

Enrolled
Senate Bill 306

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CHAPTER

AN ACT

Relating to members of the Oregon State Bar; creating new provisions; and amending ORS 9.005, 9.010, 9.080, 9.114, 9.220, 9.250, 9.261, 9.490, 9.515, 9.529, 9.537, 9.542, 9.568, 9.655, 9.657, 9.665, 9.685, 9.688, 9.695, 9.705, 9.710, 9.715, 9.720, 9.725, 9.727, 9.730, 9.735, 9.745, 9.750, 9.755, 9.757, 20.075, 25.010, 40.225, 40.227, 45.135, 45.142, 87.430, 87.435, 87.440, 87.445, 87.450, 87.455, 87.460, 90.100, 90.555 and 90.634.

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

OREGON STATE BAR

SECTION 1. 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] **means an attorney** member of the **Oregon State 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) "Governor" means a member of the board of governors of the bar.
- (5) "House" and "house of delegates" mean the house of delegates of the Oregon State Bar.
- (6) **"Member" means a member or associate member of the Oregon State Bar.**

[(6)] (7) "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.

[(7)] (8) "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 2. ORS 9.010 is amended to read:

9.010. (1) [An attorney] **A member**, admitted to practice in this state, is an officer of the court.

(2) The Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon. The bar is authorized to carry out the provisions of ORS 9.005 to 9.757.

(3) The bar is subject to the following statutes applicable to public bodies:

- (a) ORS 30.210 to 30.250.
- (b) ORS 30.260 to 30.300.
- (c) ORS 30.310, 30.312, 30.390 and 30.400.

- (d) The Oregon Rules of Civil Procedure.
- (e) ORS 192.311 to 192.478.
- (f) ORS 192.610 to 192.690.
- (g) ORS 243.401 to 243.507.
- (h) ORS 244.010 to 244.040.
- (i) ORS 297.110 to 297.230.
- (j) ORS chapters 307, 308 and 311.
- (k) ORS 731.036 and 737.600.

(4) Except as provided in subsection (3) of this section, the bar is not subject to any statute applicable to a state agency, department, board or commission or public body unless the statute expressly provides that it is applicable to the Oregon State Bar.

(5) The Oregon State Bar has perpetual succession and a seal, and may sue and be sued. Notwithstanding the provisions of ORS 270.020 and 279.835 to 279.855 and ORS chapters 278, 279A, 279B and 279C, the bar may, in its own name, for the purpose of carrying into effect and promoting its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

(6) No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon.

SECTION 3. 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. 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;
- (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*] **a member practicing law** 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.

(F) The board shall establish a reasonable standard for claims submitted by associate members to the professional liability fund. Each year, if the claims submitted by associate members exceed the standard established under this subparagraph, the board shall authorize substantially equivalent coverage for all members for the following calendar year.

(b) For purposes of paragraph (a) of this subsection, [an attorney] **a member** is not engaged in the private practice of law if the [attorney] **member** 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] **a member** who practices law outside of the [attorney's] **member'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] **a member** is considered to be the location where the [attorney] **member** engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of [an attorney] **a member practicing law** 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] **member** is not considered to be in Oregon unless the [attorney] **member** 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 Retirement 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.

SECTION 4. ORS 9.114 is amended to read:

9.114. The Oregon State Bar shall adopt rules to establish minimum training requirements for all active **attorney** members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010. Rules adopted under this section are subject to review and approval by the Supreme Court.

SECTION 5. ORS 9.220 is amended to read:

9.220. An applicant for admission as [attorney] **a member of the bar** must apply to the Supreme Court and show that the applicant:

(1) Is at least 18 years old, which proof may be made by the applicant's affidavit.

(2)(a) Is a person of good moral character and fit to practice law.

(b) For purposes of this section and ORS 9.025, 9.070, 9.110, 9.210, 9.250 and 9.527, the lack of "good moral character" may be established by reference to acts or conduct that reflect moral turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the

state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice law.

(3) Has the requisite learning and ability, which must be shown by the examination of the applicant, by the judges or under their direction. However, no rule shall establish any maximum on the number of times an applicant may apply for and take the bar examination whenever presented if the reason for refusing admission to practice law is failure to pass the bar examination.

