

Senate Bill 907

Sponsored by Senator THATCHER (at the request of Jim Claus)

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**.

Provides for award of attorney fees to prevailing plaintiff in claim for professional malpractice of attorney.

Requires minimum coverage limit required by professional liability fund to be at least \$300,000 for each claim brought against attorney, with no limitation on number of claims that may be covered.

Prohibits professional liability fund from paying amount exceeding one-sixth of required minimum coverage limit for payment of claim against attorney for cost of defense of attorney.

A BILL FOR AN ACT

1
2 Relating to professional malpractice of attorneys; creating new provisions; and amending ORS 9.080.

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

4 **SECTION 1. The court shall award attorney fees to a prevailing plaintiff in an action for**
5 **professional malpractice against an attorney.**

6 **SECTION 2.** ORS 9.080 is amended to read:

7 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS
8 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all
9 times direct its power to the advancement of the science of jurisprudence and the improvement of
10 the administration of justice. It has the authority to adopt, alter, amend and repeal bylaws and to
11 adopt new bylaws containing provisions for the regulation and management of the affairs of the
12 state bar not inconsistent with law.

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

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

28 (C) The board has the authority to establish definitions of coverage to be provided by the pro-

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 fessional liability fund and to retain or employ legal counsel to represent the fund and defend and
2 control the defense against any covered claim made against the member.

3 (D) The board has the authority to offer optional professional liability coverage on an under-
4 written basis above the minimum required coverage limits provided under the professional liability
5 fund, either through the fund, through a separate fund or through any insurance organization au-
6 thorized under the laws of the State of Oregon, and may do whatever is necessary and convenient
7 to implement this provision. Any fund so established shall not be subject to the Insurance Code of
8 the State of Oregon.

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

11 **(F) The minimum coverage limit required by the professional liability fund must be at**
12 **least \$300,000 for each claim brought against the attorney, with no limitation on the number**
13 **of claims that may be covered.**

14 **(G) The professional liability fund may not pay an amount exceeding one-sixth of the re-**
15 **quired minimum coverage limit for payment of a claim against an attorney for the cost of**
16 **defense of an attorney in a claim against the attorney.**

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

23 (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is
24 considered to be the location where the attorney engages in the private practice of law more than
25 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside
26 Oregon and the main office to which the branch office is connected is in Oregon, the principal office
27 of the attorney is not considered to be in Oregon unless the attorney engages in the private practice
28 of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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

33 (4) Except as provided in this subsection, an employee of the state bar shall not be considered
34 an "employee" as the term is defined in the public employees' retirement laws. However, an em-
35 ployee of the state bar may, at the option of the employee, for the purpose of becoming a member
36 of the Public Employees Retirement System, be considered an "employee" as the term is defined in
37 the public employees' retirement laws. The option, once exercised by written notification directed
38 to the Public Employees Retirement Board, may not be revoked subsequently, except as may other-
39 wise be provided by law. Upon receipt of such notification by the Public Employees Retirement
40 Board, an employee of the state bar who would otherwise, but for the exemption provided in this
41 subsection, be considered an "employee," as the term is defined in the public employees' retirement
42 laws, shall be so considered. The state bar and its employees shall be exempt from the provisions
43 of the State Personnel Relations Law. No member of the state bar shall be considered an
44 "employee" as the term is defined in the public employees' retirement laws, the unemployment
45 compensation laws and the State Personnel Relations Law solely by reason of membership in the

1 state bar.

2 **SECTION 3. Section 1 of this 2019 Act applies to claims that arise on or after the effec-**
3 **tive date of this 2019 Act.**

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