14" and insert "21".

On page 8 of the printed bill, after line 14 insert:

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as an attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements.".

On page 8 of the printed bill, in line 38, before the period insert "(1) and (2)".

"SECTION 9. ORS 23.030 is amended to read:

"23.030. Except as otherwise provided in this section, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property[,]:

(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located.

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470.[, along with]

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A (1) and (2).

(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

(a) Lien effect[,]:

(b) Ability to be renewed pursuant to ORS 18.360[,]: and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment.".

In line 6, after "SECTION" delete "9" and insert "11".

Senate Bill 273

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Increases witness fees and mileage in proceedings other than criminal proceedings. Defines criminal proceeding and other proceeding. Increases fee from $5 to $30 per day, and mileage from 8 cents to 25 cents per mile. Limits total mileage to cost on reasonably available common carriers. Deletes double, triple and quadruple fees based on distance witness resides from place of attendance. Modifies various provisions for witness fees and mileage in particular proceedings.

A BILL FOR AN ACT

Relating to witnesses; amending ORS 44.410, 44.430, 45.250, 136.600, 144.347, 161.395, 171.515, 181.330, 305.200, 305.495, 398.224, 426.297, 543.055, 646.831, 651.060 and 663.285 and ORCP 39 I. and 55 E.

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

SECTION 1. ORS 44.410 is amended to read:

44.410. **(1) As used in this section and ORS 44.430:** [,]

(a) "Judge" means judge of a court of record, [*judge of a district court,*] justice of the peace, referee, sheriff or other officer.

(b) "Criminal proceeding" means any criminal action or proceeding concerning an offense, proceeding conducted by the Psychiatric Security Review Board, proceeding conducted by the State Board of Parole, habeas corpus proceeding, juvenile court proceeding, mentally ill or sexually dangerous person proceeding under ORS chapter 426, mentally retarded person proceeding under ORS 427.235 to 427.295 or sterilization informed consent proceeding under ORS chapter 436.

(c) "Other proceeding" means any proceeding other than a criminal proceeding and includes but is not limited to any proceeding in respect to which there is a specific statutory reference to payment of fees or mileage of a witness as in a civil action, civil suit or civil case.

(2) Except as otherwise specifically provided by or pursuant to law, the fees of witnesses shall be $5 for each day's attendance before a judge **in a criminal proceeding and $10 for each day's attendance before a judge in any other proceeding.**

SECTION 2. ORS 44.430 is amended to read:

44.430. **Except as otherwise specifically provided by or pursuant to law,** every witness whose fees are prescribed in ORS 44.410 who is required to travel **from a place within or outside this state** in order to execute or perform duties as a witness, in addition to the fees prescribed, is entitled to mileage at the rate of eight cents a mile **in a criminal proceeding and 25 cents a mile in any other proceeding,** and no more, in going to and returning from the place where the service is performed. **Total mileage shall not exceed the necessary cost of transportation on reason-**

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

ably available common carriers.

SECTION 3. ORCP 55 E. is amended to read:

E. Subpoena for hearing or trial; [*obligation of witness to attend;*] prisoners.

[*E.(1) Obligation to attend; fees. A witness is not obliged to attend for trial or hearing at a place outside the county in which the witness resides or is served with subpoena unless the residence of the witness is within 100 miles of such place, or, if the residence of the witness is not within 100 miles of such place, unless there is paid or tendered to the witness upon service of the subpoena: (a) double attendance fee, if the residence of the witness is not more than 200 miles from the place of examination; or (b) triple attendance fee, if the residence of the witness is more than 200 miles and not more than 300 miles from such place; or (c) quadruple attendance fee, if the residence of the witness is more than 300 miles from such place; and (d) single mileage to and from such place.*]

[*E.(2) Witness confined to prison or jail.*] If the witness is confined in a prison or jail in this state, a subpoena may be served on such person only upon leave of court, and attendance of the witness may be compelled only upon such terms as the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

SECTION 4. ORS 45.250 is amended to read:

45.250. (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead; or

[*(b) The witness's residence or present location is such that the witness is not obliged to attend in obedience to a subpena as provided in ORCP 55 E.(1), unless it appears that the absence of the witness was procured by the party offering the deposition; or*]

[*(c)*] **(b)** The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

[*(d)*] **(c)** The party offering the deposition has been unable to procure the attendance of the witness by subpena; or

[*(e)*] **(d)** Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

[*(f)*] **(e)** The deposition was taken in the same proceeding pursuant to ORCP 39 I.

SECTION 5. ORCP 39 I. is amended to read:

I. Perpetuation of testimony after commencement of action.

I.(1) After commencement of any action, any party wishing to perpetuate the testimony of a witness for the purpose of trial or hearing may do so by serving a perpetuation deposition notice.

I.(2) The notice is subject to subsections C.(1) through (7) of this rule and shall additionally state:

I.(2)(a) A brief description of the subject areas of testimony of the witness; and

I.(2)(b) The manner of recording the deposition.

I.(3) Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of Rule 36 C. At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS 40.465 (1)(d) or (e) or 45.250 (2)(a) through [*(d)*] **(c)**; or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken shall be admissible at any subsequent trial or hearing in the action, subject to the Oregon Evidence Code.

I.(4) Any perpetuation deposition shall be taken not less than seven days before the trial or hearing on not less than 14 days' notice, unless the court in which the action is pending allows a shorter period upon a showing of good cause.

I.(5) To the extent that a discovery deposition is allowed by law, any party may conduct a discovery deposition of the witness prior to the perpetuation deposition.

I.(6) The perpetuation examination shall proceed as set forth in [*subsection*] **section** D. of this rule. All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The court before which the testimony is offered shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived.

SECTION 6. ORS 136.600 is amended to read:

136.600. The provisions of ORS 44.150 and ORCP 39 B. and 55 E.[*(2)*] and G. apply in criminal actions, examinations and proceedings.

SECTION 7. ORS 144.347 is amended to read:

144.347. (1) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the testimony to be offered, the board or its designated representatives shall issue subpenas requiring the attendance and testimony of witnesses. In any case, the board, on its own motion, may issue subpenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board or its designated representative shall issue subpenas duces tecum. In any case, the board, on its own motion, may issue subpenas duces tecum.

(3) Witnesses appearing under subpena, other than the parties or state officers or employes, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **criminal proceedings.** If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpena issued under subsection (1) or (2) of this section

CHAPTER 980

AN ACT SB 273

Relating to witnesses; creating new provisions; amending ORS 44.240, 45.250, 59.315, 136.600, 144.347, 147.115, 161.395, 171.515, 181.330, 183.440, 237.315, 241.145, 242.730, 305.200, 305.495, 398.224, 416.427, 426.297, 462.272, 468.120, 536.029, 539.110, 543.055, 645.210, 646.831, 651.060, 653.530, 663.285, 706.775, 722.442, 726.255, 731.232 and 756.543 and ORCP 39 I. and 55 E.; and repealing ORS 44.410 and 44.430.

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

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 44.

SECTION 2. (1) Except as provided in subsection (2) of this section, a person is entitled to receive $30 for each day's attendance as a witness and mileage reimbursement at the rate of 25 cents a mile if the person is required to travel from a place within or outside this state in order to perform duties as a witness. Total mileage reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(2) In any criminal proceeding, any proceeding prosecuted by a public body or any proceeding where a public body is a party, a person is entitled to receive $5 for each day's attendance as a witness and mileage reimbursement at the rate of eight cents a mile if the person is required to travel from a place within or outside this state in order to perform duties as a witness. Total mileage reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(3) As used in this section, "public body" means any state, city, county, school district, other political subdivision, municipal corporation, public corporation and any instrumentality thereof.

SECTION 3. ORCP 55 E. is amended to read:

E. Subpoena for hearing or trial; [*obligation of witness to attend;*] prisoners.

[*E.(1) Obligation to attend; fees. A witness is not obliged to attend for trial or hearing at a place outside the county in which the witness resides or is served with subpoena unless the residence of the witness is within 100 miles of such place, or, if the residence of the witness is not within 100 miles of such place, unless there is paid or tendered to the witness upon service of the subpoena: (a) double attendance fee, if the residence of the witness is not more than 200 miles from the place of examination; or (b) triple attendance fee, if the residence of the witness is more than 200 miles and not more than 300 miles from such place; or (c) quadruple attendance fee, if the residence of the witness is more than 300 miles from such place; and (d) single mileage to and from such place.*]

[*E.(2) Witness confined to prison or jail.*] If the witness is confined in a prison or jail in this state, a subpoena may be served on such person only upon leave of court, and attendance of the witness may be compelled only upon such terms as the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

SECTION 3a. ORS 44.240 is amended to read:

44.240. (1) Whenever a court or judge makes an order for the temporary removal and production of a witness who is confined in a Department of Corrections institution within this state before a court or officer for the purpose of being orally examined this section applies. The superintendent of the institution shall, at the institution, deliver the witness to the sheriff of the county in which the court or judge making the order is located.

(2) The sheriff shall give the superintendent a signed receipt when taking custody of the witness under subsection (1) of this section. The sheriff shall be responsible for the custody of the witness until the sheriff returns the witness to the institution. Upon the return of the witness to the institution by the sheriff, the superintendent shall give a signed receipt therefor to the sheriff.

(3) When a witness is delivered to a sheriff under subsection (1) of this section, or at any time while the witness is in the custody of the sheriff as provided in subsection (2) of this section, the superintendent may give the sheriff a list of persons who may communicate with the witness or with whom the witness may communicate. Except as otherwise required by law, upon receipt of the list and while the witness is in the custody of the sheriff, the sheriff shall permit communication only between the witness and those persons designated by the list.

(4) The sheriff and neither the institution nor the Department of Corrections shall be liable for any expense incurred in connection with the witness while the witness is in the custody of the sheriff as provided in subsection (2) of this section. If the witness is a party plaintiff, the sheriff shall recover costs of the care of the witness from the plaintiff, and shall have a lien upon any judgment for the plaintiff. In all other cases, the sheriff and not the witness shall be entitled to the witness fees and mileage to which the witness would otherwise be entitled under [*ORS 44.410 and 44.430*] **subsection (2) of section 2 of this 1989 Act,** or other applicable law.

SECTION 4. ORS 45.250 is amended to read:

45.250. (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accord-

ance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead; or

[(b) The witness's residence or present location is such that the witness is not obliged to attend in obedience to a subpena as provided in ORCP 55 E.(1), unless it appears that the absence of the witness was procured by the party offering the deposition; or]

[(c)] **(b)** The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

[(d)] **(c)** The party offering the deposition has been unable to procure the attendance of the witness by subpena; or

[(e)] **(d)** Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

[(f)] **(e)** The deposition was taken in the same proceeding pursuant to ORCP 39 I.

SECTION 5. ORCP 39 I. is amended to read:

I. Perpetuation of testimony after commencement of action.

I.(1) After commencement of any action, any party wishing to perpetuate the testimony of a witness for the purpose of trial or hearing may do so by serving a perpetuation deposition notice.

I.(2) The notice is subject to subsections C.(1) through (7) of this rule and shall additionally state:

I.(2)(a) A brief description of the subject areas of testimony of the witness; and

I.(2)(b) The manner of recording the deposition.

I.(3) Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of Rule 36 C. At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS 40.465 (1)(d) or (e) or 45.250 (2)(a) through *[(d)]* **(c)**; or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken shall be admissible at any subsequent trial or hearing in the action, subject to the Oregon Evidence Code.

I.(4) Any perpetuation deposition shall be taken not less than seven days before the trial or hearing on not less than 14 days' notice, unless the court in which the action is pending allows a shorter period upon a showing of good cause.

I.(5) To the extent that a discovery deposition is allowed by law, any party may conduct a discovery deposition of the witness prior to the perpetuation deposition.

I.(6) The perpetuation examination shall proceed as set forth in *[subsection]* **section** D. of this rule. All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The court before which the testimony is offered shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived.

SECTION 5a. ORS 59.315 is amended to read:

59.315. (1) For the purpose of an investigation or proceeding under the Oregon Securities Law, the director may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in *[civil cases]* **subsection (2) of section 2 of this 1989 Act.**

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

SECTION 6. ORS 136.600 is amended to read:

136.600. The provisions of ORS 44.150 and ORCP 39 B. and 55 E.*[(2)]* and G. apply in criminal actions, examinations and proceedings.

