

# House Bill 2057

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Health Care)

## 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**.

Terminates semi-independent state agency status of Oregon Board of Optometry, State Board of Massage Therapists and Physical Therapist Licensing Board. Establishes accounts for boards and continuously appropriates account moneys to boards. Requires boards to comply with State Personnel Relations Law.

Becomes operative July 1, 2011.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to health professional regulatory boards that are semi-independent state agencies; creating  
3 new provisions; amending ORS 182.454, 683.120, 683.250, 683.270, 683.290, 687.071, 687.115,  
4 687.250, 688.160 and 688.201; appropriating money; and declaring an emergency.

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

6 **SECTION 1.** ORS 182.454 is amended to read:

7 182.454. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

8 (1) The Appraiser Certification and Licensure Board.

9 (2) The State Board of Architect Examiners.

10 (3) The State Board of Examiners for Engineering and Land Surveying.

11 (4) The State Board of Geologist Examiners.

12 (5) The State Landscape Architect Board.

13 [(6) *The Oregon Board of Optometry.*]

14 [(7)] (6) The Oregon Patient Safety Commission.

15 [(8)] (7) The Oregon Wine Board.

16 [(9) *The State Board of Massage Therapists.*]

17 [(10) *The Physical Therapist Licensing Board.*]

18 [(11)] (8) The State Landscape Contractors Board.

19 **SECTION 2.** ORS 683.120 is amended to read:

20 683.120. (1) Each optometrist who practices in this state shall on the date established by the  
21 Oregon Board of Optometry pay a license fee, as determined by the board, for a renewal of the li-  
22 cense of the optometrist and shall have such license conspicuously posted in the office of the  
23 optometrist or place of business at all times. Each optometrist who is retired, has a disability or is  
24 a nonresident of the State of Oregon and who is not practicing optometry within this state shall on  
25 the date established by the board pay a license fee, as determined by the board, for a renewal of the  
26 license of the optometrist.

27 (2) A person who is no more than 30 days delinquent in renewing the license may renew the  
28 license upon payment to the board of the required fee plus a delinquent fee. If a person is more than

**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 30 days delinquent in renewing the license, the license is automatically suspended by the board upon  
 2 30-day notice given to the licensee. A certified letter addressed to the last-known address of the  
 3 licensee failing to comply with the requirements is sufficient notice.

4 (3) A person who is more than 60 days delinquent in renewing the license may be required to  
 5 take an examination and pay the examination fee as required in ORS 683.060 before a license is is-  
 6 sued. The board may, upon application, waive the examination requirement.

7 (4) **The fees and charges established by the board may not exceed the cost of adminis-**  
 8 **tering the regulatory program of the board pertaining to the purpose for which the fee or**  
 9 **charge is established. The fees and charges are subject to prior approval by the Oregon De-**  
 10 **partment of Administrative Services, shall be submitted to the Emergency Board prior to**  
 11 **adoption and shall be within the budget authorized by the Legislative Assembly for the**  
 12 **Oregon Board of Optometry, as that budget may be modified by the Emergency Board.**

13 **SECTION 3.** ORS 683.250 is amended to read:

14 683.250. The Oregon Board of Optometry [*shall operate as a semi-independent state agency subject*  
 15 *to ORS 182.456 to 182.472,*] **is established** for the purpose of carrying out this chapter. The board  
 16 [*shall consist*] **consists** of five members appointed by the Governor. Each member of the board shall  
 17 qualify by taking and subscribing the oath of office required by the Constitution, which shall be filed  
 18 in the office of the Secretary of State. Four of the members of this board [*shall*] **must** be Doctors  
 19 of Optometry licensed and in practice in Oregon and the fifth member [*shall*] **must** be a public  
 20 member representing health consumers. Each of the members shall hold office for a term of three  
 21 years or until a successor is appointed and qualified and shall be so classified that at least one  
 22 optometrist member of the board retires each year. A majority of the members constitute a quorum  
 23 for the transaction of business.

