

Enrolled
Senate Bill 490

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CHAPTER

AN ACT

Relating to administration of the Oregon State Bar; creating new provisions; amending ORS 9.005, 9.040, 9.042, 9.050, 9.060, 9.070, 9.100, 9.148, 9.152, 9.155, 9.200 and 9.675; and declaring an emergency.

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

**CHIEF EXECUTIVE OFFICER, VOTING AND
LATE PAYMENT PENALTY**

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 9.005 to 9.757.

SECTION 2. Chief executive officer. The board of governors shall appoint a chief executive officer of the Oregon State Bar. The chief executive officer is the chief administrative employee of the bar. The chief executive officer may, but need not, be a member of the bar. The chief executive officer serves at the board's discretion and shall perform such duties as the board prescribes.

SECTION 3. ORS 9.005 is amended to read:

9.005. As used in ORS 9.005 to 9.757, unless the context or subject matter requires otherwise:

(1) "Attorney" and "member" mean a member of the bar.

(2) "Board" and "board of governors" mean the board of governors of the bar.

(3) "Delegate" means a delegate of the house of delegates of the Oregon State Bar.

[(4) "Executive director" means the chief administrative employee of the bar, appointed by the board. The executive director may, but need not be, a member of the bar; and the executive director shall serve at the board's discretion and shall perform such duties as the board shall prescribe.]

[(5) (4) "Governor" means a member of the board of governors of the bar.

[(6) (5) "House" and "house of delegates" mean the house of delegates of the Oregon State Bar.

[(7) (6) "Oregon State Bar," "state bar" and "bar" mean the Oregon State Bar created by the State Bar Act set forth in ORS 9.005 to 9.757.

[(8) (7) "Rules of procedure" means the rules of procedure relative to admission, discipline, resignation and reinstatement of members of the bar adopted by the board and approved by the Supreme Court.

SECTION 4. ORS 9.040 is amended to read:

9.040. (1) The election of governors shall be held annually on a date set by the board of governors. [*The election shall be by ballot.*] Any member of the Oregon State Bar who is eligible to serve

as a governor for a region may file a signed statement of candidacy for the region. Statements of candidacy must be filed with the [executive director] **chief executive officer** of the bar. The board shall establish a deadline for filing statements of candidacy.

(2)(a) The [executive director shall mail] **bar shall distribute** ballots containing the names of the candidates for the office of governor in each region to every active member in the region. [Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director] **Voting must be completed** on or before the day of the election. The [executive director] **chief executive officer** shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections [*in lieu of using mailed ballots*] under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board.

(5) A vacancy in the office of elective member of the board of governors that occurs more than 24 months before the expiration of the term shall be filled for the remainder of the term by a governor elected at a special election held in the manner provided in this section as soon as possible after the occurrence of the vacancy, or as provided in subsection (4) of this section if there is only one candidate. The vacancy may be filled for the period between the occurrence of the vacancy and the election of a new governor by a person appointed by the board. A vacancy in the office of elective member that occurs 24 months or less before the expiration of the term shall be filled for the remainder of the term by a person appointed by the board.

(6) A vacancy in the office of public member of the board of governors shall be filled for the remainder of the term by a governor appointed by the board.

SECTION 5. ORS 9.042 is amended to read:

9.042. (1) Upon the written request of any member of the **Oregon State Bar**, or upon the board's own motion, the board of governors shall determine the eligibility of a candidate for the board. A request under this section must be filed with the [executive director] **chief executive officer of the bar** within 30 days after the final day on which statements of candidacy are required to be filed. The board shall give written notice of the request to the candidate whose eligibility will be determined. The board shall provide an opportunity to the candidate to respond on the issue of the candidate's eligibility.

(2) The board shall give written notice to the candidate, and to any member of the bar who has requested a determination on the eligibility of the candidate under the provisions of this section, of the board's determination on the candidate's eligibility. The notice must be given not later than 75 days after the final day on which statements of candidacy are required to be filed. The notice shall state the specific grounds for the board's determination.

(3) A candidate, or a member of the bar who has requested a determination on the eligibility of a candidate under the provisions of this section, may file a petition for review of the board's determination with the Supreme Court. The petition for review must be filed within 15 days only after notice is given to a candidate or member under subsection (2) of this section.