SECTION 7. ORS 144.347 is amended to read:

144.347. (1) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the testimony to be offered, the board or its designated representatives shall issue subpenas requiring the attendance and testimony of witnesses. In any case, the board, on its own motion, may issue subpenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board or its designated representative shall issue subpenas

duces tecum. In any case, the board, on its own motion, may issue subpenas duces tecum.

(3) Witnesses appearing under subpena, other than the parties or state officers or employes, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act.** If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpena issued under subsection (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or its designated representative or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued by the court.

SECTION 7a. ORS 147.115 is amended to read:

147.115. (1) All information submitted to the department by an applicant and all hearings of the board under ORS 135.905 and 147.005 to 147.365 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

(a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either the apprehension or the trial of the alleged assailant;

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

(c) The victim or alleged assailant is a minor; or

(d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

(2)(a) A record shall be kept of the proceedings held before the board and shall include the board's findings of fact and conclusions concerning the amount of compensation, if any, to which the applicant and the dependents of a deceased victim are entitled.

(b) No part of the record of any proceedings before the board may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have committed perjury in testimony before the board.

(c) Where the interests of justice require, the board may refuse to disclose to the public the names of victims or other material in the record by which the identity of the victim could be discovered.

(3) Notwithstanding paragraphs (b) and (c) of subsection (2) of this section, the record of the proceedings held before the board is a public record. However, any record or report obtained by the board, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act.**

SECTION 8. ORS 161.395 is amended to read:

161.395. (1) Upon request of any party to a hearing before the board, the board or its designated representatives shall issue, or the board on its own motion may issue, subpenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing before the board and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board or its designated representative shall issue, or the board on its own motion may issue, subpenas duces tecum.

(3) Witnesses appearing under subpenas, other than the parties or state officers or employes, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act.** If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpena issued under subsections (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or its designated representative or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on application of the board or its designated representative, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board shall be punishable by a fine of $100.

SECTION 9. ORS 171.515 is amended to read:

171.515. (1) Witnesses appearing under process issued pursuant to ORS 171.510:

(a) Before the Senate or House of Representatives, or a standing, special or statutory committee of either or both, or a subcommittee thereof, except as provided in paragraph (b) of this subsection, shall be reimbursed from funds appropriated for the expenses of that session of the Legislative Assembly during which the witnesses appear.

(b) Before the Legislative Counsel Committee, the Emergency Board, the Joint Committee on Ways and Means or an interim committee, or a subcommittee thereof, shall be reimbursed from funds appropriated for the expenses of the committee or subcommittee before which the witnesses appear.

(2) The amount of reimbursement payable to a witness under subsection (1) of this section shall not exceed the [*fee that would be payable if the witness were appearing before a judge pursuant to ORS 44.430*] **fees and mileage provided for witnesses in subsection (2) of section 2 of this 1989 Act.** All claims for reimbursement are subject to the approval of the Legislative Fiscal Officer.

SECTION 10. ORS 181.330 is amended to read:

181.330. The presiding officer of the trial board shall make all necessary rulings during the course of the hearing which may be held at any place designated by the superintendent. The superintendent or the officer acting in the stead of the superintendent as presiding officer of the trial board is empowered to issue subpenas to compel the attendance of witnesses and the production of evidence and to administer all necessary oaths. Persons summoned as witnesses before the trial board shall be entitled to [*witness*] fees and mileage [*for traveling, as*] provided [*by law*] for witnesses in [*courts of record in the county in which the hearing is held*] **subsection (2) of section 2 of this 1989 Act.** Failure or refusal to obey any subpena shall be brought to the attention of [*such*] **the** circuit court **for the county in which the hearing is held** and shall be punished by that court as a contempt.

SECTION 10a. ORS 183.440 is amended to read:

183.440. (1) The agency shall issue subpenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the agency, entitled to have witnesses on behalf of the party may have subpenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpena, other than the parties or officers or employes of the agency, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act.**

(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of or issuing the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

SECTION 10b. ORS 237.315 is amended to read:

237.315. In order to determine any facts necessary to the administration of the retirement system, the board may conduct hearings, subpena and examine witnesses and require any person having custody thereof to bring before the board any book, record, document, certificate, writing, article or thing necessary to a determination of facts. The chairman or member of the board acting in such capacity shall have authority to administer oaths. The procedure in such hearings shall be informal. Fees shall not be paid to witnesses who are public officers or employes, whether or not their employer is participating in the system. No public employer shall make deduction from the compensation of public officers or employes because of absence from their respective positions in order to be examined as witnesses before the board. The fees of other witnesses and mileage of any witness shall be [*the same*] as allowed by law to witnesses in [*civil cases in courts of record*] **subsection (2) of section 2 of this 1989 Act.** Fees and mileage and all other necessary disbursements in connection with a hearing shall be paid by the public employer whose failure or refusal to supply any facts requested of it by the board made necessary such hearing.

SECTION 10c. ORS 241.145 is amended to read:

241.145. Any person served with a subpena requiring attendance before the commission, or any commissioner, shall be entitled to the [*same*] fees and mileage as are allowed by law to witnesses in [*civil cases in courts of record*] **subsection (2) of section 2 of this 1989 Act,** except that no person shall be entitled to any fees or mileage for such attendance who is employed in the public service of the county in which the person is called as such witness. The fees and mileage allowed by this section need not be prepaid, but the county clerk shall draw a warrant for the payment thereof when it is certified by the commission.

SECTION 10d. ORS 242.730 is amended to read:

242.730. Every person served with a subpena requiring attendance before the commission shall be entitled to the [*same*] fees and mileage as are allowed by law to witnesses in [*civil suits and actions*] **subsection (2) of section 2 of this 1989 Act,** except that no person shall be entitled to any fees or mileage who is employed in the public service of the political subdivision in which the person is called as a witness. The fees and mileage allowed by this section need not be prepaid, but the governing body of the political subdivision shall provide for payment thereof when certified by the commission.

SECTION 11. ORS 305.200 is amended to read:

305.200. Witnesses testifying before the department at its request and on its behalf shall be allowed the [*same*] fees and mileage [*as allowed in criminal causes in the circuit court*] **provided for witnesses in subsection (2) of section 2 of this 1989 Act.** The fees and mileage shall be paid by warrant upon the State Treasurer upon the certificate of the di-

rector. However, any county or state officer shall receive the actual necessary traveling expenses of the county or state officer only. No tender of witness fees or mileage in advance shall be necessary.

SECTION 12. ORS 305.495 is amended to read:

305.495. Any witness subpenaed or whose deposition is taken shall receive the [*same*] fees and mileage [*as a witness in a circuit court of this state*] **provided for witnesses in subsection (2) of section 2 of this 1989 Act**. Witnesses for the state or its political subdivisions shall be paid from moneys appropriated therefor. Payment of fees and mileage to other witnesses shall be made by the party at whose instance the witness appears or the deposition is taken.

SECTION 13. ORS 398.224 is amended to read:

398.224. (1) Any person not subject to this chapter is guilty of an offense against the state when the person:

(a) Has been duly subpenaed to appear as a witness before a court-martial, court of inquiry or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission or board;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the circuit court of the state **in subsection (2) of section 2 of this 1989 Act**; and

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce.

(2) Any person who commits an offense described in subsection (1) of this section shall be tried before the circuit court or judge thereof of the county where the offense occurred, and exclusive jurisdiction is conferred upon those courts for such purpose. Upon conviction, such a person shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both.

(3) The district attorney of the county in which the offense occurred, upon certification of the facts by the military court, court of inquiry or board, shall prosecute any person who commits the offense described in subsection (1) of this section. The fine shall be deposited in the General Fund of the State Treasury, to be available for general governmental expenses.

SECTION 13a. ORS 416.427 is amended to read:

416.427. (1) When a party requests a hearing pursuant to ORS 416.415 or 416.425 (1)(a), the contested case provisions of ORS 183.310 to 183.550 apply except when the issue of paternity is to be resolved pursuant to ORS 416.430.

(2) Except as provided in ORS 416.430, hearings shall be conducted by a qualified hearings officer appointed by the Employment Division.

(3) The hearings officer has the power to issue subpenas for witnesses necessary to develop a full record. The attorney of record for the office may issue subpenas. Witnesses appearing pursuant to subpena, other than parties or officers or employes of the administrator, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act**. Obedience to the subpena may be compelled in the same manner as set out in ORS 183.440 (2).

(4) Upon issuance of an order, action by the administrator to enforce and collect upon the order, including arrearages, may be taken. Such action shall not be stayed or partially stayed pending appeal or by any court unless there is substantial evidence showing that the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(5) An order issued by the hearings officer or the administrator is final. The order shall be in full force and effect while any appeal is pending unless the order is stayed by a court. No stay shall be granted unless there is substantial evidence showing the obligor would be irreparably harmed and that the obligee would not be irreparably harmed. Appeal of the hearings officer's or administrator's order may be taken to the circuit court for a hearing de novo.

SECTION 14. ORS 426.297 is amended to read:

426.297. (1) The expenses of a proceeding under ORS 426.295 (2) shall be paid by the person, unless it appears from the affidavit of the person or other evidence that the person is unable to pay the expenses. If the person is unable to pay, the expenses of the proceedings shall be paid by the county of which the mentally ill person was a resident at the time of admission. If the county of residence cannot be established, the county from which the person was admitted shall pay the expenses.

(2) The expenses of the proceeding under ORS 426.295 (3) shall be paid by the petitioner.

(3) Any physician employed by the court to make an examination as to the mental condition of a person subject to a competency proceeding under ORS 426.295 or 426.380 to 426.390 shall be allowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony shall receive the same fees as are paid in [*civil cases*] **subsection (2) of section 2 of this 1989 Act**.

SECTION 14a. ORS 462.272 is amended to read:

462.272. (1) In administering the provisions of this chapter, any member of the commission, or an agent authorized by the commission, has power on behalf of the commission to:

(a) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(b) Administer oaths.

(c) Take or cause to be taken depositions within or without this state, as provided by law.

(2) The commission, upon request of any person interested in a matter before the commission, may issue subpenas for the attendance of witnesses or

the production of books, records or documents on behalf of such person.

(3) The commission's subpenas may be served by any person appointed by the commission. They shall be served, and witness fees and mileage shall be paid, as [*in civil cases in the circuit court*] **provided in subsection (2) of section 2 of this 1989 Act.**

(4) If a person refuses to attend to give testimony or to produce books, records or documents, pursuant to a subpena issued by the commission, the circuit court of the county where attendance is required, upon application of the commission, shall compel obedience to the subpena and shall punish refusal to obey or to testify in the same manner as is punished a refusal to obey a subpena or to testify pursuant to a subpena issued from the circuit court.

SECTION 14b. ORS 468.120 is amended to read:

468.120. (1) The commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) Subpenas authorized by this section may be served by any person authorized by the person issuing the subpena. Witnesses who are subpenaed shall receive the [*same*] fees and mileage [*as in civil actions in the circuit court*] **provided in subsection (2) of section 2 of this 1989 Act.**

SECTION 14c. ORS 536.029 is amended to read:

536.029. (1) The Water Resources Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department under ORS 541.010 to 541.320, 541.410 to 541.990 and ORS chapters 536 to 540, 542 and 543.

(2) Subpenas authorized by this section may be served by any person authorized by the person issuing the subpena. Witnesses who are subpenaed shall receive the [*same*] fees and mileage [*as in civil actions in the circuit court*] **provided in subsection (2) of section 2 of this 1989 Act.**

SECTION 14d. ORS 539.110 is amended to read:

539.110. The Water Resources Director shall fix the time and a convenient place for hearing the contest, and shall notify the contestant and the person whose rights are contested to appear before the director or the authorized assistant of the director at the designated time and place. The date of hearing shall not be less than 30 nor more than 60 days from the date the notice is served on the parties. The notice may be served either personally or by registered mail addressed to the parties at their post-office addresses as stated in the statement and proof of claimant. The director may adjourn the hearing from time to time upon reasonable notice to all the parties interested; may issue subpenas and compel the attendance of witnesses to testify, which subpenas shall be served in the same manner as subpenas issued out of the circuit court; may compel the witnesses so subpenaed to testify and give evidence in the matter; and may order the taking of depositions and issue commissions therefor in the same manner as depositions are taken in the circuit court. The witnesses shall receive fees as [*in civil cases*] **provided in subsection (2) of section 2 of this 1989 Act,** the costs to be taxed in the same manner as are costs in suits in equity. The evidence in the proceedings shall be confined to the subjects enumerated in the notice of contest. The burden of establishing the claim shall be upon the claimant whose claim is contested. The evidence may be taken by a duly appointed reporter.

