

LC 303  
2021 Regular Session  
OSB00-001  
10/29/20 (MNJ/ps)

# D R A F T

## SUMMARY

Modifies provisions relating to attorneys.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to attorneys; creating new provisions; amending ORS 9.050, 9.080, 9.142, 9.160, 9.241, 9.657, 9.715, 9.725, 9.727, 9.735, 9.750 and 9.755; and declaring an emergency.

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

## BOARD OF GOVERNORS

**SECTION 1.** ORS 9.080 is amended to read:

9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.136 to 9.155. The state bar has the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law. **Bylaws adopted by the board of governors are subject to review and approval by the Supreme Court. The board has authority to adopt bar policies not inconsistent with the bylaws.** The board is charged with the executive functions of the state bar and shall at all times direct its power to serve the public interest by:

(a) Regulating the legal profession and improving the quality of legal services;

**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.

(b) Supporting the judiciary and improving the administration of justice;  
and

(c) Advancing a fair, inclusive and accessible justice system.

(2)(a)(A) The board has the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and is empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active members of the state bar engaged in the private practice of law whose principal offices are in Oregon, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible.

(B) The board has the authority to assess each active member of the state bar engaged in the private practice of law whose principal office is in Oregon for contributions to the professional liability fund and to establish the date by which contributions must be made.

(C) The board has the authority to establish definitions of coverage to be provided by the professional liability fund and to retain or employ legal counsel to represent the fund and defend and control the defense against any covered claim made against the member.

(D) The board has the authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under the professional liability fund, either through the fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and

convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State of Oregon.

(E) Records of a claim against the professional liability fund are exempt from disclosure under ORS 192.311 to 192.478.

(b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

(c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.

(3) The board may appoint such committees, officers and employees as it deems necessary or proper and fix and pay their compensation and necessary expenses. At any meeting of the board, two-thirds of the total number of members then in office shall constitute a quorum. It shall promote and encourage voluntary county or other local bar associations.

(4) Except as provided in this subsection, an employee of the state bar shall not be considered an "employee" as the term is defined in the public employees' retirement laws. However, an employee of the state bar may, at the option of the employee, for the purpose of becoming a member of the Public Employees Retirement System, be considered an "employee" as the term is defined in the public employees' retirement laws. The option, once exercised by written notification directed to the Public Employees Retire-

ment Board, may not be revoked subsequently, except as may otherwise be provided by law. Upon receipt of such notification by the Public Employees Retirement Board, an employee of the state bar who would otherwise, but for the exemption provided in this subsection, be considered an “employee,” as the term is defined in the public employees’ retirement laws, shall be so considered. The state bar and its employees shall be exempt from the provisions of the State Personnel Relations Law. No member of the state bar shall be considered an “employee” as the term is defined in the public employees’ retirement laws, the unemployment compensation laws and the State Personnel Relations Law solely by reason of membership in the state bar.

## CLIENT SECURITY FUND

### **SECTION 2.** ORS 9.657 is amended to read:

9.657. (1) Any person who has made a claim with the client security fund committee of the bar concerning a loss allegedly caused by the intentional dishonest conduct of the person’s lawyer, or who has given information to the bar relative to a [*proposed or pending*] client security fund claim **or award** shall be absolutely immune from civil liability for such acts.

(2) The Oregon State Bar, its officers, the members of the client security fund committee, the board of governors, bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to [*proposed or pending*] client security fund claims **or awards**.

## CUSTODIANSHIP

### **SECTION 3.** ORS 9.715 is amended to read:

9.715. (1) When the Oregon State Bar **or an attorney** determines that one of the circumstances listed in ORS 9.710 exists, the bar **or the attorney** may

petition the court ex parte to take immediate jurisdiction over the affected attorney's law practice as provided in ORS 9.705 to 9.757.