(4) Upon the timely filing of a petition for review under subsection (3) of this section, the Supreme Court has jurisdiction to resolve all issues arising under the Oregon Constitution, state

statutes, rules of the court and rules of the board that are related to the eligibility of candidates for the board.

(5) The board of governors shall establish procedures for the implementation of subsections (1) and (2) of this section. The procedures shall be designed to ensure that there will be a final determination on the eligibility of a candidate for the board no later than 10 days before the [mailing] **distribution** of the ballots to members of the bar in the election that is affected by the determination.

(6) This section provides the exclusive procedure for challenging the eligibility of a candidate for the board. No other administrative or judicial proceeding may be brought to challenge the eligibility of a candidate for the board.

SECTION 6. ORS 9.050 is amended to read:

9.050. (1) On petition signed by 25 percent of the members in any region for the recall of any governor elected from that region, the [executive director] **chief executive officer of the Oregon State Bar** shall serve notice as soon as possible on the governor informing the governor that the petition has been filed. If the governor does not resign within 10 days after the date the notice is served, the [executive director shall mail] **chief executive officer shall distribute** ballots to each active member of the bar within the region eligible to vote, submitting the question whether the governor shall be recalled. If a majority of the members voting at the election vote in favor of the recall, the governor is recalled.

(2) On the affirmative vote of two-thirds of the entire membership of the board of governors, the board shall refer the question of the recall of any governor from any region to a vote of the members of that region. The [executive director] **chief executive officer** shall serve notice as soon as possible on the governor informing the governor that the board has approved a recall election. If the governor does not resign within 10 days after the notice is served, the [executive director shall mail] **chief executive officer shall distribute** ballots to each active member of the bar within the region eligible to vote, submitting the question whether the governor shall be recalled. If a majority of the members voting at the election vote in favor of the recall, the governor is recalled.

(3) The board of governors shall approve the ballot and any information submitted to the members in connection with a recall vote.

SECTION 7. ORS 9.100 is amended to read:

9.100. The board shall have prepared annually a statement explaining the financial condition of the **Oregon State Bar** for the 12 months preceding. [*Such statement shall be submitted by the executive director promptly*] **The chief executive officer of the bar shall promptly submit the statement** to the Chief Justice of the Supreme Court.

SECTION 8. ORS 9.148 is amended to read:

9.148. (1) Active members of the Oregon State Bar may participate in the discussion of matters before the house of delegates, but only delegates may vote. The house of delegates may by rule impose restrictions on participation by members of the state bar who are not delegates.

(2) The board of governors or the house of delegates, acting on its own motion, may refer to the members of the bar by [mail] ballot any question or measure considered by the board or house to be appropriate for submission to a vote of the members. Referral may be made under this subsection at any time.

(3) Active members of the state bar, by written petition signed by at least two percent of all active members, may have placed on the agenda of a meeting of the house of delegates any question or measure appropriate for a vote of the house. The petition shall contain the full text of the question or measure proposed. The petition must be filed with the [executive director] **chief executive officer of the bar** at least 45 days before the annual or special meeting of the house specified in the petition at the meeting when the petitioners seek to have the question or measure considered.

(4) Active members of the state bar, by written petition signed by no fewer than five percent of all active members, may request that the board of governors submit to a vote of the members any question or measure. The board of governors shall submit the question or measure to a vote of the

members of the bar if the question or measure is appropriate for a vote of the members. The initiative petition must contain the full text of the question or measure proposed.

SECTION 9. ORS 9.152 is amended to read:

9.152. (1) The election of delegates to the house of delegates shall be held annually on a date set by the board of governors. The election shall be by ballot. Any member of the Oregon State Bar who is eligible to serve as a member for a region may file a signed statement of candidacy for the region. Statements of candidacy must be filed with the [executive director of the state] bar at least 30 days before the election.

(2)(a) The [executive director shall mail] **bar shall distribute** ballots containing the names of the candidates for the office of delegate in each region to every active member in the region. [Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director] **Voting must be completed** on or before the day of the election. The [executive director] **chief executive officer** shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections [*in lieu of using mailed ballots*] under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board.