SECTION 6. ORS 9.250 is amended to read:

9.250. (1) If the Supreme Court finds that an applicant for admission as [*an attorney*] **a member of the bar** is 18 years of age or more, is of good moral character and fit to practice law, and possesses the requisite learning and ability to practice as [*an attorney in all the courts of this state*] **a member**, the court shall enter an order that the applicant be admitted to practice as [*an attorney*] **a member**. The order shall specify that admission take effect upon the applicant taking the oath required by subsection (2) of this section.

(2) The applicant shall execute a written oath that in the practice of law the applicant will support the Constitution and laws of the United States and of this state, and be of faithful and honest demeanor in office. The applicant is entitled to practice as [*an attorney*] **a member** after the State Court Administrator has received the oath executed under this subsection.

SECTION 7. ORS 9.261 is amended to read:

9.261. (1) [*An attorney*] **A member** may resign from membership in the bar pursuant to rules adopted by the board under ORS 9.542. After acceptance of the resignation by the Supreme Court, the [*attorney*] **member** shall not be entitled to the rights nor subject to the disabilities or prohibitions incident to membership, except that the [*attorney*] **member** is still subject to the power of the court in respect to matters arising prior to the resignation.

(2) [*An attorney*] **A member** who has resigned may be readmitted to practice only in compliance with rules adopted pursuant to ORS 9.542.

SECTION 8. ORS 9.490 is amended to read:

9.490. (1) The board of governors, with the approval of the house of delegates given at any regular or special meeting, shall formulate rules of professional conduct **for attorneys**, and when such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall be binding upon all **attorney** members of the bar.

(2) A court of this state may not order that evidence be suppressed or excluded in any criminal trial, grand jury proceeding or other criminal proceeding, or order that any criminal prosecution be dismissed, solely as a sanction or remedy for violation of a rule of professional conduct adopted by the Supreme Court.

SECTION 9. ORS 9.515 is amended to read:

9.515. (1) Nothing contained in ORS 9.505 shall prevent referral of claims, suits or actions between [*attorneys*] **members of the bar**.

(2) The provisions of ORS 9.505 shall not prohibit the referral of claims, suits or actions between [*attorneys*] **members of the bar** or the dividing of fees for legal services with another [*lawyer*] **member** consistent with the rules of professional conduct adopted pursuant to ORS 9.490.

SECTION 10. ORS 9.529 is amended to read:

9.529. Bar proceedings relating to discipline, admission and reinstatement are neither civil nor criminal in nature. They are sui generis and within the inherent power of the Supreme Court to control. The grounds for denying any applicant admission or reinstatement or for the discipline of [*attorneys*] **members** set forth in ORS 9.005 to 9.757 are not intended to limit or alter the inherent power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to discipline a member of the bar.

SECTION 11. ORS 9.537 is amended to read:

9.537. (1) Any person who has made a complaint to the bar concerning the conduct of [*an attorney*] **a member**, or who has given information or testimony in or relative to a proposed or pending admission, reinstatement or disciplinary proceeding is absolutely immune from civil liability for any such acts.

(2) The Oregon State Bar and its officers, the members of the state professional responsibility board, the board of bar examiners, the board of governors and the disciplinary board, bar counsel, investigators, disciplinary monitors, mentors and employees of the bar are absolutely immune from civil liability in the performance of their duties relative to proposed or pending admission, professional licensing requirements, reinstatement or disciplinary proceedings.

SECTION 12. ORS 9.542 is amended to read:

9.542. (1) The board of governors, subject to the approval of the Supreme Court, may adopt rules of procedure relating to the investigation of the conduct of *[attorneys]* **members** and applicants for admission and reinstatement to the bar, and relating to the conduct of admission, reinstatement and disciplinary proceedings.

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the board of governors may require the fingerprints of a person who is applying for admission or reinstatement to the bar or for renewal of a license issued by the bar.

SECTION 13. ORS 9.568 is amended to read:

9.568. (1)(a) The board of governors of the Oregon State Bar may create a state lawyers assistance committee for the purpose of implementing a *[lawyers]* **members** assistance program and, pursuant thereto, authorize the state lawyers assistance committee to investigate and resolve complaints or referrals regarding *[lawyers]* **members** whose performance or conduct may impair their ability to practice law or their professional competence.

(b) The board may adopt rules for the operation of the state lawyers assistance committee.