SECTION 15. ORS 543.055 is amended to read:

543.055. (1) The Water Resources Commission may hold hearings and take testimony orally, by deposition or in such other form as the commission considers satisfactory, either within or without this state. The Water Resources Commission may require, by subpena, the attendance of witnesses and the production of documentary evidence.

(2) The commission may appoint any person as hearing examiner to conduct and preside over any hearing which the commission is required or permitted by law to hold. A hearing examiner so appointed shall have the same powers with respect to the conduct of the hearing as are granted by law to the commission, including the taking of testimony, the signing and issuance of subpenas and the administering of oaths and affirmations to witnesses. The hearing examiner shall keep a record of the proceedings on the hearing and shall transmit such record to the commission. The commission may take action upon such record to the same extent as though the hearing has been conducted and presided over by the commission.

(3) The commission may designate any person to take the testimony, affidavit or deposition of a witness. The person so designated may administer an oath or affirmation to any such witness and take the testimony thereof in accordance with such rules as the commission may prescribe.

(4) Witnesses appearing before the commission or any person designated by the commission to take testimony shall be paid the [*same*] fees and mileage [*that are paid to witnesses summoned to appear as such in the courts of this state*] **provided for witnesses in subsection (2) of section 2 of this 1989 Act.**

SECTION 15a. ORS 645.210 is amended to read:

645.210. (1) For the purpose of an investigation or proceeding under this chapter, the director may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in [*civil cases*] **subsection (2) of section 2 of this 1989 Act.**

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

SECTION 16. ORS 646.831 is amended to read:

646.831. Any person appearing for oral examination pursuant to a demand served under ORS 646.750 shall be entitled to the [*same*] fees and mileage [*which are paid to witnesses in the circuit courts*] **provided for witnesses in subsection (2) of section 2 of this 1989 Act.**

SECTION 17. ORS 651.060 is amended to read:

651.060. (1) The Commissioner of the Bureau of Labor and Industries may issue subpenas, subpenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the duties required under ORS 279.348 to 279.365, 651.030, 651.050, 651.120, 651.170, 652.330, 653.055 and wage claims arising under ORS 653.305 to 653.350 and in all contested cases scheduled for hearing by the Bureau of Labor and Industries pursuant to ORS 183.310 to 183.550. Such testimony shall be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpenaed and testifying before any officer of the bureau shall be paid the [*same fees as witnesses before a circuit court*] **fees and mileage provided for witnesses in subsection (2) of section 2 of this 1989 Act,** which payment shall be made from the fund appropriated for the use of the bureau, and in the manner provided in ORS 651.170 for the payment of other expenses of the bureau.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other assistants or personnel as may be necessary to carry into effect the powers and duties of the commissioner or of the Bureau of Labor and Industries and may prescribe the duties and responsibilities of such employes. The commissioner may delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and to the other assistants employed under this subsection for the purpose of transacting the business of the commissioner's office or of the bureau. In the absence of the commissioner, the deputy commissioner and the other assistants whom the commissioner employs shall have full authority, under the commissioner's direction, to do and perform any duty which the law requires the commissioner to perform. However, the commissioner shall be responsible for all acts of the deputy commissioner and of the assistants employed under this subsection.

(4) In accordance with any applicable provisions of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries may adopt such reasonable rules as may be necessary to administer and enforce any statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

(5) The Commissioner of the Bureau of Labor and Industries may conduct and charge and collect fees for public information programs pertaining to any of the statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

SECTION 17a. ORS 653.530 is amended to read:

653.530. (1) The commission may hold meetings for the transaction of any of its business at such times and places as it may prescribe.

(2) The commission may hold public hearings at such times and places as it deems fit and proper for the purpose of investigating any of the matters it is authorized to investigate under ORS 653.535.

(3) At any such public hearing any person interested in the matter being investigated may appear and testify.

(4) The commission may subpena and compel the attendance of any witness at any such public hearing. Any commissioner may administer an oath to any witness who testifies at any such public hearing.

(5) All witnesses subpenaed by the commission shall be paid the same mileage and per diem as are allowed by law to witnesses [*in civil cases before the Circuit Court of Multnomah County*] **under subsection (2) of section 2 of this 1989 Act.**

SECTION 18. ORS 663.285 is amended to read:

663.285. (1) Complaints, orders, and other process and papers of the board or its designated agent issued under ORS 663.005 to 663.295 may be served personally, by registered or certified mail, by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving setting forth the manner of service is proof of service. The return post-office receipt or telegraph receipt therefor, when registered and mailed or telegraphed, is proof of service.

(2) Witnesses summoned before the board or its designated agent under ORS 663.005 to 663.295 shall be paid the [*same*] fees and mileage [*that are paid*

witnesses in the courts of this state] **provided for witnesses in subsection (2) of section 2 of this 1989 Act.** Witnesses whose depositions are taken and the persons taking the same are severally entitled to the same fees as are paid for like services in the courts of this state.

SECTION 19. ORS 706.775 is amended to read:

706.775. (1) For the purpose of an investigation or proceeding under the Bank Act, the director may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to the inquiry.

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matter, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpena issued from the court or a refusal to testify therein.

(3) Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in [*civil cases*] **subsection (2) of section 2 of this 1989 Act,** except that a witness subpenaed at the instance of parties other than the director or an examiner shall not be compensated for attendance or travel unless the director certifies that the testimony of the witness was material to the matter investigated.

(4) The director in any investigation may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court.

SECTION 20. ORS 722.442 is amended to read:

722.442. (1) Except as provided by ORS 40.225 to 40.295, the director and any of the examiners, auditors and appraisers of the Department of Insurance and Finance:

(a) Shall have free access to all books and records of an association, its subsidiaries and affiliates, that relate to its business, and the books and records kept by any officer, agent or employe, relating to or upon which any record of its business is kept;

(b) May subpena witnesses and administer oaths or affirmations in the examination of any director, officer, agent or employe of an association, its subsidiaries or affiliates or of any other person in relation to its affairs, transactions and conditions; and

(c) May require the production of records, books, papers, contracts and other documents.

(2) Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in [*civil cases in the circuit court*] **subsection (2) of section 2 of this 1989 Act.**

(3) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify in such court.

SECTION 21. ORS 726.255 is amended to read:

726.255. (1) For the purpose of an investigation or proceeding under the Pawnbrokers Act, the director may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to the inquiry.

(2) If a person fails to comply with a subpena issued under subsection (1) of this section or a party or witness refuses to testify on any matter, the judge of the circuit court for any county, on the application of the director, shall compel obedience in the manner provided by law in the case of disobedience to a subpena issued in a civil action in the circuit court.

(3) Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in [*civil cases*] **subsection (2) of section 2 of this 1989 Act,** except a witness subpenaed at the instance of parties other than the director or an examiner shall not be compensated for attendance or travel unless the director certifies that the testimony of the witness was material to the matter investigated.

(4) The director in any investigation may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court.

SECTION 22. ORS 731.232 is amended to read:

731.232. (1) For the purpose of an investigation or proceeding under the Insurance Code, the director may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the director considers relevant or material to the inquiry. Each witness who appears before the director under a subpena shall receive the fees and mileage provided for witnesses in [*civil cases in the circuit court*] **subsection (2) of section 2 of this 1989 Act.**

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

SECTION 23. ORS 756.543 is amended to read:

756.543. (1) The commission shall issue subpenas to any party to a proceeding before the commission upon request and proper showing of the general rel-

evance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpena, other than the parties or their officers or employes, or employes of the commission, shall receive fees and mileage as prescribed by law for witnesses in [*civil actions*] **subsection (2) of section 2 of this 1989 Act.** If the commission certifies that the testimony of a witness was relevant and material, any person who paid fees and mileage to that witness shall be reimbursed by the commission and from moneys referred to in ORS 756.360 and 767.630, subject to the limitations provided in those sections and in ORS 767.640.

(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which the person may be lawfully interrogated, the judge of the circuit court of any county, on the application of the commission, or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.

SECTION 24. ORS 44.410 and 44.430 are repealed.

Approved by the Governor August 3, 1989
Filed in the office of Secretary of State August 4, 1989

CHAPTER 981

AN ACT HB 3498

Relating to community policing; limiting expenditures; and declaring an emergency.

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

SECTION 1. (1) The Executive Department may administer a grant program for state-wide community policing demonstration projects. The Executive Department shall award grants on the basis of appropriateness and effectiveness and shall consider geographic and demographic factors in making the awards.

(2) To be eligible for a grant, a community must:

(a) Demonstrate interaction between its citizens and the police; and

(b) Have initiated planning for innovative police strategies that are problem oriented, proactive and community based.

(3) A community must submit to the Executive Department a proposal that provides the details of the community policing project the community intends to implement. The project shall contain the following elements:

(a) Community involvement, including involving neighborhood associations, business groups, churches and other civic organizations in establishing priorities for anticrime efforts involving the police and other community agencies and providing recognition of and police support to citizen-based anticrime efforts including, but not limited to, block watches, task forces and alternative programs;

(b) Problem-solving orientation;

(c) Community-based deployment strategies that fit the community's problems, financial limitations and priorities, as jointly determined by the citizens of the community, the elected officials and the police; and

(d) Increased accountability of the police to the citizens.

SECTION 2. The Executive Department shall evaluate the demonstration projects to determine their effectiveness.

SECTION 3. The Executive Department may administer a training program for local law enforcement units on community, problem-oriented policing. The training shall include, but not be limited to, familiarizing police officers with the problem-oriented policing model of scanning for problems in the community, analyzing and responding to the problems and assessing the results.

SECTION 4. Notwithstanding any other law, the following amounts are established for the biennium beginning July 1, 1989, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Executive Department for the Criminal Justice Services Division, for the following purposes:

(1) Community policing training $1
(2) Community policing grants $1

SECTION 5. Notwithstanding any other law, the following amounts are established for the biennium beginning July 1, 1989, as the maximum limits for payment of expenses from federal funds collected or received by the Executive Department for the Criminal Justice Services Division, for the following purposes:

(1) Community policing training $1
(2) Community policing grants $1

SECTION 6. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1989.

Approved by the Governor August 3, 1989
Filed in the office of Secretary of State August 4, 1989

CHAPTER 982

AN ACT HB 2188

Relating to crime; creating new provisions; amending ORS 161.005, 166.360, 166.370 and 166.715; and repealing ORS 480.220.

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

Senate Bill 287

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Office of State Court Administrator)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Repeals existing contempt statutes. Enacts new contempt laws. Establishes new penalties and procedures for contempt. Conforms existing statutes to new procedure.

A BILL FOR AN ACT

Relating to contempt of court; creating new provisions; amending ORS 1.020, 1.250, 1.475, 3.311, 8.710, 9.360, 10.245, 10.990, 20.160, 21.605, 23.720, 25.020, 25.050, 25.190, 25.200, 25.350, 29.285, 29.305, 33.290, 40.015, 44.090, 52.040, 52.050, 59.315, 93.990, 107.105, 107.445, 107.718, 107.720, 107.820, 110.222, 114.425, 116.043, 132.990, 133.381, 135.055, 135.290, 135.990, 136.619, 137.128, 144.347, 151.250, 151.450, 161.395, 161.685, 164.075, 169.150, 171.522, 181.330, 183.440, 190.770, 192.490, 221.918, 241.125, 243.726, 297.210, 297.530, 305.190, 305.195, 305.263, 314.425, 316.164, 323.235, 327.109, 411.390, 416.220, 416.440, 419.517, 423.450, 465.040, 465.160, 471.640, 471.765, 520.125, 583.096, 583.106, 618.506, 618.531, 646.626, 646.632, 650.060, 654.130, 662.130, 663.275, 677.270, 677.325, 679.027, 679.290, 686.270, 697.742, 706.775, 722.442, 731.232, 756.543 and 764.360 and ORCP 9 B., 46 B., 47 G., 55 G., 65 D., 78 B. and 78 D.; and repealing ORS 33.010, 33.020, 33.030, 33.040, 33.050, 33.060, 33.070, 33.080, 33.090, 33.095, 33.100, 33.110, 33.130, 33.140 and 33.150.

