

SENATE AMENDMENTS TO SENATE BILL 244

By COMMITTEE ON JUDICIARY

February 11

1 On page 1 of the printed bill, line 2, delete “amending ORS 9.025 and 9.162;” and insert
2 “amending ORS 3.428, 9.025, 9.160, 9.162, 9.527 and 9.990; repealing ORS 9.500, 9.505, 9.510, 9.515 and
3 9.520;”.

4 On page 2, after line 32, insert:

5 “**SECTION 4.** ORS 9.160 is amended to read:

6 “9.160. (1) Except as provided in this section, a person may not practice law **in this state**, or
7 represent that **the** person [as] **is** qualified to practice law **in this state**, unless [that] **the** person is
8 an active member of the Oregon State Bar.

9 “(2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in
10 person as provided in ORS 9.320.

11 “(3) An individual licensed under ORS 696.022 acting in the scope of the individual’s license to
12 arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled
13 with an option to purchase, lease for a term of one year or longer or rental of real property, is not
14 engaged in the practice of law **in this state** in violation of subsection (1) of this section.

15 “(4) A title insurer authorized to do business in this state, a title insurance agent licensed under
16 the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the
17 practice of law **in this state** in violation of subsection (1) of this section if, for the purposes of a
18 transaction in which the insurer or agent provides title insurance or escrow services, the insurer
19 or agent:

20 “(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of
21 a lien, encumbrance or obligation;

22 “(b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in
23 blanks in any document selected by the principals;

24 “(c) Presents to the principals to the transaction for their selection any blank form prescribed
25 by statute, rule, ordinance or other law; or

26 “(d) Presents to the principals to the transaction for their selection a blank form prepared or
27 approved by a lawyer licensed to practice law in this state for one or more of the following:

28 “(A) A mortgage.

29 “(B) A trust deed.

30 “(C) A promissory note.

31 “(D) An assignment of a mortgagee’s interest under a mortgage.

32 “(E) An assignment of a beneficial interest under a trust deed.

33 “(F) An assignment of a seller’s or buyer’s interest under a land sale contract.

34 “(G) A power of attorney.

35 “(H) A subordination agreement.

1 “(I) A memorandum of an instrument that is to be recorded in place of the instrument that is
2 the subject of the memorandum.

3 “(5) In performing the services permitted in subsection (4) of this section, a title insurer, a title
4 insurance agent or an escrow agent may not draft, select or give advice regarding any real estate
5 document if those activities require the exercise of informed or trained discretion.

6 “(6) The exemption provided by subsection (4) of this section does not apply to any acts relating
7 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
8 this section unless the escrow agent provides to the principals to the transaction a notice in at least
9 12-point type as follows:

10 “

11 _____
12 YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT
13 CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE
14 DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU
15 MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN
16 ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR
17 ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT
18 YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

19 “

20 _____
21 “(7) The exemption provided by subsection (4) of this section does not apply to any acts relating
22 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
23 this section for a real estate sale and purchase transaction in which all or part of the purchase price
24 consists of deferred payments by the buyer to the seller unless the escrow agent provides to the
25 principals to the transaction:

26 “(a) A copy of any proposed instrument of conveyance between the buyer and seller to be used
27 in the transaction;

28 “(b) A copy of any proposed deferred payment security instrument between the buyer and seller
29 to be used in the transaction; and

30 “(c) A copy of any proposed promissory note or other evidence of indebtedness between the
31 buyer and seller to be used in the transaction.

32 “(8) The notice and copies of documents that must be provided under subsections (6) and (7) of
33 this section must be delivered in the manner most likely to ensure receipt by the principals to the
34 transaction at least three days before completion of the transaction. If copies of documents have
35 been provided under subsection (7) of this section and are subsequently amended, copies of the
36 amended documents must be provided before completion of the transaction.

37 “(9) Failure of any person to comply with the requirements of subsections (3) to (8) of this sec-
38 tion does not affect the validity of any transaction and may not be used as a basis to challenge any
39 transaction.

40 “**SECTION 5.** ORS 3.428 is amended to read:

41 “3.428. (1) A family law facilitation program may be established by the judges of the family court
42 department of a circuit court. If there is no family court department for the court, a family law fa-
43 cilitation program may be established for a circuit court by the presiding judge for the judicial dis-
44 trict. A family law facilitation program shall be designed to assist litigants in domestic relations or
45 other family court proceedings described in ORS 3.408. The program shall be developed in consul-

1 tation with the local family law advisory committee established for the judicial district under ORS
2 3.434. The program shall operate under the supervision of the family court department or, if there
3 is no family court department, under the supervision of the presiding judge for the judicial district.
4 Services under the program shall be provided by court personnel in facilities under the supervision
5 and control of the family court department or, if there is no family court department, under the
6 supervision and control of the presiding judge for the judicial district. The program may provide:

7 “(a) Educational materials.

8 “(b) Court forms.

9 “(c) Assistance in completing forms.

10 “(d) Information about court procedures.

11 “(e) Referrals to agencies and resources that provide legal and other services to parents or
12 children.

13 “(2) All materials, forms, instructions and referral lists provided through the program must be
14 approved by the family court department or, if there is no family court department, by the presiding
15 judge for the judicial district.

16 “(3) Except for those fees authorized for forms under ORS 21.361, services provided through the
17 program shall be provided without charge.

18 “(4) An employee or other person providing services to litigants through a family law facilitation
19 program as provided in this section is not engaged in the practice of law **in this state** for the
20 purposes of ORS 9.160.

21 “(5) Except as provided in subsection (6) of this section, an employee or other person who as-
22 sisted litigants through a family law facilitation program may not, for a period of one year after
23 leaving the program, charge or collect any fee from a litigant for services relating to a matter that
24 was the subject of assistance under the program.

25 “(6) The prohibition of subsection (5) of this section does not apply to persons admitted to the
26 practice of law in this state.

27 **“SECTION 6. ORS 9.500, 9.505, 9.510, 9.515 and 9.520 are repealed.**

28 **“SECTION 7.** ORS 9.527 is amended to read:

29 “9.527. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever,
30 upon proper proceedings for that purpose, it appears to the court that:

31 “(1) The member has committed an act or carried on a course of conduct of such nature that,
32 if the member were applying for admission to the bar, the application should be denied;

33 “(2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor
34 involving moral turpitude or a felony under the laws of this state, or is punishable by death or
35 imprisonment under the laws of the United States, in any of which cases the record of the conviction
36 shall be conclusive evidence;

37 “(3) The member has willfully disobeyed an order of a court requiring the member to do or
38 forbear an act connected with the legal profession;

39 “(4) The member is guilty of willful deceit or misconduct in the legal profession;

40 “(5) The member is guilty of willful violation of any of the provisions of ORS 9.460 [or 9.510];

41 “(6) The member is guilty of gross or repeated negligence or incompetence in the practice of
42 law; or

43 “(7) The member has violated any of the provisions of the rules of professional conduct adopted
44 pursuant to ORS 9.490.

45 **“SECTION 8.** ORS 9.990 is amended to read:

1 “9.990. [(1)] Any person who violates ORS 9.160 shall be fined not more than \$500 or imprisoned
2 in the county jail for a period not to exceed six months, or both.

3 “[(2) Any person who violates any of the provisions of ORS 9.500 or 9.520 commits a Class A vi-
4 olation.]

5 “[(3) Any person violating any of the provisions of ORS 9.505 shall, upon conviction, be fined not
6 more than \$1,000 or imprisoned in the county jail for a period not to exceed one year, or both.]”.

7 In line 33, delete “4” and insert “9”.

8
