

House Bill 4095

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Establishes privilege for communications with lawyer referral service.

A BILL FOR AN ACT

Relating to legal services; 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) 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) A person, public officer, corporation, association or other organization or entity, either public or private, who consults a lawyer referral service with a view to obtaining professional legal services from a 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) "Lawyer referral service" means an entity that, as a regular part of its business, refers potential clients to lawyers, including but not limited to a public nonprofit entity sponsored or operated by the Oregon State Bar.

[(d)] (e) "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.

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

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

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 services to the client:

2 (a) Between the client or the client's representative and the client's lawyer or a representative
3 of the lawyer;

4 (b) Between the client's lawyer and the lawyer's representative **or the client's lawyer referral**
5 **service**;

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

8 (d) Between representatives of the client or between the client and a representative of the cli-
9 ent; [*or*]

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

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

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

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

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

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

25 (c) As to a communication relevant to an issue of breach of duty by the lawyer **or lawyer re-**
26 **ferred service** to the client or by the client to the lawyer **or lawyer referral service**;

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

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

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

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

39 (7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
40 cation ordered to be disclosed under ORS 192.311 to 192.478.

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