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

SECTION 1. Nature of contempt powers. Sections 1 to 13 of this Act do not limit the contempt powers of the courts but establish procedures and rights relating to the contempt powers of courts to the end that the powers be exercised in a uniform and consistent manner and that rights with regard to those powers be recognized and protected. The following apply to the contempt powers of courts as described:

(1) The contempt powers of the courts are inherent powers necessary for courts to maintain their dignity and authority, transact their business and accomplish the purpose of their existence.

(2) A contempt proceeding or exercise of contempt powers under sections 1 to 13 of this Act is not civil or criminal in nature but is unique and of its own nature and is subject to provisions relating to civil and criminal law only as provided under sections 1 to 13 of this Act.

(3) Contempt is not an offense under the criminal laws of this state, and the provisions of this state's criminal laws are applicable only as provided under sections 1 to 13 of this Act.

(4) In the case of a corporation or other organization that is a contemnor, the court may exercise its contempt powers against the officers, directors or other persons in control of the corporation or organization the same as though such persons were themselves contemnors.

(5) A contemnor can be indicted for the same misconduct if it is an indictable offense, but the court before which the contemnor is convicted shall take into consideration in passing sentence any

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

sanction previously imposed for the contempt.

(6) Any party in an action, suit or proceeding may bring a civil suit or action against a contemnor for the same misconduct if the misconduct causes any injury or loss to the party that is prejudicial to the rights of the injured party or if the party, including the state, is aggrieved by the contempt and is caused to make costs and disbursements because of the contempt. If a person accepts any moneys as part of remedial sanctions, described under section 9 of this Act, that are imposed by a court under section 3 of this Act, the judgment for the moneys from the remedial sanctions and acceptance by the person is a bar to any suit or action described under this subsection.

(7) A court has continuing jurisdiction over a contempt and the person who committed the conduct from the time the contempt action is initiated under section 3 of this Act until the court discharges the contempt action. Multiple proceedings held or sanctions imposed as part of a contempt action do not affect the jurisdiction of the court, but the court must take any prior sanctions into consideration in the imposition of subsequent sanctions for the same contempt.

(8) The distinctions between civil and criminal contempt and between direct and indirect contempt are abolished.

(9) The provisions of sections 1 to 13 of this Act are applicable to the contempt powers of every court and judicial officer, including municipal and justice courts and all other courts of this state and its political subdivisions whether established by the Constitution, statute, charter or ordinance.

(10) Whenever sections 1 to 13 of this Act provide the right to have appointed counsel to indigents who are contemnors or are cited for contempt, counsel shall be provided and paid for as provided under ORS chapter 151.

(11) A court may only respond to a contempt committed against another court if the judge of the other court refers authority over the contempt under section 3 of this Act.

SECTION 2. Behavior constituting contempt. (1) A person commits contempt and is subject to contempt powers of the court under section 3 of this Act if the person's wilful conduct does one or more of the following:

(a) Disrupts the judicial process.

(b) Tends to bring the judicial process into disrepute or disrespect.

(c) Obstructs the judicial process.

(d) Violates a statutory provision that specifically subjects the person to the contempt powers of the court.

(2) The acts or omissions listed in this subsection constitute contempt for purposes of subsection (1) of this section, but subsection (1) of this section is not limited to or restricted by the list in this subsection. Any conduct described in the following is contempt if it is wilful:

(a) Disorderly, contemptuous or insolent behavior toward a judge who is holding court that tends to impair the court's authority or to interrupt the due course of a trial or other judicial proceeding.

(b) A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

(c) Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

(d) Deceit or abuse of the process or proceedings of the court by a party, an interested person or witness to an action, suit or proceeding.

(e) Disobedience of any order of the court.

(f) Acting as an attorney or other officer of the court without authority in a particular instance.

(g) Rescuing from the custody of an officer any person or property that is in custody by order or process of the court.

(h) Unlawfully detaining a witness or party to an action, suit or proceeding while the witness or party is going to, remaining at or returning from the court where the action, suit or proceeding is heard or is to be heard.

(i) Disobedience of a subpena duly served or refusal to be sworn or to answer as a witness.

(j) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any person, in relation to the merits of the action, suit or proceeding or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(k) Disobedience by any inferior tribunal, magistrate or officer of the judgment, decree, order or process of a superior court in an action, suit or proceeding after the action, suit or proceeding has been removed from the jurisdiction of the inferior tribunal, magistrate or officer.

(L) Any other unlawful interference with the process or proceedings of a court.

(m) Disobedience of a judgment, order, decree or process of the court made for the benefit of a litigant in a civil process.

(n) Failure to comply with a judgment or order to pay money in domestic relations and juvenile court proceedings for suit money, attorney fees, spousal support, child support, maintenance, nurture or education.

(o) Contempt described under the following sections: ORS 1.020, 1.250, 1.475, 3.311, 8.710, 9.360, 9.527, 10.245, 10.990, 20.160, 21.605, 23.720, 25.020, 25.050, 25.190, 25.200, 25.350, 29.285, 29.305, 33.290, 40.015, 44.090, 52.040, 52.050, 59.315, 93.990, 107.105, 107.445, 107.718, 107.720, 107.820, 110.222, 114.425, 116.043, 132.990, 133.381, 135.290, 135.990, 136.619, 137.128, 144.347, 151.250, 151.450, 161.395, 161.685, 164.075, 169.150, 171.522, 181.330, 183.440, 190.770, 192.490, 221.918, 241.125, 243.726, 297.210, 297.530, 305.190, 305.195, 305.263, 314.425, 316.164, 323.235, 327.109, 411.390, 416.220, 416.440, 419.517, 423.450, 465.040, 465.160, 471.640, 471.765, 520.125, 583.096, 583.106, 618.506, 618.531, 646.626, 646.632, 650.060, 654.130, 662.130, 663.275, 677.270, 677.325, 679.027, 679.290, 686.270, 697.742, 706.775, 722.442, 731.232, 756.543, 764.360 or under the Oregon Rules of Civil Procedure.

(p) Conduct that completely halts a judicial proceeding until order is restored including, but not limited to, repeatedly interrupting, insulting other persons in court, physically assaulting persons in the court room, noisemaking, shouting, clapping, pounding, stamping feet, being tardy or absent without excuse, making frivolous or insubstantial objections and arguments, disregarding court rulings and engaging in tactics designed to delay or interfere with the proceedings.

(q) Conduct that tends to subvert fairness or efficiency in the judicial process, thereby reducing or eliminating the opportunity for a fair trial including, but not limited to, bribing, threatening or intimidating court officers, jurors, witnesses, judges or opposing parties, avoiding execution of process, altering documents, refusing to testify and concealing property to avoid levy.

(r) Refusal to comply with an interlocutory or final order in a case, failure to make payments as ordered, refusal to testify before a grand jury, refusal to file a financial statement or refusal to produce a handwriting sample.

(s) The failure of a convicted defendant to pay any fine or make restitution, as defined in ORS 137.103, when so sentenced upon any offense under the laws of this state, or defaults in the payment

thereof of any instalment. Contempt described under this paragraph is subject to the provisions of ORS 161.685 (1) in addition to the provisions under sections 1 to 13 of this Act.

(3) Except as otherwise specifically provided by statute, the following nonexclusive list describes situations that do not constitute contempt under this section:

(a) Except as provided in paragraphs (n) and (s) of subsection (2) of this section, failure to comply with a judgment or order for payment of money.

(b) Failure to comply with an order of the court where the contemnor can show an inability to comply that is not self-induced.

(c) Refusal to testify under a lawful privilege not to testify.

(d) An attorney's respectful disagreement with a judge's viewpoint or respectful attempt to make a record or preserve objections.

(e) Any act of a person under 12 years of age.

SECTION 3. Court powers and procedures to respond to contempt of court. A court may respond to a contempt described under section 2 of this Act by instituting a contempt action described under section 8 of this Act to impose sanctions described under section 9 of this Act. Any contempt action is subject to the provisions and requirements of sections 1 to 13 of this Act. In its response to a contempt, any court is subject to the following provisions that control the described elements of the court's response:

(1) Citation. A contempt citation initiates a contempt action. The following apply to contempt citations as described:

(a) Except for a warrant or order necessary to obtain the appearance of the person cited, no claim, indictment, pleading, subpena, complaint or other instrument is necessary for a court to initiate a contempt action.

(b) A court may cite for contempt in person, may provide for personal service with a written contempt citation or may provide such other method of service of a contempt citation as the court may direct.

(c) Contempt citations shall comply with the requirements of section 6 of this Act.

(2) Obtaining appearance of person cited. When a person is cited for contempt, a court shall require the person cited to appear before the court for contempt proceedings. When necessary, the court may obtain the person's appearance for the proceedings by any of the following methods:

(a) Issuing an order requiring the person cited to appear at a specified time and place.

(b) Issuing an arrest warrant for the person cited to be brought before the court. An arrest warrant ordered under this paragraph is subject to the provisions of section 12 of this Act.

(c) If the person cited is in the custody of an officer by virtue of a legal order or process, issuing an order for the production of the person. If an order is issued under this paragraph, the officer shall produce the person cited and hold the person until disposition by the court.

(3) Referral to another judge. A judge may at any time refer a contempt to another judge in order to avoid bias; the appearance of bias or circumstances where objectivity could reasonably be questioned. If a contempt is referred under this subsection, the judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt and shall have the same authority over the contempt as the court against which the contempt was committed. Except as provided in section 11 of this Act, a person cited for contempt may file a motion for referral to another judge under this subsection and may obtain the referral upon a showing of prejudice.

(4) Contempt order. A contempt order is the order that imposes sanctions established as a result of a contempt proceeding and determines whether there will be further proceedings in the contempt action. The following apply to contempt orders as described:

(a) A contempt order does not discharge the contempt action unless it specifically so provides.

(b) A contempt order is an appealable order.

(c) A contempt order must comply with the requirements under section 7 of this Act.

SECTION 4. Participation in or prosecution of contempt action. This section establishes persons permitted and required to participate in or prosecute a contempt action. Section 5 of this Act establishes the procedure for becoming a party to or initiating a prosecution of a contempt action by persons when required or allowed under this section. Nothing in this section allows any of the described parties to participate in or prosecute a summary action. The following apply as described:

(1) The district attorney:

(a) May prosecute when necessary to protect an interest of this state and when no other party is prosecuting.

(b) Shall prosecute when ordered by a court.

(c) Shall prosecute when a party alleging violation of a restraining order issued under ORS 107.700 to 107.720 states that the party is unable to afford private counsel and asks the district attorney of the county in which the restraining order was issued to initiate and prosecute to compel compliance with the order. A district attorney is only required to prosecute under this paragraph if the district attorney determines that there is probable cause to believe that the violation has occurred.

(d) Shall prosecute when the district attorney represents an obligee for support under ORS 25.080 or a state agency and the district attorney finds probable cause to believe the obligor is in contempt.

(e) May or shall prosecute when specifically required or allowed by another statute.

(2) The Support Enforcement Division:

(a) May prosecute when specifically allowed by statute.

(b) Shall prosecute when it represents an obligee for support under ORS 25.080 or a state agency and the division finds probable cause to believe the obligor is in contempt.

(3) Any person, including state agencies, may prosecute or become a party when specifically allowed by another statute.

(4) Any party to a suit or action, including the state and any of its subdivisions or agencies, may prosecute in any instance where a contempt arises out of the suit and the contempt causes injury or loss of the party that is prejudicial to the rights of the injured party or causes the party to make costs and disbursements because of the contempt. In all cases where the proceeding is commenced by or at the request of a party or state agency under this section, that person or agency shall be deemed the party-plaintiff. The person or agency shall be added as a party-plaintiff in the proceeding without any action of the district attorney or the Support Enforcement Division and without a proceeding for adding a party.

(5) Any person, including the state and any agency or political subdivision or agency of the state, may become a party to a contempt proceeding other than a summary action for the purpose of offering proof necessary to establish remedial damages if the court assents to the person becoming a party and if the court could impose remedial sanctions for the benefit of the person.