SECTION 10. ORS 9.155 is amended to read:

9.155. Upon the filing of a petition with the Oregon State Bar signed by 25 percent of the members of the bar from a region for the recall of a delegate elected from that region, the [executive director] **chief executive officer of the bar** shall serve notice on the delegate of the filing of the petition. If the delegate does not resign within 15 days after the date that the notice is served, the [executive director shall mail] **chief executive officer shall distribute** ballots to each member of the bar within the region. The ballots shall submit the question of whether the delegate should be recalled. If a majority of the members voting in the election vote in favor of the recall, the delegate is recalled and the position held by the delegate becomes vacant upon the [executive director's] **chief executive officer's** declaration of the results of the election.

SECTION 11. ORS 9.200 is amended to read:

9.200. (1) Any member in default in payment of membership fees established under ORS 9.191 (1) or any member in default in payment of assessed contributions to a professional liability fund established under ORS 9.080 (2) shall be given written notice of delinquency and a reasonable time to cure the default. The [executive director] **chief executive officer** of the Oregon State Bar shall send the notice of delinquency to the member at the member's electronic mail address on file with the bar on the date of the notice. The [executive director] **chief executive officer** shall send the notice by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a member fails to pay the fees or contributions within the time allowed to cure the default as stated in the notice, the member is automatically suspended. The [executive director] **chief executive officer** shall provide the names of all members suspended under this section to the State Court Administrator and to each of the judges of the Court of Appeals, circuit and tax courts of the state.

(2) An active member delinquent in the payment of fees or contributions is not entitled to vote.

(3) A member delinquent in the payment of fees or contributions may be assessed a late payment penalty determined by the board of governors.

[(3)] (4) A member suspended for delinquency under this section may be reinstated only on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees or contributions.

SECTION 12. ORS 9.675 is amended to read:

9.675. (1) An active member of the Oregon State Bar shall certify annually to the bar whether the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more lawyer trust accounts, the member must disclose the financial institution in which each account is held and the account number for each account. The *[executive director of the Oregon State]* **chief executive officer of the** bar shall prescribe a form and due date for the certification and disclosures required by this section.

(2) If a member does not file the certificate and disclosures required by this section within 30 days after the due date prescribed under subsection (1) of this section, the *[executive director]* **chief executive officer** shall send written notice of the default to the member at the member's electronic mail address on file with the bar on the date of the notice. The *[executive director]* **chief executive officer** shall send the notice by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a member does not file the certificate and disclosures required by this section within 60 days after the date of the notice, the person's membership in the bar is automatically suspended. The *[executive director]* **chief executive officer** shall provide the names of all persons suspended under this section to the judges of the circuit courts, the Court of Appeals and the Oregon Tax Court.

(3) A person suspended under this section may be reinstated to membership in the bar only if the person pays all required fees and contributions and complies with all rules of procedure and rules of the Supreme Court relating to reinstatement.

VICE PRESIDENTS AND IMMEDIATE PAST PRESIDENT

SECTION 13. ORS 9.060 is amended to read:

9.060. A president[,] **and** president-elect *[and two vice presidents]* shall be elected by the governors each year immediately following the annual election of governors and before the newly elected governors have qualified. The president[,] **and** president-elect *[and vice presidents]* shall be elected from among the attorney board members. All officers shall continue in office until their successors are elected and qualify. Vacancies in any of the offices shall be filled by the board by appointment for the remainder of the term. **Upon completion of the term for which the president is elected or appointed, the president becomes the immediate past president and shall serve as a non-voting, ex officio member of the board for one year.** All officers shall take office as provided by the bar bylaws.

SECTION 14. ORS 9.070 is amended to read:

9.070. (1) The president shall preside at all meetings of the house of delegates and of the board of governors, and in the president's absence or inability to act, the president shall designate another officer to preside. **The board of governors may prescribe** other duties of the president[,] **and** president-elect *[and vice presidents shall be such as the board of governors may prescribe].*

(2) All fees shall be paid into the treasury of the **Oregon** State Bar, and when so paid shall become part of its funds and shall be disbursed only on order of the board of governors.

CAPTIONS

SECTION 15. **The unit and section captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.**

EMERGENCY CLAUSE

SECTION 16. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate February 21, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 4, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State