**(2) When an attorney files a petition under subsection (1) of this section, the attorney shall provide notice to the Oregon State Bar.**

**SECTION 4.** ORS 9.725 is amended to read:

9.725. (1) If the court assumes jurisdiction under ORS 9.705 to 9.757, it shall appoint the Oregon State Bar **or, if the bar declines the appointment, another attorney**, to act as custodian of the law practice of the affected attorney. Immediately upon appointment, the bar shall take possession and control of all property over which the court assumed jurisdiction. The court may order the bar **or the appointed attorney** to do one or more of the following:

(a) Examine the files and records of the law practice and obtain information as to any pending matters which may require attention;

(b) Notify persons and entities who appear to be clients of the affected attorney that the court has assumed jurisdiction and inform such persons that it may be in their best interest to obtain other legal counsel;

(c) Apply for extensions of time pending employment of other counsel by the client;

(d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;

(e) Give notice to appropriate persons and entities who may be affected, other than clients, that the court has assumed jurisdiction;

(f) Arrange for the surrender or delivery of clients' papers or property; and

(g) Do such other acts as the court may direct to carry out the purposes of ORS 9.705 to 9.757.

(2) The court has jurisdiction over that portion of the files, records and property of the affected attorney for the purposes of ORS 9.705 to 9.757 as established in the order, and may make all orders necessary or appropriate

to protect the interest of the affected attorney, the clients of the affected attorney and the public.

(3) Any financial institution holding funds in a lawyer trust account of the affected lawyer shall release the funds to the bar **or the appointed attorney** upon presentment of a copy of the order appointing the [bar as] custodian. The bar **or the appointed attorney** shall determine the ownership of the funds in the lawyer trust account and distribute the funds as directed by the interested client. Any funds for which ownership cannot be determined or for whom the owner cannot be located shall be turned over to the bar **or the appointed attorney** as provided in ORS 98.302 to 98.436.

(4) *[The bar may not be required to pay]* **The court may not charge** a filing fee for filing a petition under ORS 9.715.

**SECTION 5.** ORS 9.727 is amended to read:

9.727. The Oregon State Bar **or an attorney appointed as custodian of a law practice under ORS 9.725** shall serve a copy of an order appointing the [bar as] custodian *[of a law practice under ORS 9.725]* on the affected attorney or any person assisting in the suspension or termination of the affected attorney's practice. The bar **or appointed attorney** shall serve the copy of the order by regular mail to the last-known address of the affected attorney in the records of the bar or to a duly appointed fiduciary at the address provided in an official filing. The affected attorney or assisting person may, within 10 days of the service, request a hearing to challenge the order. After the hearing, the court may vacate or modify the custodianship order as the court finds appropriate.

**SECTION 6.** ORS 9.735 is amended to read:

9.735. The court shall enter a judgment awarding reasonable compensation and expenses to the Oregon State Bar **or another attorney appointed under ORS 9.725** for acting as custodian under ORS 9.705 to 9.757. The judgment shall be against the affected attorney or the estate of the affected attorney. The judgment is a lien upon all nontrust funds, office furnishings, supplies, equipment, library and other personal property used in the law

1 practice of the affected attorney retroactive to the date of filing of the peti-  
2 tion for jurisdiction under ORS 9.705 to 9.757. The judgment lien takes pri-  
3 ority over all general unsecured creditors, nonpossessory liens and security  
4 interests that were unperfected on the date the court assumed jurisdiction,  
5 and may be foreclosed as provided in ORS chapter 87.

6 **SECTION 7.** ORS 9.750 is amended to read:

7 9.750. Persons examining the files and records of the law practice of an  
8 affected attorney pursuant to ORS 9.705 to 9.757 shall preserve the  
9 confidentiality of the information relating to the affected attorney's repre-  
10 sentation of a client and shall make disclosure only to the extent necessary  
11 to carry out the purposes of ORS 9.705 to 9.757. Such disclosure is a disclo-  
12 sure which is reasonably necessary for the accomplishment of the purpose  
13 for which the affected attorney was consulted. Communications between the  
14 Oregon State Bar or its designees **or another attorney appointed as**  
15 **custodian of a law practice under ORS 9.725** and a client of the affected  
16 attorney are subject to the attorney-client privilege to the same extent as it  
17 would have applied to communications by or to the affected attorney.