SECTION 5. Procedure for person other than court to initiate contempt action or become a

party. This section establishes how a person initiates or becomes a party to a contempt action when allowed or required under section 4 of this Act. The following apply as described:

(1) A person allowed or required to become a party to or prosecute a contempt action under section 4 of this Act does so by making a filing with the court against which the contempt was committed. The filing must meet the requirements under subsection (2) of this section.

(2) For purposes of subsection (1) of this section, the filing must provide the court with all of the following:

(a) The name and address of the party.

(b) The name and address of the person alleged to be in contempt.

(c) A specific description, supported by specific facts, of the conduct alleged to have been committed. The filing need not set forth recitals of matters already appearing in the record of the suit, action or proceeding from which the contempt arises, and in which the alleged contemnor has been personally served.

(d) Any name and identifying number assigned by the court to the suit, action or proceeding out of which the alleged contempt arises.

(e) Supporting affidavits, if obtainable, that will help the court determine whether a contempt might have been committed.

(f) Any other information required by the court.

SECTION 6. Contempt citation, requirements. This section establishes the requirements for a contempt citation for purposes of section 3 of this Act. A contempt citation may include such information as the court determines appropriate, but shall include all of the following:

(1) A statement that the person is being cited for contempt.

(2) A statement that the contempt action is subject to the provisions of sections 1 to 13 of this Act.

(3) A description, in detail, of the misconduct upon which the contempt action is based.

(4) A statement of the specific time and place the person is to appear for the contempt proceeding and whether the contempt is referred to another judge.

(5) A statement of the person's rights to be represented by or to have appointed an attorney.

(6) A statement of the maximum sanction for the contempt, excluding coercive sanctions.

SECTION 7. Contempt order, requirements. This section establishes, for purposes of section 3 of this Act, requirements for a contempt order. A contempt order must include all of the following:

(1) If a statute is violated, a citation to the statute.

(2) Facts supporting a finding of wilfulness.

(3) If summary action is taken, facts to support a finding of contempt in the court's immediate view and presence.

(4) Facts to support a finding of prejudice, if any.

(5) Findings as to any defense raised or found available.

(6) The relevant burden of proof and facts sufficient to meet that burden.

(7) The sanctions to be imposed.

(8) Any other information the court determines necessary or appropriate concerning the contempt or the proceeding.

SECTION 8. Types of contempt proceedings. This section establishes, for purposes of section 3 of this Act, the different types of proceedings for contempt. Subject to the limitations in this section and section 10 of this Act, a court may use the following types of proceedings to respond to a con-

tempt:

(1) Summary action. The following apply to a summary action as described:

(a) A court shall proceed on its own and such action shall not be prosecuted by any party.

(b) No person may become a party to or prosecute a summary action under section 4 of this Act.

(c) A court may use summary action only when the judge, through personal observation, has seen all the evidence regarding the incident and when the incident was committed in the immediate view and presence of the court.

(d) A judge cannot use summary action when the contempt is referred from another judge under section 3 of this Act.

(e) Summary action may include summary proceeding and summary imposition of sanction.

(f) Sanctions are limited by section 10 of this Act.

(g) The rights of persons cited for contempt at such proceeding are established under section 11 of this Act.

(h) No process or notice is required for summary action.

(i) At summary action, a finding that a person has committed contempt must be supported by a preponderance of the evidence.

(2) A contempt proceeding. The following apply to a contempt proceeding as described:

(a) The proceeding shall be prosecuted by a party other than the court.

(b) A finding that a person has committed contempt must be supported by a preponderance of the evidence except when otherwise provided under section 10 of this Act.

(c) Except when otherwise provided under section 10 of this Act, the proceeding shall follow the Oregon Rules of Civil Procedure.

(d) Rights of a person cited for contempt are established under section 11 of this Act.

(e) Sanctions are limited by section 10 of this Act.

SECTION 9. Sanctions for contempt. This section establishes the various types of sanctions a court may impose for contempt under section 3 of this Act. The sanctions described in this section are not mutually exclusive and a court may impose any or all of the sanctions in accordance with the procedures in section 3 of this Act and subject to any limits under section 10 of this Act. The following types of sanctions are available to courts as a response to contempt:

(1) Protective sanctions. Protective sanctions are sanctions a court may impose to protect or restore the order of the court. A court may impose protective sanctions only against individuals. Protective sanctions only include one or more of the following:

(a) A fine of not more than $100, or in lieu of a fine _____hours of community service.

(b) Removal of the person or barring the person from the proceeding for a specific time or until the end of the proceeding.

(c) Imprisonment, custody or other detention of the person for not more than two days.

(2) Coercive sanctions. Coercive sanctions are indeterminate sanctions the court may impose in cases of continuing contempt in order to compel compliance with a lawful order, judgment or decree of the court to the end that the contemnor will purge the contempt and comply with the order judgment or decree. The sanctions continue until the contemnor purges the contempt, until a time certain established by the court or until the court lifts the sanctions, whichever first occurs. Coercive sanctions only include one or more of the following:

(a) A continuing fine that accumulates on an hourly, daily, weekly or monthly basis or any other

basis the court determines appropriate.

(b) Custody, imprisonment or other detention until the contemnor purges the contempt. Custody under this paragraph may include house arrest upon such conditions as the court may impose or intermittent imprisonment if the court determines that to be appropriate.

(c) A fine, community service, custody, imprisonment or other detention where the imposition and execution of the sanction is suspended and conditions of probation are imposed under which the contemnor may purge the contempt. The court may provide that a purging of the contempt under this paragraph also purges the sanction either entirely or partially.

(3) Remedial sanctions. Remedial sanctions are sanctions that a court may impose to recover or compensate for any loss, injury, costs or disbursements that are caused by a contempt. Remedial sanctions may include, but are not limited to, one or more of the following:

(a) A judgment that a party injured by the contempt recover from the contemnor a sum of money sufficient to indemnify the injured party and to satisfy the injured party's costs and disbursements. This paragraph applies only to a loss or injury to a party in an action, suit or proceeding that is prejudicial to the rights of the injured party.

(b) A judgment that a party, including the state, aggrieved by the contempt may recover costs and disbursements from a contemnor together with a reasonable attorney fee to be fixed by the court. If counsel was appointed for an indigent contemnor, the court may require the contemnor, if found in contempt, to repay the contemnor's attorney fees to the state.

(c) An order requiring the contemnor to return or restore property damaged or taken as part of the contempt.

(4) Punitive sanctions. Punitive sanctions are sanctions a court may impose to punish a contemnor for a contempt. The court may impose the sanctions whether or not the contemnor has the present ability to purge the contempt and may impose the sanctions for past conduct that was contempt even though similar present conduct is a continuing contempt. Punitive sanctions may include one or more of the following:

(a) Imprisonment, custody or other detention.

(b) A fine.

(c) A community service requirement.

(5) Residual sanctions. Residual sanctions are those sanctions a court may impose under its inherent powers that are not otherwise described in this section and include, but are not limited to, the following:

(a) Ordering an apology.

(b) Dismissing a trial where a plaintiff or prosecutor commits contempt.

(c) Issuing an injunction against the contemnor.

(d) An order designed to insure compliance with a prior order of the court.

(e) Issuing an order and judgment for the payment of court costs. An order under this paragraph may include a requirement to pay reasonable attorney fees to any party who successfully prosecuted the contempt.

(f) Any sanction not otherwise specified in this section that the court may fashion from its power and that the court finds effective to terminate a continuing contempt, to punish a contempt or to provide a remedy to someone damaged by a contempt.

SECTION 10. Limits on sanctions. This section establishes limits relating to sanctions for contempt. It does not limit the sanction that a court can impose for a contempt, but it establishes re-

quirements and procedures that a court must comply with before the court may exceed certain limits and circumstances under which certain sanctions cannot be imposed. Nothing in this section prohibits the use of successive proceedings in a contempt action for the imposition of sanctions resulting from a continuing contempt where the contempt action has not been discharged. However, the sanctions for multiple proceedings in such circumstances are subject to the limits in this section in the same manner as if there were a single proceeding. This section does not supersede limits that are specifically imposed by other statutes. The following apply as described:

(1) A court shall not impose, by summary action, a sanction that exceeds a limit established by this subsection. This subsection does not establish limits for sanctions not described. Nothing in this subsection limits the imposition of a higher sanction by a proceeding other than summary action even if sanctions have been imposed for the same contempt by summary action. The following are maximum limits:

(a) Imprisonment, custody or other detention of more than_____ months, whether imposed as a coercive sanction, a punitive sanction, or both.

(b) Any remedial sanction.

(c) A fine that is a punitive sanction that is more than $_____ for an individual or $_____ for a corporation.

(d) A fine that is a coercive sanction that is more than $_____ a day for an individual or $_____ for a corporation or that accumulates for longer than _____ months.

(2) A court shall not impose remedial sanctions for any contempt unless the party on whose behalf the sanctions are to be imposed requests such sanctions or is notified and does not object.

(3) A court shall not impose in any contempt action any imprisonment, custody or other detention of more than _____months as a coercive sanction or a punitive sanction or any other sanction, unless a jury has determined the facts relating to the contempt. The use of a jury under this subsection is subject to the provisions of law relating to the use of juries in civil actions.

(4) A court shall not impose any sanction in excess of a limit imposed under this subsection without affording the person cited for contempt the full rights and procedures accorded a person accused of a crime under the criminal laws of this state, including, but not limited to, rights and procedures relating to juries, burden of proof, counsel, witnesses and the right not to testify. This subsection does not impose limits on sanctions not described. The following are maximum limits:

(a) Imprisonment, custody or other detention of more than_____, whether imposed as a coercive sanction, a punitive sanction, or both.

(b) A fine that is a punitive sanction that is more than $_____ for an individual or $_____ for a corporation.

(c) A fine that is a coercive sanction that is more than $_____ a day or exceeds a maximum of $_____ for an individual or $_____ a day or exceeds a maximum of $_____ for a corporation.

SECTION 11. Rights in contempt proceedings. This section describes rights of persons who have been cited for contempt. The following apply as described:

(1) At a summary action, a person cited for contempt:

(a) Has no right to counsel.

(b) Has no right to notice.

(c) Has no right to bail.

(d) Has no right to a jury.

(e) Has no right to present evidence or make any statement except as allowed by the judge.

(f) Has only those rights to refuse to answer questions or to refuse to testify that are accorded a defendant in a civil trial.

(g) Has no right to file an affidavit under section 3 of this Act requesting that authority over the contempt be referred to another judge.

(2) At a contempt proceeding, a person cited for contempt:

(a) Except as provided in section 10 of this Act or as specifically provided by another statute, has no right to a jury.

(b) Has a right to be represented by counsel.

(c) Except as provided in section 10 of this Act or as specifically provided by another statute, has the rights of a defendant in a case tried under the Oregon Rules of Civil Procedure.

(d) Except as provided in section 10 of this Act or as specifically provided by another statute, has only those rights to refuse to answer questions or refuse to testify that are accorded a defendant in a civil trial.

(e) Has a right to be informed by the court of the person's rights under this subsection.

(f) Has a right to present witnesses and to confront and cross-examine witnesses.

(g) Has a right to present defenses and facts in mitigation of the contempt.

(3) On appeal under section 13 of this Act, including an appeal from a summary action, a contemnor:

(a) Has the right to be represented by counsel and, if indigent, to have counsel appointed.

(b) Has the right to have a transcript furnished in accordance with ORS 138.500.

SECTION 12. Arrest. This section establishes procedures that are applicable when an arrest is ordered for contempt under section 3 of this Act. The following apply as described:

(1) When an arrest warrant is issued for contempt, the court shall direct the amount of security to be required. Upon executing the arrest warrant, unless the arrested person deposits security as required by the court, the sheriff shall keep the arrested person in custody to be brought before the court of judicial officer and shall detain the arrested person either until a release decision is made or until the disposition of the contempt charge.

(2) The arrested person shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the arrested person will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(3) The sheriff shall return the arrest warrant and the security deposit, if any, given to the sheriff by the arrested person by the return day specified in the warrant.

(4) When an arrest warrant for contempt issued under section 3 of this Act has been returned after having been served and the defendant does not appear on the return day, the court may do any or all of the following:

(a) Issue another arrest warrant.