(c) The purpose of the state lawyers assistance committee is the provision of supervision and assistance to those *[lawyers]* **members** whose performance or conduct may impair their ability to practice law or their professional competence.

(2)(a) In addition to the state lawyers assistance committee created under subsection (1) of this section, the board may create personal and practice management assistance committees to provide assistance to *[lawyers]* **members** who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to *[lawyers]* **members** in practice management.

(b) The board may adopt rules governing the provision of assistance to *[lawyers]* **members** by personal and practice management assistance committees.

(c) The purpose of a personal and practice management assistance committee is the provision of completely confidential assistance, advice and training to *[lawyers]* **members** in a manner that fosters maximum openness in communications between a *[lawyer]* **member** and the committee and that encourages a *[lawyer]* **member** to seek assistance from the committee.

(3) Any information provided to or obtained by the state lawyers assistance committee or any personal and practice management assistance committee, or provided to or obtained by any agent of those committees, is:

(a) Confidential;

(b) Exempt from the provisions of ORS 192.311 to 192.478;

(c) Not discoverable or admissible in any civil proceeding without the written consent of the *[lawyer]* **member** to whom the information pertains; and

(d) Not discoverable or admissible in any disciplinary proceeding except to the extent provided by rules of procedure adopted pursuant to ORS 9.542.

(4) The limitations placed on the disclosure and admissibility of information in this section shall not apply to information relating to a *[lawyer's]* **member's** noncooperation with the state lawyers assistance committee or any agent of the committee, or to information otherwise obtained by the bar from any other source.

(5) The board may authorize the state lawyers assistance committee to act as the monitor or supervisor for *[lawyers]* **members** placed on probation or in diversion in connection with a disciplinary investigation or proceeding, or who have been conditionally admitted or reinstated to the practice of law. Any information provided to or obtained by the state lawyers assistance committee

when the committee acts as a monitor or supervisor under the provisions of this subsection is not subject to subsection (3) of this section.

(6) All meetings of the state lawyers assistance committee and the personal and practice management assistance committees are exempt from the provisions of ORS 192.610 to 192.690.

(7) Any person who makes a complaint or referral to the bar as to the competence of [*an attorney*] **a member** or provides information or testimony in connection with the state lawyers assistance committee or any personal and practice management assistance committee is not subject to an action for civil damages as a result thereof.

(8) With respect to their acts in connection with the state lawyers assistance committee or any personal and practice management assistance committee, the same privileges and immunities from civil and criminal proceedings that apply to prosecuting and judicial officers of the state shall apply to the board, all officers and employees of the bar, and the members of the committees and their agents.

(9) For the purposes of this section, agents of the state lawyers assistance committee or a personal and practice management assistance committee include investigators, attorneys, **associate members licensed to practice law**, counselors, staff personnel and any other individual or entity acting on behalf of or at the request of the committees.

SECTION 14. ORS 9.655 is amended to read:

9.655. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss payable from the client security fund, the board of governors or its designated representative shall determine if the person named in the claim as the [*attorney*] **member** whose dishonest conduct caused the loss was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the claim arose and whether the transaction arose out of the person's practice of law in Oregon. The board or designated representative shall then determine whether the loss was caused by the person's dishonest conduct and if the person:

(a) Has been found guilty of a crime arising out of the dishonest conduct;

(b) In the case of a claim of loss of \$5,000 or less, has been disbarred, suspended or reprimanded in disciplinary proceedings or has resigned from the bar due to circumstances arising out of the dishonest conduct; or

(c) Is a judgment debtor under the money award portion of a judgment entered in favor of the client in a proceeding arising out of the dishonest conduct, and execution issued on the judgment has been returned uncollected or issuance of execution would be a useless act.

(2) At any time after a claim is filed by a client claiming a pecuniary loss payable from the client security fund, the board or the board's representative may compel by subpoena the person named in the claim as the [*attorney*] **member** whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served.

SECTION 15. 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*] **a member representing the person**, or who has given information to the bar relative to a 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 client security fund claims or awards.

SECTION 16. ORS 9.665 is amended to read:

9.665. (1) Except as provided in this section, reimbursement from the client security fund is discretionary with the board of governors.