18 **SECTION 8.** ORS 9.755 is amended to read:

19 9.755. Whenever the purposes of ORS 9.705 to 9.757 have been accom-  
20 plished with respect to the law practice of an affected attorney for which the  
21 Oregon State Bar **or another attorney** has been appointed as custodian  
22 under ORS 9.725, the bar **or the appointed attorney** shall file with the  
23 court a final report and accounting of all funds and property coming into the  
24 possession or control of the bar **or the appointed attorney** as custodian and  
25 a petition for compensation and expenses of the bar **or the appointed at-**  
26 **torney** for acting as custodian. The bar **or the appointed attorney** shall  
27 mail a copy of the report and accounting and a copy of the petition [*of the*  
28 *bar*] for compensation and expenses to all persons upon whom service was  
29 made pursuant to ORS 9.727. Upon approval by the court, an order shall be  
30 entered approving the final report and accounting, fixing the amount of  
31 compensation and expenses to be allowed to the bar **or the appointed at-**

1 **torney**, and discharging the bar **or the attorney** from further duties.

2 **SECTION 9. Section 10 of this 2021 Act is added to and made a part**  
3 **of ORS 9.005 to 9.757.**

4 **SECTION 10. A circuit court has jurisdiction to determine who is**  
5 **entitled to property contained in a lawyer trust account during a pro-**  
6 **bate of a deceased attorney's estate.**

7  
8 **COURT FACILITATORS**  
9

10 **SECTION 11.** ORS 9.160 is amended to read:

11 9.160. (1) Except as provided in this section, a person may not practice  
12 law in this state, or represent that the person is qualified to practice law in  
13 this state, unless the person is an active member of the Oregon State Bar.

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

16 **(3) Any employee or volunteer of the Judicial Department acting**  
17 **with the authorization and direction of the Chief Justice or a presiding**  
18 **judge of a circuit court to provide assistance to members of the public**  
19 **with court processes, selecting and completing court forms and legal**  
20 **information is not engaged in the practice of law in violation of sub-**  
21 **section (1) of this section.**

22 [(3)] (4) An individual licensed under ORS 696.022 acting in the scope of  
23 the individual's license to arrange a real estate transaction, including the  
24 sale, purchase, exchange, option or lease coupled with an option to purchase,  
25 lease for a term of one year or longer or rental of real property, is not en-  
26 gaged in the practice of law in this state in violation of subsection (1) of this  
27 section.

28 [(4)] (5) A title insurer authorized to do business in this state, a title in-  
29 surance agent licensed under the laws of this state or an escrow agent li-  
30 censed under the laws of this state is not engaged in the practice of law in  
31 this state in violation of subsection (1) of this section if, for the purposes



1 of a transaction in which the insurer or agent provides title insurance or  
2 escrow services, the insurer or agent:

3 (a) Prepares any satisfaction, reconveyance, release, discharge, termi-  
4 nation or cancellation of a lien, encumbrance or obligation;

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

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

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

12 (A) A mortgage.

13 (B) A trust deed.

14 (C) A promissory note.

15 (D) An assignment of a mortgagee's interest under a mortgage.

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

17 (F) An assignment of a seller's or buyer's interest under a land sale con-  
18 tract.

19 (G) A power of attorney.

20 (H) A subordination agreement.

21 (I) A memorandum of an instrument that is to be recorded in place of the  
22 instrument that is the subject of the memorandum.

23 [(5)] **(6)** In performing the services permitted in subsection [(4)] **(5)** of this  
24 section, a title insurer, a title insurance agent or an escrow agent may not  
25 draft, select or give advice regarding any real estate document if those ac-  
26 tivities require the exercise of informed or trained discretion.

