

Enrolled
Senate Bill 768

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION
(at the request of Oregon State Bar)

CHAPTER

AN ACT

Relating to the Oregon State Bar; creating new provisions; amending ORS 9.050, 9.142, 9.160, 9.241, 9.657, 9.715, 9.725, 9.727, 9.735, 9.750, 9.755 and 731.036; and declaring an emergency.

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

NOTE: Section 1 was deleted by amendment. Subsequent sections were not renumbered.

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 practice of the affected attorney retroactive to the date of filing of the petition for jurisdiction under ORS 9.705 to 9.757. The judgment lien takes priority over all general unsecured creditors, nonpossessory liens and security interests that were unperfected on the date the court assumed jurisdiction, and may be foreclosed as provided in ORS chapter 87.

SECTION 7. ORS 9.750 is amended to read:

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

SECTION 8. ORS 9.755 is amended to read:

9.755. Whenever the purposes of ORS 9.705 to 9.757 have been accomplished with respect to the law practice of an affected attorney for which the Oregon State Bar **or another attorney** has been appointed as custodian under ORS 9.725, the bar **or the appointed attorney** shall file with the court a final report and accounting of all funds and property coming into the possession or control of the bar **or the appointed attorney** as custodian and a petition for compensation and expenses of the bar **or the appointed attorney** for acting as custodian. The bar **or the appointed attorney** shall mail a copy of the report and accounting and a copy of the petition [*of the bar*] for compensation and expenses to all persons upon whom service was made pursuant to ORS 9.727. Upon approval by the court, an order shall be entered approving the final report and accounting, fixing the amount of compensation and expenses to be allowed to the bar **or the appointed attorney**, and discharging the bar **or the attorney** from further duties.

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

SECTION 10. A circuit court has jurisdiction to determine who is entitled to property contained in a lawyer trust account during a probate of a deceased attorney's estate.

COURT FACILITATORS

SECTION 11. ORS 9.160 is amended to read:

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

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

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

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

[4] (5) A title insurer authorized to do business in this state, a title insurance agent licensed under the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the practice of law in this state in violation of subsection (1) of this section if, for the purposes of a transaction in which the insurer or agent provides title insurance or escrow services, the insurer or agent:

(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a lien, encumbrance or obligation;

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

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

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

(A) A mortgage.

(B) A trust deed.

(C) A promissory note.

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

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

(F) An assignment of a seller's or buyer's interest under a land sale contract.

- (G) A power of attorney.
- (H) A subordination agreement.

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

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

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

YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

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

- (a) A copy of any proposed instrument of conveyance between the buyer and seller to be used in the transaction;
- (b) A copy of any proposed deferred payment security instrument between the buyer and seller to be used in the transaction; and
- (c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer and seller to be used in the transaction.

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

[(9)] (10) Failure of any person to comply with the requirements of subsections [(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 (first special session), does not apply to the Oregon State Bar.

INSURANCE CODE

SECTION 16. ORS 731.036 is amended to read:

731.036. Except as provided in ORS 743.029 or as specifically provided by law, the Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

(1) A bail bondsman, other than a corporate surety and its agents.

(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date.

(3) A religious organization providing insurance benefits only to its employees, if the organization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue Code on September 13, 1975.

(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for tort liability in accordance with ORS 30.282.

(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for property damage in accordance with ORS 30.282.

(6) Cities, counties, school districts, community college districts, community college service districts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employees or retired employees, or their dependents, or students engaged in school activities, or combination of employees and dependents, with or without employee or student contributions, if all of the following conditions are met:

(a) The individual or jointly self-insured program meets the following minimum requirements:

(A) In the case of a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals;

(B) In the case of an individual public body program other than a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals; and

(C) In the case of a joint program of two or more public bodies, the number of covered employees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

(b) The individual or jointly self-insured health insurance program includes all coverages and benefits required of group health insurance policies under ORS chapters 743, 743A and 743B;

(c) The individual or jointly self-insured program must have program documents that define program benefits and administration;

(d) Enrollees must be provided copies of summary plan descriptions including:

(A) Written general information about services provided, access to services, charges and scheduling applicable to each enrollee's coverage;

(B) The program's grievance and appeal process; and
(C) Other group health plan enrollee rights, disclosure or written procedure requirements established under ORS chapters 743, 743A and 743B;

(e) The financial administration of an individual or jointly self-insured program must include the following requirements:

(A) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program;

(B) The program must maintain adequate reserves. Reserves may be invested in accordance with the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper actuarial calculations including the following:

- (i) Known claims, paid and outstanding;
- (ii) A history of incurred but not reported claims;
- (iii) Claims handling expenses;
- (iv) Unearned contributions; and
- (v) A claims trend factor; and

(C) The program must maintain adequate reinsurance against the risk of economic loss in accordance with the provisions of ORS 742.065 unless the program has received written approval for an alternative arrangement for protection against economic loss from the Director of the Department of Consumer and Business Services;

(f) The individual or jointly self-insured program must have sufficient personnel to service the employee benefit program or must contract with a third party administrator licensed under ORS chapter 744 as a third party administrator to provide such services;

(g) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Consumer and Business Services copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

(h) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool.

(7) All ambulance services.

(8) A person providing any of the services described in this subsection. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

(a) Towing service.

(b) Emergency road service, which means adjustment, repair or replacement of the equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated under its own power.

(c) Transportation and arrangements for the transportation of human remains, including all necessary and appropriate preparations for and actual transportation provided to return a decedent's remains from the decedent's place of death to a location designated by a person with valid legal authority under ORS 97.130.

(9)(a) A person described in this subsection who, in an agreement to lease or to finance the purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in paragraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft or other occurrence, as specified in the agreement. The exemption established in this subsection applies to the following persons:

(A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail installment contract.

(B) The lessor of the motor vehicle.

- (C) The lender who finances the purchase of the motor vehicle.
- (D) The assignee of a person described in this paragraph.
- (b) The amount waived pursuant to the agreement shall be the difference, or portion thereof, between the amount received by the seller, lessor, lender or assignee, as applicable, that represents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the agreement.
- (10) A self-insurance program for tort liability or property damage that is established by two or more affordable housing entities and that complies with the same requirements that public bodies must meet under ORS 30.282 (6). As used in this subsection:
 - (a) “Affordable housing” means housing projects in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to individuals of low income.
 - (b) “Affordable housing entity” means any of the following:
 - (A) A housing authority created under the laws of this state or another jurisdiction and any agency or instrumentality of a housing authority, including but not limited to a legal entity created to conduct a self-insurance program for housing authorities that complies with ORS 30.282 (6).
 - (B) A nonprofit corporation that is engaged in providing affordable housing.
 - (C) A partnership or limited liability company that is engaged in providing affordable housing and that is affiliated with a housing authority described in subparagraph (A) of this paragraph or a nonprofit corporation described in subparagraph (B) of this paragraph if the housing authority or nonprofit corporation:
 - (i) Has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company;
 - (ii) Has the power to direct the management or policies of the partnership or limited liability company;
 - (iii) Has entered into a contract to lease, manage or operate the affordable housing owned by the partnership or limited liability company; or
 - (iv) Has any other material relationship with the partnership or limited liability company.
 - (11) Except as provided in ORS 735.500 and 735.510, a person certified by the Department of Consumer and Business Services to operate a retainer medical practice.
 - (12) **A fund established by the Board of Governors of the Oregon State Bar under ORS 9.080.**

CAPTIONS

SECTION 17. The unit captions used in this 2021 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 2021 Act.

EMERGENCY CLAUSE

SECTION 18. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 15, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State