(2) The board shall not authorize payment unless the conditions of ORS 9.655 (1) have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances. The state bar is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and remedies of that client against the [attorney] **member** whose dishonest conduct caused the loss, against the estate of the [attorney] **member** or against any other person liable for the loss.

SECTION 17. ORS 9.685 is amended to read:

9.685. (1) Subject to the requirements of ORS 9.490, the Supreme Court may establish a trust account overdraft notification program for [attorneys] **members**.

(2) The board of governors may adopt regulations for the administration of a trust account overdraft notification program established under this section. Regulations adopted under this subsection are binding upon all members of the bar only after those regulations are approved by the Supreme Court.

SECTION 18. ORS 9.688 is amended to read:

9.688. 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] **member's** estate.

SECTION 19. ORS 9.695 is amended to read:

9.695. (1) Notwithstanding ORS 133.535, the files, papers, effects or work premises of a [lawyer] **member** relating to the provision of legal service by the [lawyer] **member** shall not be subject to search or seizure by any law enforcement officer, either by search warrant or otherwise.

(2) The provisions of subsection (1) of this section do not apply where there is probable cause to believe that the [lawyer] **member** has committed, is committing or is about to commit a crime.

(3) As used in this section, ["lawyer"] "**member**" means a member or associate member of the Oregon State Bar or a person licensed to practice law in any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(4) Evidence or the fruits thereof obtained in violation of this section shall be inadmissible in any criminal or civil action or proceeding, except for an action or suit brought for violation of this section or the rights protected thereby.

SECTION 20. ORS 9.705 is amended to read:

9.705. As used in ORS 9.705 to 9.757:

(1) "Affected [attorney] **member**" means a member or former member of the Oregon State Bar whose law practice is placed within the jurisdiction of the court under ORS 9.720 or as to whom a petition has been filed to place such law practice within the jurisdiction of the court under ORS 9.715.

(2) "Law practice" means a practice conducted by an individual, a partnership or a professional corporation.

SECTION 21. ORS 9.710 is amended to read:

9.710. The circuit court of the county in which [an attorney] a **member** engaged in the practice of law in this state maintains or has maintained a principal office has jurisdiction as provided in ORS 9.705 to 9.757 whenever the [attorney] **member** has died, is disbarred or suspended from the active practice of law, is incarcerated or has abandoned the practice and:

(1) The [attorney] **member** failed to make arrangements for the orderly suspension or termination of the law practice of the [attorney] **member**; or

(2) A duly appointed personal representative or other person assisting with the suspension or termination of the law practice is unable to adequately protect the interests of the [attorney's] **member's** clients.

SECTION 22. 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] **member'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 23. ORS 9.720 is amended to read:

9.720. If the court finds that it has jurisdiction and finds that the assumption of such jurisdiction is necessary in order to protect the interest of the clients of the affected [attorney] **member** or to protect the public interest, the court may, by appropriate order, immediately take jurisdiction over the law practice of the affected [attorney] **member** to the extent the court determines is necessary. The exercise of jurisdiction may extend only to the affected [attorney's] **member's** lawyer trust account or may include all legal files, clients' trust funds, clients' property and all books, records, funds and property used in the law practice of the affected [attorney] **member**.

SECTION 24. 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] **an** attorney, to act as custodian of the law practice of the affected [attorney] **member**. 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] **member** 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] **member** 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] **member**, the clients of the affected [attorney] **member** and the public.

(3) Any financial institution holding funds in a lawyer trust account of the affected [lawyer] **member** shall release the funds to the bar or the appointed attorney upon presentment of a copy of the order appointing the 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 court may not charge a filing fee for filing a petition under ORS 9.715.

SECTION 25. 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 custodian on the affected [attorney] **member** or any person assisting in the suspension or termination of the affected [attorney's] **member'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] **member** in the records of the bar or to a duly appointed fiduciary at the address provided in an official filing. The affected [attorney] **member** 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 26. ORS 9.730 is amended to read:

9.730. After appointment as custodian of a law practice under ORS 9.725, the Oregon State Bar may engage the services of the Oregon State Bar Professional Liability Fund created under ORS 9.005 to 9.757 or any active member of the bar to assist in the performance of the bar's duties as custodian. Acts performed by a member of the bar in assisting the custodian do not constitute acceptance of employment by any client of the affected [attorney] **member**.