27 [(6)] **(7)** The exemption provided by subsection [(4)] **(5)** of this section does  
28 not apply to any acts relating to a document or form that are performed by  
29 an escrow agent under subsection [(4)(b)] **(5)(b)**, (c) or (d) of this section  
30 unless the escrow agent provides to the principals to the transaction a notice  
31 in at least 12-point type as follows:

1 \_\_\_\_\_  
2 YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPOR-  
3 TANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW  
4 FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE  
5 CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU  
6 MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU  
7 SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR  
8 CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS.  
9 IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU  
10 HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

11 \_\_\_\_\_  
12 [(7)] **(8)** The exemption provided by subsection [(4)] **(5)** of this section does  
13 not apply to any acts relating to a document or form that are performed by  
14 an escrow agent under subsection [(4)(b)] **(5)(b)**, (c) or (d) of this section for  
15 a real estate sale and purchase transaction in which all or part of the pur-  
16 chase price consists of deferred payments by the buyer to the seller unless  
17 the escrow agent provides to the principals to the transaction:

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

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

22 (c) A copy of any proposed promissory note or other evidence of indebt-  
23 edness between the buyer and seller to be used in the transaction.

24 [(8)] **(9)** The notice and copies of documents that must be provided under  
25 subsections [(6) and (7)] **(7) and (8)** of this section must be delivered in the  
26 manner most likely to ensure receipt by the principals to the transaction at  
27 least three days before completion of the transaction. If copies of documents  
28 have been provided under subsection [(7)] **(8)** of this section and are subse-  
29 quently amended, copies of the amended documents must be provided before  
30 completion of the transaction.

31 [(9)] **(10)** Failure of any person to comply with the requirements of sub-

sections [(3) to (8)] **(4) to (9)** of this section does not affect the validity of any transaction and may not be used as a basis to challenge any transaction.

## **ELECTRONIC VOTING**

**SECTION 12.** ORS 9.142 is amended to read:

9.142. (1) The board of governors shall formulate rules for the conduct of the business of the house of delegates. Rules adopted by the board become effective upon the adoption of the rules by the house of delegates. The president of the Oregon State Bar may call special meetings of the house. The president shall call a special meeting of the house if 25 or more delegates make a written request for a special meeting. A majority of the total number of delegates constitutes a quorum for any regular or special meeting of the house.

(2) The board of governors shall set a time and place for the annual meeting of the house of delegates. At the annual meeting, the board of governors shall submit to the house of delegates reports of the proceedings by the board since the last meeting of the house, reports of the officers and committees of the state bar and recommendations of the board.

**(3) The house of delegates may vote through electronic ballot. If electronic ballots are used at a meeting, the vote of each member must be recorded and published after the meeting.**

## **ASSOCIATE MEMBERSHIP**

**SECTION 13.** ORS 9.241 is amended to read:

9.241. (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a

court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.

(2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.

**(3) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to ORS 9.210 to admit individuals with substantial legal education as associate members of the Oregon State Bar without taking the examination required by ORS 9.210. An individual admitted as an associate member under this subsection must meet all character and fitness requirements under ORS 9.220.**

[(3)] (4) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

## REMOVAL OF MEMBERS OF BOARD OF GOVERNORS

**SECTION 14.** ORS 9.050 is amended to read:

9.050. (1)(a) On petition signed by 25 percent of the members in any region for the recall of any governor elected from that region, the 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 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)] (b) 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 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 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)] (c) The board of governors shall approve the ballot and any information submitted to the members in connection with a recall vote.

**(2) The board of governors may remove a member of the board on the affirmative vote of two-thirds of the entire membership of the board. For purposes of a vote under this subsection, three-fourths of the total number of members then in office shall constitute a quorum.**

## RECORDING OF MEETINGS

**SECTION 15. Section 1 (1)(b), chapter 12, Oregon Laws 2020 (1st special session), does not apply to the Oregon State Bar.**

## CAPTIONS

**SECTION 16. The unit captions used in this 2021 Act are provided**

1 only for the convenience of the reader and do not become part of the  
2 statutory law of this state or express any legislative intent in the  
3 enactment of this 2021 Act.

4  
5 **EMERGENCY CLAUSE**  
6

7 **SECTION 17.** This 2021 Act being necessary for the immediate  
8 preservation of the public peace, health and safety, an emergency is  
9 declared to exist, and this 2021 Act takes effect on its passage.  
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