24 **SECTION 4.** ORS 683.270 is amended to read:

25 683.270. The powers and duties of the Oregon Board of Optometry are as follows:

26 (1) To organize and elect from its membership a president and vice president of the board, each  
 27 of whom shall hold office for one year, or until the election and qualification of a successor.

28 (2) To adopt and use a common seal.

29 (3) To employ agents and inspectors to secure evidence of and report on all violations of this  
 30 chapter and to employ other necessary assistance in the carrying out of the provisions of this  
 31 chapter, and to pay the same from the funds provided in ORS 683.010 to 683.335.

32 (4) To hold regular meetings at least once a year at which an examination of applicants for li-  
 33 censes shall be held at such places as the board shall from time to time designate, and special  
 34 meetings upon request of a majority of the members of the board or upon the call of the president.

35 (5) To keep an accurate record of all proceedings of the board and of all of its meetings, of all  
 36 prosecutions for violations of ORS 683.010 to 683.335, and of all examinations held for applicants for  
 37 licenses, with the names and addresses of all persons taking examinations and their success or  
 38 failure to pass such examinations. All the records of the board shall be public and shall be kept in  
 39 the office of the board.

40 (6) To keep an accurate inventory of all property of the board and of the state in the possession  
 41 of the board and to obtain a receipt therefor from its successor.

42 (7) To keep a register of optometrists which shall contain the names and addresses of all persons  
 43 to whom licenses have been issued in the State of Oregon, together with the date of the issuance  
 44 of the license and the place or places of business in which each optometrist is engaged, and all re-  
 45 newals, revocations and suspensions thereof.

1 (8) To grant or refuse to grant licenses as provided in ORS 683.010 to 683.335 and to impose any  
 2 of the sanctions for any of the causes specified in ORS 683.140.

3 (9) To administer oaths and take testimony upon granting and revoking or suspending any cer-  
 4 tificate of registration or any other certificate established by the board for the protection of the  
 5 public.

6 (10) To designate pharmaceutical agents for topical use in the practice of optometry with the  
 7 advice and guidance of the Oregon Medical Board.

8 (11) To adopt rules not inconsistent with the laws of this state as are necessary or proper to  
 9 carry out the lawful powers and duties of the board, as may be necessary or proper to establish li-  
 10 cense fees and license terms or duration, to determine the qualifications of applicants for a license  
 11 and of licensees to practice optometry in this state, and to establish educational and professional  
 12 standards for such applicants, subject to the laws of this state. If an applicant fails to pass a second  
 13 examination the board may adopt rules which may provide the required courses of study before  
 14 further examination.

15 **(12) Subject to the State Personnel Relations Law, to appoint, prescribe the duties of and**  
 16 **fix the compensation of an administrator and other employees of the board necessary to**  
 17 **carry out the duties of the board.**

18 **(13) To biennially report to the Legislative Assembly concerning the activities of the**  
 19 **board.**

20 **SECTION 5.** ORS 683.290 is amended to read:

21 683.290. (1) *[All moneys received by the Oregon Board of Optometry under ORS 683.010 to 683.335*  
 22 *shall be deposited into an account established by the board as provided under ORS 182.470. Moneys*  
 23 *deposited into the account hereby are appropriated continuously to the board and shall]* **The Oregon**  
 24 **Board of Optometry Account is established separate and distinct from the General Fund. All**  
 25 **moneys received by the Oregon Board of Optometry under ORS 683.010 to ORS 683.335 shall**  
 26 **be deposited into the account and are continuously appropriated to the board to be used**  
 27 **[only] for the administration and enforcement of ORS [182.456 to 182.472 and] 683.010 to 683.335 and**  
 28 **as otherwise provided in this section.**

29 (2) *[Notwithstanding subsection (1) of this section and ORS 182.470,]* All civil penalties collected  
 30 or received for violations of or in prosecutions under ORS 683.010 to 683.335 shall be paid to the  
 31 **Oregon Board of Optometry Account** *[described under subsection (1) of this section].*

32 (3) All fines collected or received for violations of or in prosecutions under ORS 683.010 to  
 33 683.335 shall be paid to the Criminal Fine and Assessment Account.