SECTION 27. 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]* **an** 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]* **member** or the estate of the affected *[attorney]* **member**. 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]* **member** 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 28. ORS 9.745 is amended to read:

9.745. Any applicable statute of limitations or time limit for the filing set by statute or rule of court as it relates to the affected *[attorney's]* **member's** clients shall be suspended automatically by the filing of a petition for jurisdiction under ORS 9.705 to 9.757 for a period of 120 days following the date of filing of such petition.

SECTION 29. ORS 9.750 is amended to read:

9.750. Persons examining the files and records of the law practice of an affected *[attorney]* **member** pursuant to ORS 9.705 to 9.757 shall preserve the confidentiality of the information relating to the affected *[attorney's]* **member'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]* **member** was consulted. Communications between the Oregon State Bar or its designees or *[another]* **an** attorney appointed as custodian of a law practice under ORS 9.725 and a client of the affected *[attorney]* **member** are subject to the attorney-client privilege to the same extent as it would have applied to communications by or to the affected *[attorney]* **member**.

SECTION 30. 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]* **member** for which the Oregon State Bar or *[another]* **an** 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 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 31. ORS 9.757 is amended to read:

9.757. (1) Except as provided in subsection (2) of this section or by court order, the Oregon State Bar may dispose of client papers and files that have not been claimed by a client of an affected *[attorney]* **member** within six months after written notice to the client from the bar. The bar must dispose of the papers and files in a manner reasonably calculated to protect the confidentiality of the information contained in the papers and files.

(2) The bar may dispose of an unclaimed original will as provided in ORS 112.815 and 112.820.

(3) The bar shall maintain a log of all retained wills that is accessible to the public.

(4) Upon receipt of satisfactory proof of identity, the bar shall release a will belonging to a client to the client or to a duly appointed personal representative or conservator of the client.

(5) The bar may retain wills in digitized form, and a digitized copy, certified by the bar as a true copy of the digital document retained by the bar, shall be admissible in evidence to the same extent as the original.

SECTION 32. ORS 20.075 is amended to read:

20.075. (1) A court shall consider the following factors in determining whether to award attorney fees in any case in which an award of attorney fees is authorized by statute and in which the court has discretion to decide whether to award attorney fees:

(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.

(b) The objective reasonableness of the claims and defenses asserted by the parties.

(c) The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.

(d) The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.

(e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.

(f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

(g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.

(h) Such other factors as the court may consider appropriate under the circumstances of the case.

(2) A court shall consider the factors specified in subsection (1) of this section in determining the amount of an award of attorney fees in any case in which an award of attorney fees is authorized or required by statute. In addition, the court shall consider the following factors in determining the amount of an award of attorney fees in those cases:

(a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.

(b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.

(c) The fee customarily charged in the locality for similar legal services.

(d) The amount involved in the controversy and the results obtained.

(e) The time limitations imposed by the client or the circumstances of the case.

(f) The nature and length of the attorney's professional relationship with the client.

(g) The experience, reputation and ability of the attorney performing the services.

(h) Whether the fee of the attorney is fixed or contingent.

(i) Whether the attorney performed the services on a pro bono basis or the award of attorney fees otherwise promotes access to justice.

(3) In any appeal from the award or denial of an attorney fee subject to this section, the court reviewing the award may not modify the decision of the court in making or denying an award, or the decision of the court as to the amount of the award, except upon a finding of an abuse of discretion.

(4) Nothing in this section authorizes the award of an attorney fee in excess of a reasonable attorney fee.

(5) As used in this section and in any provision of law authorizing an award of attorney fees, "attorney" includes an associate member of the Oregon State Bar practicing law in the member's approved scope of practice.

LAW PRACTITIONER-CLIENT PRIVILEGE

SECTION 33. 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*] **law practitioner**, or who consults a [*lawyer*] **law practitioner** with a view to obtaining professional legal services from the [*lawyer*] **law practitioner**.

(B) A person, public officer, corporation, association or other organization or entity, either public or private, who consults a [lawyer] **legal** referral service with a view to obtaining professional legal services from a [lawyer] **law practitioner**.

(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”] **“Law practitioner”** means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(d) “[Lawyer] **Legal** referral service” means an entity that, as a regular part of its business, refers potential clients to [lawyers] **law practitioners**, including but not limited to a public nonprofit entity sponsored or operated by the Oregon State Bar.