(b) Proceed against the security deposited upon the arrest.

(5) If the court proceeds against the security under subsection (2) of this section and the sum specified is recovered, the court may award any or all of the money recovered as remedial damages for the benefit of an aggrieved party who has joined the action.

SECTION 13. Appeal. This section establishes procedures that are applicable when an appeal

district court.

(6)(a) The presiding judge, or judge of the court, shall certify to the administrative authority responsible for paying fees and expenses under this section that the amount for payment is reasonable and that the amount is properly payable out of public funds.

(b) With any certification by the court of fees or expenses that the State Court Administrator is to pay for counsel or other costs of indigent representation under ORS [*33.095,*] 135.045, 135.055, 135.705, 144.317, 144.343, 151.430, 151.450, 151.460, 161.346, 161.365, 161.665, 163.105, 419.498, 419.525, 426.255 and 426.307, the court shall include any information identified and requested by the State Court Administrator as needed for audit, statistical or any other purpose pertinent to insure the proper disbursement of state funds or pertinent to the provision of appointed counsel compensated at state expense.

(c) The presiding judge may authorize the clerk of the court to make the certification required under this section in some or all cases where the amount for payment meets the cost guidelines and standards established pursuant to ORS 151.430 (5) and (6). The authorization must be in writing and must specify the types of cases to which the authorization applies.

SECTION 109. ORCP 46 B. is amended to read:

B. Failure to comply with order.

B.(1) Sanctions by court in the county where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by a circuit or district court judge in the county in which the deposition is being taken, the failure may be considered a contempt of court **under sections 1 to 13 of this 1989 Act.**

B.(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent or a person designated under Rule 39 C.(6) or 40 A. to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section A. of this rule or Rule 44, the court in which the action is pending may make, **in addition to those allowed under sections 1 to 13 of this 1989 Act,** such orders in regard to the failure as are just, including among others, the following:

B.(2)(a) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

B.(2)(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

B.(2)(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party;

B.(2)(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court **under sections 1 to 13 of this 1989 Act** the failure to obey any order except an order to submit to a physical or mental examination.

B.(2)(e) Such orders as are listed in paragraphs (a), (b), and (c) of this subsection, where a party has failed to comply with an order under Rule 44 A. requiring the party to produce another for examination, unless the party failing to comply shows inability to produce such person for examination.

B.(3) Payment of expenses. In lieu of any order listed in subsection (2) of this section or in addition thereto, the court shall require the party failing to obey the order or the attorney advising

such party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

SECTION 110. ORCP 47 G. is amended to read:

G. Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt **under sections 1 to 13 of this 1989 Act**.

SECTION 111. ORCP 55 G. is amended to read:

G. Disobedience of subpoena; refusal to be sworn or answer as a witness. Disobedience to a subpoena or a refusal to be sworn or answer as a witness may be punished as contempt **under sections 1 to 13 of this 1989 Act** by a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or answer as a witness, such party's complaint, answer, or reply may be stricken.

SECTION 112. ORCP 65 D. is amended to read:

D. Proceedings.

D.(1) Meetings.

D.(1)(a) When a reference is made, the clerk or person performing the duties of that office shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys of the meeting date.

D.(1)(b) It is the duty of the referee to proceed with all reasonable diligence. Any party, after notice to the parties and the referee, may apply to the court for an order requiring the referee to speed the proceedings and to make the report.

D.(1)(c) If a party fails to appear at the time and place appointed, the referee may proceed ex parte or may adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

D.(2) Witnesses. The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 55. If, without adequate excuse, a witness fails to appear or give evidence, that witness may be punished as for a contempt by the court and be subjected to the consequences, penalties, and remedies provided in Rule 55 G. **and sections 1 to 13 of this 1989 Act.**

D.(3) Accounts. When matters of accounting are in issue, the referee may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the referee may require a different form of statement to be furnished or the accounts or specific items thereof to be proved by oral examination of the accounting parties or in such other manner as the referee directs.

SECTION 113. ORCP 78 B. is amended to read:

B. Enforcement; contempt. The court or judge thereof may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided [*in ORS 33.010 through 33.150*] **under sections 1 to 13 of this 1989 Act.**

SECTION 114. ORCP 78 D. is amended to read:

D. Contempt proceeding. As an alternative to the independent proceeding contemplated [*by ORS 33.010 through 33.150*] **under sections 1 to 13 of this 1989 Act**, when a contempt consists of disobedience of an injunction or other judgment or order of court in a civil action, citation for contempt may be by motion in the action in which such order was made and the determination respecting punishment made after a show cause hearing. Provided however:

D.(1) Notice of the show cause hearing shall be served personally upon the party required to show cause.

D.(2) Punishment for contempt shall be limited as provided in ORS 33.020 **(1987 Replacement Part).**

D.(3) The party cited for contempt shall have right to counsel [*as provided in ORS 33.095*] **and the right to appointed counsel if the alleged contemnor is indigent and the proceedings may result in incarceration.**

SECTION 115. ORCP 9 B. is amended to read:

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party or by mailing it to such attorney's or party's last known address. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by placing a copy of the pleading or other papers in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may [*only be upon such party personally*] **be made as provided under sections 1 to 13 of this 1989 Act.**

SECTION 116. The section headings used in this Act are provided only for convenience in locating provisions of this Act and do not become part of the statutory law of this state or express any legislative intent in the enactment of the Act.

SECTION 117. ORS 33.010, 33.020, 33.030, 33.040, 33.050, 33.060, 33.070, 33.080, 33.090, 33.095, 33.100, 33.110, 33.130, 33.140 and 33.150 are repealed.

Senate Bill 497

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Trial Lawyers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Changes content requirements for pleading claim for relief in civil proceedings. Requires complaint to include general prayer for relief rather than specific dollar amount of damages sought.

A BILL FOR AN ACT

Relating to pleading of claims for relief; amending ORCP 18.

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

SECTION 1. ORCP 18 is amended to read:

RULE 18

CLAIMS FOR RELIEF

A. Claims for relief. A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain:

A.(1) A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition.

A.(2) A demand of the relief which the party claims[; *if recovery of money or damages is demanded, the amount thereof shall be stated,*] except as provided in section B. of this rule; relief in the alternative or of several different types may be demanded.

B.(1) The amount sought in a civil action for noneconomic damages, as defined in ORS 18.560, shall not be pleaded in a complaint, counterclaim, cross-claim or third-party claim.

B.(2) The prayer in such actions shall contain only a demand for the payment of damages without specifying the amount.

B.(3) The party making the claim may supply to any adverse party a statement of the amount claimed for such damages, and shall do so within 10 days of a request for such statement. The request and the statement shall not be made a part of the trial court file.

C. In any action brought to recover general or punitive damages for personal injury or wrongful death, the complaint shall not contain a statement of the amount of such damages sought, but shall contain a prayer for damages which are reasonable under the circumstances and within the jurisdiction of the court and a statement that the action is within the jurisdiction of the court.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

Senate Bill 499

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Trial Lawyers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires court to postpone civil case set for trial if all parties stipulate it should be postponed.

A BILL FOR AN ACT

Relating to postponement of civil court cases; amending ORCP 52 A.

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

SECTION 1. ORCP 52 A. is amended to read:

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement, **except that if all parties stipulate that a cause should be postponed then the court shall order a postponement.** At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

House Bill 2342

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Judicial Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Merges district courts into circuit court to create a single general jurisdiction trial court for state. Continues court as "circuit" court. Continues existing district courts and district court judges as courts and judges of circuit court. Makes related changes necessary to accomplish merger.

A BILL FOR AN ACT

Relating to courts; creating new provisions; amending ORS 1.003, 1.005, 1.030, 1.085, 1.625, 1.730, 3.011, 3.260, 3.265, 3.270, 3.275, 7.120, 7.125, 8.185, 8.195, 8.205, 8.215, 18.320, 21.110, 21.270, 21.275, 21.490, 30.450, 33.350, 33.360, 34.040, 46.010, 46.019, 46.040, 46.060, 46.150, 46.180, 46.190, 46.221, 46.250, 46.274, 46.276, 46.335, 46.340, 46.345, 46.455, 46.461, 46.465, 46.485, 51.030, 51.050, 51.220, 51.260, 51.440, 51.450, 51.460, 51.470, 105.110, 105.130, 111.055, 133.030, 133.545, 135.280, 135.285, 136.210, 137.180, 138.050, 153.220, 153.280, 153.385, 153.415, 153.565, 153.595, 181.660, 203.810, 237.013, 237.079, 254.125, 271.130, 292.930, 431.160, 646.545 and ORCP 21 G. and 81 A.; and repealing ORS 1.169, 1.625, 3.101, 3.227, 3.229, 3.255, 21.485, 46.025, 46.026, 46.030, 46.050, 46.064, 46.075, 46.080, 46.082, 46.084, 46.092, 46.094, 46.096, 46.099, 46.100, 46.130, 46.141, 46.210, 46.223, 46.265, 46.270, 46.278, 46.280, 46.330, 46.610, 46.620, 46.630, 46.632, 46.648, 46.655, 46.665, 46.680, 46.800, 46.810, 111.165 and 453.992.

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

SECTION 1. (1) By December 31, 1989, the circuit and district courts in each judicial district of this state shall have completed consolidation of the administrative functions of the courts within the judicial district. The circuit and district courts in a judicial district may adopt jointly, and cause to be entered in the records of each of the courts, an order of administrative consolidation of the courts. An order shall not be effective until it is approved by the Chief Justice of the Supreme Court. Administrative consolidation under this subsection shall be effective to do the following:

(a) Combine the judicial administration of the circuit and district courts in the judicial district; and

(b) Continue the jurisdiction and functions of the circuit court and each district court in the judicial district until the operative date of section 2 of this Act, as provided by law, separate and distinct from the jurisdiction and functions of the other courts, but subject to common judicial administration.

(2) By July 1, 1990, the Chief Justice of the Supreme Court shall exercise authority under ORS 1.003 to establish a single presiding judge for each judicial district.

(3) The Chief Justice shall exercise authority under ORS 1.002 to establish any procedures, rules, orders or requirements necessary to accomplish the merger of circuit and district courts contemplated by section 2 of this Act. Such exercise of authority may begin before the operative date of section 2 of this Act to the end that on that effective date, the circuit and district courts

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

risdiction in any action for damages for violation of ORS 646.535.]

SECTION 81. ORCP 21 G. is amended to read:

G. Waiver or preservation of certain defenses.

G.(1) A defense of lack of jurisdiction over the person, that there is another action pending between the same parties for the same cause, insufficiency of summons or process, or insufficiency of service of summons or process, is waived under either of the following circumstances: (a) if the defense is omitted from a motion in the circumstances described in section F. of this rule, or (b) if the defense is neither made by motion under this rule nor included in a responsive pleading. The defenses referred to in this subsection shall not be raised by amendment.

G.(2) A defense that a plaintiff has not the legal capacity to sue, that the party asserting the claim is not the real party in interest, or that the action has not been commenced within the time limited by statute, is waived if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof. Leave of court to amend a pleading to assert the defenses referred to in this subsection shall only be granted upon a showing by the party seeking to amend that such party did not know and reasonably could not have known of the existence of the defense or that other circumstances make denial of leave to amend unjust.

G.(3) A defense of failure to state ultimate facts constituting a claim, a defense of failure to join a party indispensable under Rule 29, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under Rule 13 B. or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in Rule 23 B. in light of any evidence that may have been received.

G.(4) *[Except as provided in ORS 3.227 and 46.064,]* If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

SECTION 82. ORCP 81 A. is amended to read:

A. Definitions. As used in Rules 81 through 85, unless the context otherwise requires:

A.(1) Attachment. "Attachment" is the procedure by which an unsecured plaintiff obtains a judicial lien on defendant's property prior to judgment.

A.(2) Bank. "Bank" includes commercial and savings banks, trust companies, savings and loan associations, and credit unions.

A.(3) Clerk. "Clerk" means clerk of the court or any person performing the duties of that office.

A.(4) Consumer goods. "Consumer goods" means consumer goods as defined in ORS 79.1090.

A.(5) Consumer transaction. "Consumer transaction" means a transaction in which the defendant becomes obligated to pay for goods sold or leased, services rendered, or monies loaned, primarily for purposes of the defendant's personal, family, or household use.