34 (4) In addition to making expenditures for the administration and enforcement of ORS 683.010  
 35 to 683.335, the Oregon Board of Optometry may make expenditures **from the Oregon Board of**  
 36 **Optometry Account** for educational purposes *[out of funds available].*

37 **SECTION 6.** ORS 687.071 is amended to read:

38 687.071. (1) The State Board of Massage Therapists shall impose fees for the following:

- 39 (a) Massage therapist license issuance or renewal.
- 40 (b) Examinations and reexaminations.
- 41 (c) Inactive status.
- 42 (d) Delinquency in renewal of a license.
- 43 (e) Temporary practice permit.
- 44 (f) Application for massage license examination.

45 (2) If the effective period of the initial massage therapist license is to be less than 12 months

1 by reason of the expiration date established by rule of the board, the required license fee shall be  
 2 prorated to represent one-half of the biennial rate.

3 (3) The board shall examine or reexamine any applicant for a massage therapist license who  
 4 pays a fee for each examination and who meets the requirements of ORS 687.051.

5 *[(4) All moneys received by the board shall be paid into the account created by the board under  
 6 ORS 182.470 and are appropriated continuously to the board and shall be used only for the adminis-  
 7 tration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991.]*

8 **(4) The fees and charges established by the board may not exceed the cost of adminis-  
 9 tering the regulatory program of the board pertaining to the purpose for which the fee or  
 10 charge is established. The fees and charges are subject to prior approval by the Oregon De-  
 11 partment of Administrative Services, shall be submitted to the Emergency Board prior to  
 12 adoption and shall be within the budget authorized by the Legislative Assembly for the State  
 13 Board of Massage Therapists, as that budget may be modified by the Emergency Board.**

14 **SECTION 7. Section 8 of this 2009 Act is added to and made a part of ORS 687.011 to  
 15 687.250.**

16 **SECTION 8. The State Board of Massage Therapists Account is established separate and  
 17 distinct from the General Fund. All moneys received by the State Board of Massage Thera-  
 18 pists shall be deposited into the account and are continuously appropriated to the board for  
 19 the administration and enforcement of ORS 687.011 to 687.250.**

20 **SECTION 9. ORS 687.115 is amended to read:**

21 687.115. (1) The State Board of Massage Therapists *[shall operate as a semi-independent state  
 22 agency subject to ORS 182.456 to 182.472,]* **is established** for purposes of carrying out the provisions  
 23 of ORS 687.011 to 687.250, 687.895 and 687.991. The board *[shall be composed]* **consists** of seven  
 24 members<sup>[,]</sup> **who are appointed by the Governor for terms of four years. Members serve at the  
 25 pleasure of the Governor. Of the members of the board:**

26 **(a)** Four *[of whom shall]* **must** be licensed massage therapists; and

27 **(b)** Three *[of whom shall]* **must** be members of the public, including one public member selected  
 28 from a *[health related]* **health-related** field<sup>[,]</sup> *who shall be appointed by the Governor for terms of four  
 29 years. Members serve at the option of the Governor.]*

30 (2) Members are entitled to compensation and expenses as determined by the board.

31 (3) The board may:

32 (a) Hold meetings at times and locations determined by the board.

33 **(b) Subject to the State Personnel Relations Law,** hire, define the duties and fix the salary  
 34 of an administrator who may hire and define the duties and provide supervision and evaluation of  
 35 other employees as necessary to carry out the provisions of ORS 687.011 to 687.250, 687.895 and  
 36 687.991. The administrator, with approval of the board, may also employ special consultants. All  
 37 salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the  
 38 board.

39 **SECTION 10. ORS 687.250 is amended to read:**

40 687.250. (1) The State Board of Massage Therapists shall report to the proper district attorney  
 41 all cases that in the judgment of the board warrant criminal prosecution under ORS 687.991.

