

A-Engrossed
House Bill 2453

Ordered by the House March 18
Including House Amendments dated March 18

Sponsored by Representative BARTON; Representatives BARKER, CAMERON, GARRETT, KAHL, KRIEGER, OLSON, SHIELDS, J SMITH, STIEGLER, WHISNANT, Senator PROZANSKI

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.

[Provides that lawyer-client privilege extends to communications made by or to agent of client under specified circumstances.]

Redefines "representative of client" for purposes relating to lawyer-client privilege.

A BILL FOR AN ACT

Relating to lawyer-client privilege; creating new provisions; and amending ORS 40.225.

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

SECTION 1. ORS 40.225 is amended to read:

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

(a) "Client" means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

[(d) "Representative of the client" means a principal, an employee, an officer or a director of the client:]

[(A) Who provides the client's lawyer with information that was acquired during the course of, or as a result of, such person's relationship with the client as principal, employee, officer or director, and is provided to the lawyer for the purpose of obtaining for the client the legal advice or other legal services of the lawyer; or]

[(B) Who, as part of such person's relationship with the client as principal, employee, officer or director, seeks, receives or applies legal advice from the client's lawyer.]

(d) "Representative of the client" means:

(A) A principal, an officer or a director of the client; or

(B) A person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person's scope of employment for the client.

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 (e) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of
2 professional legal services, but does not include a physician making a physical or mental examina-
3 tion under ORCP 44.

4 (2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing
5 confidential communications made for the purpose of facilitating the rendition of professional legal
6 services to the client:

7 (a) Between the client or the client's representative and the client's lawyer or a representative
8 of the lawyer;

9 (b) Between the client's lawyer and the lawyer's representative;

10 (c) By the client or the client's lawyer to a lawyer representing another in a matter of common
11 interest;

12 (d) Between representatives of the client or between the client and a representative of the cli-
13 ent; or

14 (e) Between lawyers representing the client.

15 (3) The privilege created by this section may be claimed by the client, a guardian or conservator
16 of the client, the personal representative of a deceased client, or the successor, trustee, or similar
17 representative of a corporation, association, or other organization, whether or not in existence. The
18 person who was the lawyer or the lawyer's representative at the time of the communication is pre-
19 sumed to have authority to claim the privilege but only on behalf of the client.

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

21 (a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or
22 plan to commit what the client knew or reasonably should have known to be a crime or fraud;

23 (b) As to a communication relevant to an issue between parties who claim through the same
24 deceased client, regardless of whether the claims are by testate or intestate succession or by inter
25 vivos transaction;

26 (c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or
27 by the client to the lawyer;

28 (d) As to a communication relevant to an issue concerning an attested document to which the
29 lawyer is an attesting witness; or

30 (e) As to a communication relevant to a matter of common interest between two or more clients
31 if the communication was made by any of them to a lawyer retained or consulted in common, when
32 offered in an action between any of the clients.

33 (5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
34 cation made to the office of public defense services established under ORS 151.216 for the purpose
35 of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

36 (6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained
37 under this section for a communication that is made to the office of public defense services estab-
38 lished under ORS 151.216 for the purpose of making, or providing information regarding, a complaint
39 against a lawyer providing public defense services.

40 (7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
41 cation ordered to be disclosed under ORS 192.410 to 192.505.

42 **SECTION 2. The amendments to ORS 40.225 by section 1 of this 2009 Act apply to all**
43 **communications, whether made before, on or after the effective date of this 2009 Act.**

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