(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.

(f) “Representative of the [lawyer] **law practitioner**” means one employed to assist the [lawyer] **law practitioner** 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 services to the client:

(a) Between the client or the client’s representative and the client’s [lawyer] **law practitioner** or a representative of the [lawyer] **law practitioner**;

(b) Between the client’s [lawyer] **law practitioner** and the [lawyer’s] **law practitioner’s** representative or the client’s [lawyer] **legal** referral service;

(c) By the client or the client’s [lawyer] **law practitioner** to a [lawyer] **law practitioner** representing another in a matter of common interest;

(d) Between representatives of the client or between the client and a representative of the client;

(e) Between [lawyers] **law practitioners** representing the client; or

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

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

(4) There is no privilege under this section:

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

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

(c) As to a communication relevant to an issue of breach of duty by the [lawyer or lawyer] **law practitioner or legal** referral service to the client or by the client to the [lawyer or lawyer] **law practitioner or legal** referral service;

(d) As to a communication relevant to an issue concerning an attested document to which the [lawyer or lawyer] **law practitioner or legal** referral service is an attesting witness; or

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

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

(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained under this section for a communication that is made to the office of public defense services established under ORS 151.216 for the purpose of making, or providing information regarding, a complaint against a [lawyer] **law practitioner** providing public defense services.

(7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.311 to 192.478.

SECTION 34. ORS 40.227 is amended to read:

40.227. (1) As used in this section, “client,” “confidential communication,” [“lawyer” and “representative of the lawyer”] **“law practitioner” and “representative of the law practitioner”** have the meanings given those terms in ORS 40.225.

(2) A client has a right to privately communicate with the client’s [lawyer] **law practitioner** and representatives of the [lawyer] **law practitioner**.

(3)(a) Any evidence derived from a confidential communication that is privileged under ORS 40.225, between a client and the client’s [lawyer] **law practitioner** or a representative of the [lawyer] **law practitioner**, is inadmissible in any proceeding to which the client is a party if the confidential communication was obtained or disclosed without the consent of the client.

(b) Paragraph (a) of this subsection does not apply to evidence offered by the client.

SECTION 35. ORS 45.135 is amended to read:

45.135. (1) A deposition in a civil action may not be stenographically reported by:

(a) A party in the action;

(b) A person with a financial interest in the outcome of the action;

(c) An attorney for a party in the action;

(d) An attorney for a person with a financial interest in the outcome of the action;

(e) An employee of a party in the action;

(f) An employee of an attorney for a party in the action;

(g) An employee of a person with a financial interest in the outcome of the action;

(h) An employee of an attorney for a person with a financial interest in the outcome of the action; or

(i) A person related, by affinity or consanguinity within the third degree, to a party in the action or to a person with a financial interest in the outcome of the action.

(2) Any deposition recorded or reported by a person in violation of this section may not be introduced in evidence or used for any other purpose in a civil action.

(3) As used in this section, “attorney” includes an associate member of the Oregon State Bar practicing law in the member’s approved scope of practice.

SECTION 36. ORS 45.142 is amended to read:

45.142. (1) Before recording or reporting a deposition, the person recording or reporting the deposition must disclose if the person has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the following persons:

(a) A party in the action;

(b) A person with a financial interest in the outcome of the action;

(c) An attorney for a party in the action **or another law practitioner representing a party in the action;** or

(d) An attorney for a person with a financial interest in the outcome of the action **or another law practitioner representing a person with a financial interest in the outcome of the action.**

(2) If the person recording or reporting a deposition has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the persons specified in subsection (1) of this section, any party to the action may object to the person employed for the purpose of recording or reporting the deposition. Upon objection, the parties shall attempt to agree upon a different person who shall record or report the deposition. If the parties cannot reach agreement, any of the parties may move the court to appoint an independent person who shall record or report the deposition.

(3) A party that objects to a person employed for the purpose of recording or reporting a deposition in the manner provided by this section is not subject to any penalty or sanction for making the objection and is not required to pay any fee of the person objected to.

(4) This section does not apply to contracts for reporting services for a single deposition, case or incident.

(5) This section does not apply to a person who records or reports depositions for a public body, as defined in ORS 30.260, or for a federal agency or any instrumentality of the federal government.