42 (2) The board may, in its own name, assess a civil penalty against any licensed or unlicensed  
 43 person violating a provision of ORS 687.011 to 687.250, 687.895 and 687.991. The board may assess  
 44 the civil penalty instead of or in addition to disciplinary action under ORS 687.081, an injunction  
 45 issued under ORS 687.021 or criminal prosecution by the district attorney under this section. The

1 amount of the civil penalty may not exceed \$1,000 for any single violation. [*Except as the board may*  
 2 *otherwise provide under ORS 182.462 (5),*] Moneys collected through the assessment of civil penalties  
 3 by the board under this subsection or ORS 687.081 shall be deposited into [*the account created by the*  
 4 *board pursuant to ORS 182.470 and are continuously appropriated to the board for carrying out the*  
 5 *provisions of ORS 687.011 to 687.250, 687.895 and 687.991.*] **the State Board of Massage Therapists**  
 6 **Account established in section 8 of this 2009 Act.**

7 **SECTION 11.** ORS 688.160 is amended to read:

8 688.160. (1) The Physical Therapist Licensing Board [*shall operate as a semi-independent state*  
 9 *agency subject to ORS 182.456 to 182.472,*] **is established** for purposes of carrying out the provisions  
 10 of ORS 688.010 to 688.201 and 688.990 (1). The Physical Therapist Licensing Board [*shall consist*]  
 11 **consists** of seven members appointed by the Governor who may be appointed from a list of not  
 12 fewer than nine names, submitted by the Oregon Physical Therapy Association. Five members  
 13 [*shall*] **must** be physical therapists who are Oregon residents, possess unrestricted licenses to  
 14 practice physical therapy in this state, have been practicing in this state for at least two years im-  
 15 mediately preceding their appointments and have been practicing in the field of physical therapy for  
 16 at least five years. One member [*shall*] **must** be a licensed physical therapist assistant. One member  
 17 [*shall*] **must** be a public member who has an interest in consumer rights. All members [*shall*] have  
 18 equal voting privileges.

19 (2) Upon the expiration of the term of a member of the board, the Governor shall appoint a  
 20 successor who may be appointed from a list of three names submitted to the Governor by the Oregon  
 21 Physical Therapy Association to serve a term of four years. A member may not serve for more than  
 22 two consecutive four-year terms.

23 (3) In the event of a vacancy in the office of a member of the board other than by reason of the  
 24 expiration of a term, the Governor, not later than 90 days after the occurrence of the vacancy, shall  
 25 appoint a person to fill the vacancy for the unexpired term. The person may be appointed from a list  
 26 of three names submitted as provided in subsection (2) of this section. If requested by the board, the  
 27 Governor may remove any member of the board for misconduct, incompetence or neglect of duty.

28 (4) Each member of the board is entitled to compensation and expenses as provided in ORS  
 29 292.495.

30 (5) A board member who acts within the scope of board duties, without malice and in reasonable  
 31 belief that the member's action is warranted by law, is immune from civil liability.

32 (6) The board [*shall have power to*] **may:**

33 (a) Establish matters of policy affecting administration of ORS 688.010 to 688.201;

34 (b) Provide for examinations for physical therapists and physical therapist assistants and adopt  
 35 passing scores for the examinations;

36 (c) Adopt rules necessary to carry out and enforce the provisions of ORS 688.010 to 688.201;

37 (d) Establish standards and tests to determine the qualifications of applicants for licenses to  
 38 practice physical therapy in this state;

39 (e) Issue licenses to persons who meet the requirements of ORS 688.010 to 688.201;

40 (f) Adopt rules relating to the supervision and the duties of physical therapist aides who assist  
 41 in performing routine work under supervision;

42 (g) Adopt rules establishing minimum continuing education requirements for all licensees;

43 (h) Exercise general supervision over the practice of physical therapy within this state;

44 (i) Establish and collect fees for the application or examination for, or the renewal, rein-  
 45 statement or duplication of, a license under ORS 688.040, 688.080 or 688.100 or for the issuance of

1 a temporary permit under ORS 688.110; and

2 (j) Establish and collect fees to carry out and enforce the provisions of ORS 688.010 to 688.201.

3 (7) The board shall meet as determined by the board and at any other time at the call of the  
4 board chairperson, who shall be elected by the members of the board.

5 (8) **Subject to the State Personnel Relations Law**, the board may appoint and fix the com-  
6 pensation of an executive director and other staff as necessary to carry out the operations of the  
7 board.

