

D R A F T

SUMMARY

Establishes privilege for communications with lawyer referral service.

A BILL FOR AN ACT

1
2 Relating to legal services; creating new provisions; and amending ORS
3 40.225.

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

5 **SECTION 1.** ORS 40.225 is amended to read:

6 40.225. (1) As used in this section, unless the context requires otherwise:

7 (a) “Client” means:

8 (A) A person, public officer, corporation, association or other organiza-
9 tion or entity, either public or private, who is rendered professional legal
10 services by a lawyer, or who consults a lawyer with a view to obtaining
11 professional legal services from the lawyer.

12 (B) **A person, public officer, corporation, association or other or-**
13 **ganization or entity, either public or private, who consults a lawyer**
14 **referral service with a view to obtaining professional legal services**
15 **from a lawyer.**

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

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

22 (d) **“Lawyer referral service” means an entity that, as a regular**

1 **part of its business, refers potential clients to lawyers, including but**
2 **not limited to a public nonprofit entity sponsored or operated by the**
3 **Oregon State Bar.**

4 [(d)] (e) “Representative of the client” means:

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

6 (B) A person who has authority to obtain professional legal services, or
7 to act on legal advice rendered, on behalf of the client, or a person who, for
8 the purpose of effectuating legal representation for the client, makes or re-
9 ceives a confidential communication while acting in the person’s scope of
10 employment for the client.

11 (e) “Representative of the lawyer” means one employed to assist the law-
12 yer in the rendition of professional legal services, but does not include a
13 physician making a physical or mental examination under ORCP 44.

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

17 (a) Between the client or the client’s representative and the client’s law-
18 yer or a representative of the lawyer;

19 (b) Between the client’s lawyer and the lawyer’s representative **or the**
20 **client’s lawyer referral service;**

21 (c) By the client or the client’s lawyer to a lawyer representing another
22 in a matter of common interest;

23 (d) Between representatives of the client or between the client and a
24 representative of the client; [or]

25 (e) Between lawyers representing the client[.]; **or**

26 **(f) Between the client or a representative of the client and a lawyer**
27 **referral service.**

28 (3) The privilege created by this section may be claimed by the client, a
29 guardian or conservator of the client, the personal representative of a de-
30 ceased client, or the successor, trustee, or similar representative of a corpo-
31 ration, association, or other organization, whether or not in existence. The

1 person who was the lawyer **or lawyer referral service** or the lawyer's rep-
2 resentative at the time of the communication is presumed to have authority
3 to claim the privilege but only on behalf of the client.

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

5 (a) If the services of the lawyer **or lawyer referral service** were sought
6 or obtained to enable or aid anyone to commit or plan to commit what the
7 client knew or reasonably should have known to be a crime or fraud;

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

11 (c) As to a communication relevant to an issue of breach of duty by the
12 lawyer **or lawyer referral service** to the client or by the client to the
13 lawyer **or lawyer referral service**;

14 (d) As to a communication relevant to an issue concerning an attested
15 document to which the lawyer **or lawyer referral service** is an attesting
16 witness; or

17 (e) As to a communication relevant to a matter of common interest be-
18 tween two or more clients if the communication was made by any of them
19 to a lawyer retained or consulted in common, when offered in an action be-
20 tween any of the clients.

21 (5) Notwithstanding ORS 40.280, a privilege is maintained under this
22 section for a communication made to the office of public defense services
23 established under ORS 151.216 for the purpose of seeking preauthorization
24 for or payment of nonroutine fees or expenses under ORS 135.055.

25 (6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a
26 privilege is maintained under this section for a communication that is made
27 to the office of public defense services established under ORS 151.216 for the
28 purpose of making, or providing information regarding, a complaint against
29 a lawyer providing public defense services.

30 (7) Notwithstanding ORS 40.280, a privilege is maintained under this
31 section for a communication ordered to be disclosed under ORS 192.311 to

1 192.478.

2 **SECTION 2. The amendments to ORS 40.225 by section 1 of this 2018**
3 **Act apply to all confidential communications, whether made before,**
4 **on or after the effective date of this 2018 Act.**

5
