

# House Bill 2338

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys' 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**.

Provides that spouse may not claim husband-wife privilege for confidential communication in criminal action in which spouse is charged with offense against minor child to which spouse has legal duty.

## A BILL FOR AN ACT

1  
2 Relating to privilege for confidential communications between spouses; creating new provisions; and  
3 amending ORS 40.255.

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

5 **SECTION 1.** ORS 40.255 is amended to read:

6 40.255. (1) As used in this section, unless the context requires otherwise:

7 (a) "Confidential communication" means a communication by a spouse to the other spouse and  
8 not intended to be disclosed to any other person.

9 (b) "Marriage" means a marital relationship between husband and wife, legally recognized under  
10 the laws of this state.

11 (2) In any civil or criminal action, a spouse has a privilege to refuse to disclose and to prevent  
12 the other spouse from disclosing any confidential communication made by one spouse to the other  
13 during the marriage. The privilege created by this subsection may be claimed by either spouse. The  
14 authority of the spouse to claim the privilege and the claiming of the privilege is presumed in the  
15 absence of evidence to the contrary.

16 (3) In any criminal proceeding, neither spouse, during the marriage, shall be examined adversely  
17 against the other as to any other matter occurring during the marriage unless the spouse called as  
18 a witness consents to testify.

19 (4) There is no privilege under this section:

20 (a) In all criminal actions in which one spouse is charged with bigamy or with an offense or  
21 attempted offense against the person or property of the other spouse or of a child of either, or with  
22 an offense against the person or property of a third person committed in the course of committing  
23 or attempting to commit an offense against the other spouse;

24 (b) As to matters occurring prior to the marriage; or

25 (c) In any civil action where the spouses are adverse parties.

26 **(5) There is no privilege under this section in a criminal action in which a spouse is**  
27 **charged with an offense against a minor child to which the spouse has a legal duty as defined**  
28 **in ORS 163.200.**

29 **SECTION 2.** (1) **Except as provided in subsection (2) of this section, the amendments to**  
30 **ORS 40.255 by section 1 of this 2009 Act apply to all confidential communications between**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 spouses, whether occurring before, on or after the effective date of this 2009 Act.

2 (2) The amendments to ORS 40.255 by section 1 of this 2009 Act do not apply to any action  
3 or proceeding filed before the effective date of this 2009 Act, or to any administrative pro-  
4 ceeding commenced before the effective date of this 2009 Act.

5

---