8 (9) The board shall:

9 (a) Maintain a current list of all persons regulated under ORS 688.010 to 688.201, including the  
10 persons' names, current business and residential addresses, telephone numbers, electronic mail ad-  
11 dresses and license numbers.

12 (b) Provide information to the public regarding the procedure for filing a complaint against a  
13 physical therapist or physical therapist assistant.

14 (c) Publish at least annually, and in a format or place determined by the board, final disciplinary  
15 actions taken against physical therapists and physical therapist assistants and other information,  
16 including rules, in order to guide physical therapists and physical therapist assistants regulated  
17 pursuant to ORS 688.010 to 688.201.

18 (10) **The fees and charges established by the board may not exceed the cost of adminis-**  
19 **tering the regulatory program of the board pertaining to the purpose for which the fee or**  
20 **charge is established. The fees and charges are subject to prior approval by the Oregon De-**  
21 **partment of Administrative Services, shall be submitted to the Emergency Board prior to**  
22 **adoption and shall be within the budget authorized by the Legislative Assembly for the**  
23 **Physical Therapist Licensing Board, as that budget may be modified by the Emergency**  
24 **Board.**

25 **SECTION 12.** ORS 688.201 is amended to read:

26 688.201. *[All moneys received under ORS 688.010 to 688.201 shall be paid into the account estab-*  
27 *lished by the Physical Therapist Licensing Board under ORS 182.470. Those moneys hereby]* **The**  
28 **Physical Therapist Licensing Board Account is established separate and distinct from the**  
29 **General Fund. All moneys received by the Physical Therapist Licensing Board under ORS**  
30 **688.010 to 688.201 shall be deposited into the account and** are appropriated continuously to the  
31 board *[and shall]* **to be used only for the administration and enforcement of ORS 688.010 to 688.201.**

32 **SECTION 13. (1) The Oregon Board of Optometry, the State Board of Massage Therapists**  
33 **and the Physical Therapist Licensing Board shall take any action necessary to cause their**  
34 **2010-2011 fiscal years to end on June 30, 2011.**

35 (2) **Each board referred to in this section shall prepare an annual financial statement of**  
36 **board revenues and expenses for the board's 2010-2011 fiscal year and shall make the state-**  
37 **ment available for public review. Each board shall provide a copy of its annual financial**  
38 **statement to the Oregon Department of Administrative Services on or before September 30,**  
39 **2011.**

40 (3) **If the Seventy-sixth Legislative Assembly does not enact legislation before July 1,**  
41 **2011, authorizing expenditures for a board referred to in this section for purposes of the**  
42 **2011-2013 biennial budget, in any Act for the temporary continuation of state agency expen-**  
43 **ditures the expenditure levels budgeted by that board for the last quarter of the board's**  
44 **2010-2011 fiscal year shall be considered to be the board's authorized expenditure levels for**  
45 **the last quarter of the 2009-2011 biennial budget.**

1       **SECTION 14.** Notwithstanding the amendments to ORS 683.290 and 688.160 by sections 4,  
 2 5 and 11 of this 2009 Act, the lawful rules of the Oregon Board of Optometry, the State Board  
 3 of Massage Therapists and the Physical Therapist Licensing Board that are in effect imme-  
 4 diately prior to the operative date of the amendments to ORS 683.270, 683.290 and 688.160 by  
 5 sections 4, 5 and 11 of this 2009 Act continue in full force and effect unless superseded by  
 6 temporary or permanent rules lawfully adopted on or after the effective date of this 2009 Act.

7       **SECTION 15.** Notwithstanding the amendments to ORS 683.120, 683.270, 687.071 and  
 8 688.160 by sections 2, 4, 6 and 11 of this 2009 Act, the fee structure utilized by the Oregon  
 9 Board of Optometry, the State Board of Massage Therapists and the Physical Therapist Li-  
 10 censing Board immediately prior to the operative date of the amendments to ORS 683.120,  
 11 683.270, 687.071 and 688.160 by sections 2, 4, 6 and 11 of this 2009 Act continues in full force  
 12 and effect except as superseded by a temporary or permanent fee structure lawfully adopted  
 13 on or after the operative date of the amendments to ORS 683.120, 683.270, 687.071 and 688.160  
 14 by sections 2, 4, 6 and 11 of this 2009 Act.