A.(6) Issuing officer. "Issuing officer" means any person who on behalf of the court is authorized to issue provisional process.

A.(7) Levy. "Levy" means to create a lien upon property prior to judgment by any of the procedures provided by Rules 81 through 85 that create a lien.

A.(8) Plaintiff and defendant. "Plaintiff" includes any party asserting a claim for relief whether by way of claim, third party claim, cross-claim, or counterclaim, and "defendant" includes any person against whom such claim is asserted.

A.(9) Provisional process. "Provisional process" means attachment under Rule 84, claim and

delivery under Rule 85, temporary restraining orders under Rule 83, preliminary injunctions under Rule 83, or any other legal or equitable judicial process or remedy which before final judgment enables a plaintiff, or the court on behalf of the plaintiff, to take possession or control of, or to restrain use or disposition of, or fix a lien on property in which the defendant claims an interest, except an order appointing a provisional receiver under Rule 80 or granting a temporary restraining order or preliminary injunction under Rule 79.

A.(10) Security interest. "Security interest" means a lien created by agreement, as opposed to a judicial or statutory lien.

A.(11) Sheriff. "Sheriff" includes a constable of a [*district or*] justice court.

A.(12) Writ. A "writ" is an order by a court to a sheriff or other official to aid a creditor in attachment.

SECTION 83. ORS 1.169, 1.625, 3.101, 3.227, 3.229, 3.255, 21.485, 46.025, 46.026, 46.030, 46.050, 46.064, 46.075, 46.080, 46.082, 46.084, 46.092, 46.094, 46.096, 46.099, 46.100, 46.130, 46.141, 46.210, 46.223, 46.265, 46.270, 46.278, 46.280, 46.330, 46.610, 46.620, 46.630, 46.632, 46.648, 46.655, 46.665, 46.680, 46.800, 46.810, 111.165 and 453.992 are repealed.

SECTION 84. Sections 2 to 83 of this Act and any amendments to and repeals of Oregon Revised Statutes contained therein become operative September 1, 1991.

SECTION 85. For purposes of harmonizing and clarifying the statute sections published in Oregon Revised Statutes, the Legislative Counsel, after the 1991 regular session of the Legislative Assembly:

(1) May substitute for words designating the district courts from which duties, functions or powers are transferred by this Act, wherever they occur in Oregon Revised Statutes, other words designating the circuit courts into which such duties, functions or powers are merged and transferred.

(2) Where words exist in statute sections designating the existence of both circuit and district courts, may delete language referring to district courts from the sections to reflect the merger of the duties, functions and powers thereof with the circuit courts.

(3) Shall prepare and present to the 1991 regular session of the Legislative Assembly legislation to remove references to the district courts from statute sections and substitute therefor references to circuit courts where the Legislative Counsel cannot accomplish under subsection (1) or (2) of this section.

SECTION 86. The section captions used in this Act are provided only for convenience in locating provisions of this Act and do not become part of the statutory law of this state or express any legislative intent in the enactment of this Act.

SECTION 87. Sections 1 and 2 of this Act are repealed September 1, 1993.

House Bill 2363

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Permits service of certain pleadings and papers by telephonic facsimile communication device to party represented by attorney who maintains such device. Establishes requirements for proof of service in such cases.

A BILL FOR AN ACT

Relating to procedure in civil cases; amending ORCP 9.

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

SECTION 1. ORCP 9 is amended to read:

A. Service; when required. Except as otherwise provided in these rules, every order, every pleading subsequent to the original complaint, every written motion other than one which may be heard ex parte, and every written request, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 7.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party [*or*], by mailing it to such attorney's or party's last known address[.] **or, if the party is represented by an attorney, by telephonic facsimile communication device as provided in section F. of this rule.** Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by placing a copy of the pleading or other papers in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

C. Filing; proof of service. Except as provided by section D. of this rule, all papers required to be served upon a party by section A. of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rules 7 and 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by certificate of an attorney. Such proof of service may be made upon the papers served or as a separate document attached to the papers. **Where service is made by telephonic facsimile communication device, proof of service shall be made by affidavit of the**

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

person making service, or by certificate of an attorney. Attached to such affidavit or certificate shall be the printed confirmation of receipt of the message generated by the transmitting machine.

D. When filing not required. Notices of deposition, requests made pursuant to Rule 43, and answers and responses thereto shall not be filed with the court. This rule shall not preclude their use as exhibits or as evidence on a motion or at trial.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month, month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

F. Service by telephonic facsimile communication device. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service may be made upon the attorney by means of a telephonic facsimile communication device if the attorney maintains such a device at the attorney's office and the device is operating at the time service is made.

SECTION 9. Section 22, chapter 721, Oregon Laws 1985, as amended by section 11, chapter 809, Oregon Laws 1987, is repealed.

SECTION 10. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor June 7, 1989
Filed in the office of Secretary of State June 7, 1989

CHAPTER 295

AN ACT HB 2363

Relating to procedure in civil cases; amending ORCP 9 and ORS 1.006.

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

SECTION 1. ORCP 9 is amended to read:

A. Service; when required. Except as otherwise provided in these rules, every order, every pleading subsequent to the original complaint, every written motion other than one which may be heard ex parte, and every written request, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 7.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party, [*or*] by mailing it to such attorney's or party's last known address[.] **or, if the party is represented by an attorney, by telephonic facsimile communication device as provided in section F. of this rule.** Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by placing a copy of the pleading or other papers in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

C. Filing; proof of service. Except as provided by section D. of this rule, all papers required to be served upon a party by section A. of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rules 7 and 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by certificate of an attorney. Such proof of service may be made upon the papers served or as a separate document attached to the papers. **Where service is made by telephonic facsimile communication device, proof of service shall be made by affidavit of the person making service, or by certificate of an attorney. Attached to such affidavit or certificate shall be the printed confirmation of receipt of the message generated by the transmitting machine.**

D. When filing not required. Notices of deposition, requests made pursuant to Rule 43, and answers and responses thereto shall not be filed with the court. This rule shall not preclude their use as exhibits or as evidence on a motion or at trial.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month, month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

F. Service by telephonic facsimile communication device. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service may be made upon the attorney by means of a telephonic facsimile communication device if the attorney maintains such a device at the attorney's office and the device is operating at the time service is made.

SECTION 2. ORS 1.006 is amended to read:

1.006. **(1)** The Supreme Court may prescribe by rule the form of written process, notices, motions and pleadings used or submitted in civil proceedings and criminal proceedings in the courts of this state. The rules shall be designed to prescribe standardized forms of those writings for use throughout the state. The forms so prescribed shall be consistent with applicable provisions of law and the Oregon Rules of Civil Procedure. The form of written process, notices, motions and pleadings submitted to or used in the courts of this state shall comply with rules made under this section.

(2) The Supreme Court may prescribe by rule the manner of filing of pleadings and other papers submitted in civil proceedings with the courts of this state by means of a telephonic facsimile communication device. The manner so

prescribed shall be consistent with applicable provisions of law and the Oregon Rules of Civil Procedure.

Approved by the Governor June 7, 1989
Filed in the office of Secretary of State June 7, 1989

CHAPTER 296

AN ACT HB 5002

Relating to the financial administration of the Builders Board; limiting expenditures; and declaring an emergency.

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

SECTION 1. Notwithstanding any other law, the amount of $2,316,322 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Builders Board.

SECTION 2. Notwithstanding any other law, all sections of this Act are subject to Executive Department rules related to allotting, controlling and encumbering funds.

SECTION 3. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1989.

Approved by the Governor June 7, 1989
Filed in the office of Secretary of State June 7, 1989

CHAPTER 297

AN ACT SB 244

Relating to taxation; amending ORS 311.220 and 311.808.

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

SECTION 1. ORS 311.220 is amended to read:

311.220. No real **or personal** property taxes imposed on real property **or a mobile home** purchased by a bona fide purchaser shall be a lien on the real property **or mobile home** unless at the time of purchase the taxes were a matter of public record. For the purposes of this section, if the tax roll has not been prepared for the tax year in which the purchase occurred, taxes levied or to be levied for the tax year of purchase are taxes which are a matter of public record.

SECTION 2. ORS 311.808 is amended to read:

311.808. No refund of property taxes under ORS 311.806 (1)(d) shall be made on real property **or a mobile home** when all of the following conditions are present:

(1) A mortgagee has requested the tax statement for the property under ORS 311.252 and has paid the tax on the property.

(2) The tax roll shows payment of the taxes, and thereafter the property is sold to a bona fide purchaser.

Approved by the Governor June 7, 1989
Filed in the office of Secretary of State June 7, 1989

CHAPTER 298

AN ACT SB 346

Relating to early intervention programs; repealing section 2, chapter 238, Oregon Laws 1987; and declaring an emergency.

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

SECTION 1. Section 2, chapter 238, Oregon Laws 1987, is repealed.

SECTION 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor June 7, 1989
Filed in the office of Secretary of State June 7, 1989

CHAPTER 299

AN ACT SB 509

Relating to administration of emergency medical treatment; creating new provisions; and amending ORS 433.805, 433.810, 433.815 and 433.825.

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

SECTION 1. Section 2 of this Act is added to and made a part of ORS 433.805 to 433.830.

SECTION 2. As used in ORS 433.805 to 433.830, unless the context requires otherwise:

(1) "Allergen" means a substance, usually a protein, which evokes a particular adverse response in a sensitive individual.

(2) "Allergic response" means a medical condition caused by exposure to an allergen, with physical symptoms that may be life threatening, ranging from localized itching to severe anaphylactic shock and death.

SECTION 3. ORS 433.805 is amended to read:

433.805. It is the purpose of ORS 433.805 to 433.830 to provide a means of authorizing certain individuals when a physician is not immediately available to administer lifesaving treatment to those persons who have severe [*adverse reactions*] **allergic**

House Bill 2425

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Trial Lawyers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Repeals distinction between economic and noneconomic damages.
Provides for joint and several liability.

A BILL FOR AN ACT

Relating to joint liability; amending ORS 18.425, 18.485 and ORCP 18 B.; and repealing ORS 18.560 and 18.570.

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

SECTION 1. ORS 18.485 is amended to read:

18.485. [*(1) As used in this section, "economic damages" and "noneconomic damages" have the meaning given those terms in ORS 18.560.*]

[*(2)*] **(1)** In any civil action arising out of bodily injury, death or property damage, including claims for emotional injury or distress, loss of care, comfort, companionship and society, and loss of consortium, the liability of each defendant for [*noneconomic*] damages awarded to plaintiff shall be [*several only and shall not be*] joint **and several, except that the liability of a defendant who is found to be less than 10 percent at fault for the damages awarded the plaintiff shall be several only.**

[*(3) The liability of a defendant who is found to be less than 15 percent at fault for the economic damages awarded the plaintiff shall be several only.*]

[*(4) The liability of a defendant who is found to be at least 15 percent at fault for the economic damages awarded the plaintiff shall be joint and several, except that a defendant whose percentage of fault is less than that allocated to the plaintiff is liable to the plaintiff only for that percentage of the recoverable economic damages.*]

[*(5) Subsections (1) to (4)*] **(2) Subsection (1)** of this section [*do*] **does** not apply to:

(a) A civil action resulting from the violation of a standard established by Oregon or federal statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS 469.300.

(b) A civil action resulting from the violation of Oregon or federal standards for air pollution, as defined in ORS 468.275 or water pollution, as defined in ORS 468.700.

SECTION 2. ORCP 18 B. is amended to read:

B.(1) The amount sought in a civil action for noneconomic damages[, *as defined in ORS 18.560,*] shall not be pleaded in a complaint, counterclaim, cross-claim or third-party claim.

B.(2) The prayer in such actions shall contain only a demand for the payment of damages without specifying the amount.

B.(3) The party making the claim may supply to any adverse party a statement of the amount

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

claimed for such damages, and shall do so within 10 days of a request for such statement. The request and the statement shall not be made a part of the trial court file.

SECTION 3. ORS 18.425 is amended to read:

18.425. The following requirements apply to every civil action which is brought in a court of record in this state for damages resulting from personal injury or wrongful death, whether it results in a judgment of dismissal, with or without a settlement, or a judgment after verdict:

(1) The attorneys for each party to an action shall file the statement required under subsection (2) of this section within 45 days after final judgment is entered.