15       **SECTION 16.** (1) The termination of the semi-independent state agency status of the  
 16 Oregon Board of Optometry, the State Board of Massage Therapists and the Physical Ther-  
 17 apist Licensing Board on the operative date of the amendments to ORS 182.454, 683.250,  
 18 687.115 and 688.160 by sections 1, 3, 9 and 11 of this 2009 Act does not act to cancel:

- 19       (a) Any lawful debt owing by or to a board;
- 20       (b) Any fine, penalty, tax or obligation imposed on or by a board;
- 21       (c) Any action taken by a board in the administration and enforcement of the board's  
 22 duties;
- 23       (d) Any budget for the 2010-2011 fiscal year lawfully adopted by a board; or
- 24       (e) Any action filed on or before that operative date in which a board is a named party.

25       (2) The Oregon Board of Optometry, the State Board of Massage Therapists and the  
 26 Physical Therapist Licensing Board, upon the expiration of the semi-independent status of  
 27 each board, shall retain all supplies, materials, equipment, records, books and papers of the  
 28 board as though the expiration had not occurred. Subject to the authority of the Oregon  
 29 Department of Administrative Services under ORS 276.410, the Oregon Board of Optometry,  
 30 the State Board of Massage Therapists and the Physical Therapist Licensing Board, upon the  
 31 expiration of the semi-independent status of each board, may continue to occupy and use  
 32 board facilities as though the expiration had not occurred.

33       **SECTION 17.** On the operative date of section 8 of this 2009 Act and the amendments to  
 34 ORS 683.290 and 688.201 by sections 5 and 12 of this 2009 Act:

35       (1) The Oregon Board of Optometry shall close the account established by the board un-  
 36 der ORS 182.470. The moneys in the account remaining unexpended and unobligated on the  
 37 operative date of the amendments to ORS 683.290 by section 5 of this 2009 Act shall be  
 38 transferred to the Oregon Board of Optometry Account established under ORS 683.290.

39       (2) The State Board of Massage Therapists shall close the account established by the  
 40 board under ORS 182.470. The moneys in the account remaining unexpended and unobligated  
 41 on the operative date of section 8 of this 2009 Act shall be transferred to the State Board  
 42 of Massage Therapists Account established under section 8 of this 2009 Act.

43       (3) The Physical Therapist Licensing Board shall close the account established by the  
 44 board under ORS 182.470. The moneys in the account remaining unexpended and unobligated  
 45 on the operative date of the amendments to ORS 688.201 by section 12 of this 2009 Act shall

1 be transferred to the Physical Therapist Licensing Board Account established under ORS  
2 688.201.

3 **SECTION 18.** The Oregon Board of Optometry, the State Board of Massage Therapists,  
4 the Physical Therapist Licensing Board and any state agency or officer may undertake any  
5 reasonable and necessary action prior to the operative date of section 8 of this 2009 Act and  
6 the amendments to statutes by sections 1 to 6 and 9 to 12 of this 2009 Act to facilitate the  
7 carrying out of this 2009 Act on or after that operative date. The authority granted by this  
8 section includes, but is not limited to, the preparation of the biennial departmental budgets  
9 of the Oregon Board of Optometry, the State Board of Massage Therapists and the Physical  
10 Therapist Licensing Board for inclusion in the state budget for the 2011-2013 biennium.

11 **SECTION 19.** Section 8 of this 2009 Act and the amendments to ORS 182.454, 683.120,  
12 683.250, 683.270, 683.290, 687.071, 687.115, 687.250, 688.160 and 688.201 by sections 1 to 6 and 9  
13 to 12 of this 2009 Act become operative on July 1, 2011.

14 **SECTION 20.** This 2009 Act being necessary for the immediate preservation of the public  
15 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
16 on its passage.

17 \_\_\_\_\_