(2) The attorney shall file with the court a certified statement in the form and manner required by the Chief Justice. The statement shall contain the following information regarding the settlement or judgment:

(a) The date and terms.

(b) Any damages awarded or agreed to. [*For purposes of this paragraph, the information shall distinguish damages based on whether they are economic or noneconomic, as defined in ORS 18.560, or punitive.*]

(c) Any costs awarded or agreed to be paid by or to any party.

(d) Any disbursements awarded or agreed to be paid by or to any party.

(e) Any attorney fees awarded or agreed to be paid by or to any party.

(f) Any net amount realized by any party after payment of any costs, disbursements, attorney fees or any other charges or costs related to the case.

(3) If the attorney fails to file the statement by the due date or the statement is incomplete, the court shall order it filed within 20 days after the due date.

(4) The court shall maintain a record of the statements in a manner determined by the State Court Administrator. The statements shall be separately maintained from other records kept by the court. Each court shall transmit the information from the statements as determined by the State Court Administrator.

(5)(a) The State Court Administrator shall use the information in the statements to compile statistical summaries. The summaries shall be public records. A summary shall not contain information that identifies a specific case or a party to the case.

(b) Except as provided in paragraph (a) of this subsection, the statements are confidential and shall not be released by the State Court Administrator, trial court administrator, or trial court clerk to any person, including but not limited to other parties to the action.

(6) The Chief Justice shall adopt rules concerning the form and manner for filing of the statements. The rules shall be made available to the public in a manner which the Chief Justice determines will be most likely to apprise attorneys of their content.

(7) The State Court Administrator may adopt any procedures necessary or convenient for purposes of this section, except where rules are required to be adopted by the Chief Justice under subsection (6) of this section.

SECTION 4. ORS 18.560 and 18.570 are repealed.

House Bill 2458

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Department of Justice)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires every judgment providing for payment of money to have separate summary attached.

A BILL FOR AN ACT

Relating to civil procedure; amending ORCP 70 A.

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

SECTION 1. ORCP 70 A. is amended to read:

A. Form. Every judgment shall be in writing plainly labeled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A.(1) Content. No particular form of words is required, but every judgment shall:

A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

A.(1)(c) If the judgment provides for the payment of money, *[contain]* **have attached as a separate document** a summary of the type described in section 70 A.(2) of this rule.

A.(2) Summary. When required under section 70 A.(1)(c) of this rule a judgment shall comply with the requirements of this part. These requirements relating to a summary are not jurisdictional for purposes of appellate review and are subject to the requirements under section 70 A.(3) of this rule. A summary shall include all of the following:

A.(2)(a) The names of the judgment creditor and the creditor's attorney.

A.(2)(b) The name of the judgment debtor.

A.(2)(c) The amount of the judgment.

A.(2)(d) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney fees.

A.(2)(f) Post-judgment interest accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

A.(2)(g) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

A.(3) Submitting and certifying summary. The following apply to the summary described under section 70 A.(2) of this rule:

A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their attorneys of record as required under ORCP 9.

A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed to prepare the judgment shall certify on the summary that the information in the summary accurately reflects the judgment.

House Bill 2562

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Collectors Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows commencement of civil action by service of summons and complaint.

A BILL FOR AN ACT

Relating to civil actions; amending ORCP 3.

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

SECTION 1. ORCP 3 is amended to read:

RULE 3

COMMENCEMENT

Commencement of action. Other than for purposes of statutes of limitations, an action shall be commenced by filing a complaint with the clerk of the court **or by service of summons together with a true copy of the complaint. An action shall not be commenced by service by publication. If the action is commenced by service of summons, the complaint shall be filed with the clerk of the court within 15 days after service, or the action shall be deemed dismissed without prejudice and without notice. The 15-day filing requirement shall be deemed waived upon the filing of a responsive pleading or motion to the complaint without reserving the issue.**

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

M E M O R A N D U M

March 2, 1989

TO: **MEMBERS, COUNCIL ON COURT PROCEDURES**

FROM: Fredric Merrill, **Executive Director**

RE: HB 2127

Attached is a copy of the testimony submitted relating to HB 2127 and a copy of a suggested amendment submitted at the February 27, 1988 hearing by the Department of Justice. A member of the Bar Procedure and Practice Committee was present and strongly supported the amendments recommended by the Council. He, however, stated that the committee had not met to take a formal position on the matter.

The legislative committee did not take any action relating to the bill. Members suggested that the Procedure and Practice Committee, which meets March 4, take a formal position and report back. It was also suggested that the Administrator and Council try to come to some agreement about Section 2 of the bill relating to 68 C.

The amendment submitted by the Department of Justice answers most of my concerns about the suggested amendment to 68 C where an objection to the cost bill is filed and ruled upon by the trial judge. Under 60 C(4)(e)(ii) of the amended rule, if the matter is determined before the main judgment is entered, the court's determination is included in the judgment. An appeal from that judgment would then be from both the main part of the judgment and the cost bill part. If the appellant did not want to challenge the court's ruling on the cost bill, that could be avoided by simply not assigning error for that ruling.

In the more common situation where the main judgment is entered before the objection to the cost bill is determined, a separate order would be entered by the trial judge. The order is entered as a judgment under 60 C(4)(f) of the amended rule and "becomes part of the judgment on the cause to which the attorney fees or costs and disbursements relate." Under ORS 19.033(1), the trial court has jurisdiction to enter the order ruling on the objections to the cost bill after the appeal from the main judgment is filed. Under the Justice Department version of ORS 20.220 (1), the judgment order would always have to be appealed separately if the correctness of the judge's ruling is challenged. Under ORS 20.220 (2), both appeals could then be consolidated under the appellate rules. ORS 20.220(3) would eliminate the problem that if the appellant failed, intentionally

or inadvertently, to appeal the cost order it would not remain in place even though the main judgement were reversed or modified.

Where there is no objection filed to the cost bill, I think the suggested amendment still creates more problems than it solves. The difficulty is that the present rule, 60 C(4)(a), provides that when the cost bill is filed, it is entered as part of the judgment. Then if objection is filed, enforcement is suspended until the court rules. That is certainly awkward, but at least it is clear that the cost bill amount is a judgment.

The suggested amendment, 60 C(4)(d), says that if there is no objection to the cost bill the amount is docketed in the judgment docket, but it never says anything about entry or being a judgment or part of the judgement. This, of course, is not a problem for appeal because without objection there is nothing to appeal and if the main judgment is modified or reversed, that is covered by the Department of Justice change to ORS 20.220(3). It would be a problem for enforceability by writ of execution or garnishment. They may only be used to enforce judgments.

I suggest that problem might be avoided by changing the revised version of ORCP 60 C(4)(d) to read as follows:

> "C.(4)(d) <u>Entry by the clerk</u>. **If no objection to a statement of attorney fees or costs and disbursements is timely filed, the amount claimed in the statement becomes part of the judgment on the cause to which the attorney fees or costs and disbursements relate. If no judgment has been entered disposing of the cause to which the statement of attorney fees or costs and disbursements relates before the time for objection to such statement has expired, the amount claimed in such statement shall be included in the judgment. If a judgment on the cause has been entered before the time for objection to the statement of attorney fees or costs and disbursements expired, such statement shall be entered, and notice thereof shall be given to the parties, in the same manner as provided in Rule 70 B(1), excluding the last sentence thereof."**

The other thing that still bothers me is the necessity of complying with the money judgment form. That would be extremely awkward if not impossible for the cost bill and order involved here. The revised form of ORCP 71 A(2) says if the costs and attorney fees are not set when the judgment is entered, they need not be included in the money judgment section of the main judgment. To avoid any argument that 71 A(2) applies directly to the cost bill or order on objections, the following should be added to the amended form of 68 C(4):

"C.(4)(d) Form. Amounts claimed in statements of attorney fees or costs and disbursements which become part of a judgment pursuant to paragraph C(4)(d) or C(4)(f) of this subsection shall not be subject to the requirements of ORCP 71 A(2) and (3)."

Encs.

TESTIMONY

FREDRIC R. MERRILL, EXECUTIVE DIRECTOR OF THE COUNCIL ON COURT PROCEDURES
Relating to HB 2127
House Judiciary Committee
February 27, 1989

The Council on Court Procedures reviewed HB 2127 at its meeting on February 11, 1989. The Council expressed some reservations about portions of the bill. The Chairman of the Council met with representatives of the Court Administrator's Office and worked out amendments to the bill which would satisfy the concerns raised by the Council and still accomplish the objectives of the Court Administrator. These amendments are being submitted by the Court Administrator and are supported by the Council.

For two of the matters raised by the Council, the Court Administrator decided that, although he would not oppose the suggested amendments, the Council should present the amendments.

1. The Council recommends that those portions of Section 1 of HB 2127 which relate to ORCP 70A be amended as set out in APPENDIX ONE to this testimony. The change involved is one purely of form. The substance is identical to that in the original bill. The Council felt the original form was unnecessarily confusing. The direction to use a specific form of money judgment is in ORCP 70 A(1), which refers you to Section 70 A(2), which in turn refers you to Section 70 A(3). The Council's suggested amendment puts all of the requirements relating to the form requirements for money judgments in one subsection.

2. The Council recommends that Section 2 of HB 2127 be deleted. That section would amend ORCP 68C relating to entry of judgments for costs and disbursements and attorney fees. The Council recognizes that the language of ORCP 68C is archaic and there are problems with entry of judgments relating to costs and disbursements and attorney fees. The language in the rule was taken directly from the prior ORS section which was part of the original 1853 Oregon Civil Procedure Code. It refers to the costs and disbursements and attorney fees being entered "as part of the judgment" without being clear how that comes about. As a practical matter, it is frequently unclear if the costs and disbursements and attorney fee award is part of the original judgment or is a separate judgment. This causes severe problems for appeal.

The amendment of ORCP 68 proposed in Section 2 of HB 2127 would not solve the main problem relating to the relationship between the main judgment and the costs and disbursements and attorney fee judgment. While the suggested language may be clearer than that in the present rule, it may also create some new problems. For example:

Paragraph 70 C(4)(d) provides that, if no objection is filed, the clerk should enter the cost bill amount in the judgment docket. This leaves opens how this amount becomes a judgment or part of a judgment. Is a separate judgment entered if the main judgment has already been entered? Is an order entered which becomes part of the main judgement, as provided when the order is entered after objections are filed?

Paragraph 70 C(4)(e) provides that, where objections are filed, after the objections are disposed of: (a) if no judgment has been entered, the costs and attorney fees should be included in the main judgment; or (b) if the main judgment has been entered, the determination shall be set forth in "an order separate from the judgment." That leaves open the question whether this subsequent order is itself a judgment and appealable and enforceable separately. ORCP 68 C(4)(f) then says that the order shall be filed and entered as if it is a judgment and becomes part of the judgment on the cause to which the amounts relate. Does this mean that a notice of appeal from the main judgment is also an appeal of the later cost judgment? What if the notice of appeal is filed before the cost and attorney fee order is entered? Can the cost order become part of a judgment which was appealed before the order was entered?

The Council does not disagree with the Court administrator's suggestion that ORCP 68C could use some revision. It feels that the question is extremely complex and important and should be addressed in the first instance by Council review of the area. The opportunity for systematic research and review by the Council and review of suggested changes by the bench and bar outweighs the delay involved. Section 2 of HB 2127 is collateral to the principal objectives of the bill and deletion of Section 2 would not frustrate those objectives.

February 27, 1989

PROPOSED AMENDMENT TO HB 2127
Submitted by Department of Justice

On page 1 of the printed bill, in line 2, after "18.410" insert "20.220,".

On page 8 of the printed bill, after line 32 insert:

" SECTION ___. ORS 20.220 is amended to read:

" 20.220. (1) An appeal may be taken from [a judgment] an order under ORCP 68C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the [judgment] order rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

(2) If an appeal is taken from a judgment before the trial court enters an order allowing or denying attorney fees or costs and disbursements relating to that judgment, any necessary modification of the appeal shall be pursuant to rules of the appellate court.

(3) When an appeal is taken from the judgment to which the award of attorney fees or costs and disbursements relates:

(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements were awarded may move for relief under ORCP 71B.(1)(e).".