POSSESSORY LIEN

SECTION 37. ORS 87.430 is amended to read:

87.430. An attorney **or other member of the Oregon State Bar licensed to practice law** has a lien for compensation whether specially agreed upon or implied, upon all papers, personal property and money of the client in the possession of the attorney **or member** for services rendered to the client. The attorney **or member** may retain the papers, personal property and money until the lien created by this section, and the claim based thereon, is satisfied, and the attorney **or member** may apply the money retained to the satisfaction of the lien and claim.

SECTION 38. ORS 87.435 is amended to read:

87.435. (1) The owner of papers or personal property subject to a lien created by ORS 87.430, or any other interested person, may file with the recording officer of the county in which the attorney [*has the principal office of the attorney*] **or other member of the Oregon State Bar licensed to practice law has the attorney's or member's principal office** a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the owner of the papers and personal property against which the lien is claimed shall pay the amount of the claim and all costs which are awarded against the papers and personal property on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, and must be filed prior to the commencement of a foreclosure proceeding by the attorney **or member**.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, a person may deposit with the treasurer of the county in which the attorney [*has the*] **or member has the attorney's or member's principal office** [*of the attorney*] an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or a sum of money or its equivalent equal in value to 150 percent of the amount claimed under the lien.

(b) When a person deposits money or an irrevocable letter of credit with the treasurer of a county under this subsection, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made.

(3) When a bond is filed under subsection (1) of this section or money or an irrevocable letter of credit deposited and an affidavit filed under subsection (2) of this section, the recording officer shall issue to the owner or other person a certificate stating that the bond, irrevocable letter of credit or money is substituted for the chattel and that the lien on the chattel is discharged.

(4) When a bond is filed under subsection (1) of this section, or money or an irrevocable letter of credit is deposited under subsection (2) of this section, the owner or other person filing the bond or depositing the money shall promptly send a copy of the certificate received from the recording officer under subsection (3) of this section to the attorney **or member** by registered or certified mail.

(5) If the attorney **or member** establishes the validity of the lien claim by a suit to enforce it under ORS chapter 88, the attorney **or member** is entitled to judgment against the sureties upon the bond, against the irrevocable letter of credit issuer or against the deposited money.

SECTION 39. ORS 87.440 is amended to read:

87.440. If an attorney **or other member of the Oregon State Bar licensed to practice law** considers the bond filed with a recording officer or the irrevocable letter of credit deposited with the treasurer of a county inadequate to protect the claim of the attorney **or member** for lien for some reason other than the amount of the bond or irrevocable letter of credit, the attorney **or member** shall, within 10 days of receipt of the notice of filing, petition the court in which the suit to foreclose the lien may be brought for a determination of the adequacy of the bond or irrevocable letter of credit. The attorney **or member** shall state in detail the reasons for the inadequacy. If the court determines that the bond is inadequate for one or more of the reasons stated by the attorney **or member**, the court shall order such action as shall make the bond or irrevocable letter of credit adequate to protect the claim for lien.

SECTION 40. ORS 87.445 is amended to read:

87.445. An attorney **or other member of the Oregon State Bar licensed to practice law** has a lien upon actions, suits and proceedings after the commencement thereof, and judgments, orders and awards entered therein in the client's favor and the proceeds thereof to the extent of fees and compensation specially agreed upon with the client, or if there is no agreement, for the reasonable value of the services of the attorney **or member**.

SECTION 41. ORS 87.450 is amended to read:

87.450. (1) When an attorney **or other member of the Oregon State Bar licensed to practice law** claims a lien under ORS 87.445, if the judgment is for a sum of money only, the attorney **or member** must file a notice of claim of lien with the clerk of the court that entered the judgment within three years after the judgment is entered. The clerk shall enter the notice in the register of the court and in the judgment lien record maintained by the court administrator under ORS 18.075.

(2) When an attorney **or member** files a notice of claim of lien under subsection (1) of this section, the attorney **or member** shall send forthwith a copy of the notice to the client by registered or certified mail sent to the client at the last-known address of the client.

(3) A lien under ORS 87.445 on a judgment for a sum of money only remains a lien on the judgment until the judgment remedies for the judgment expire under ORS 18.180 to 18.190.

(4) For purposes of this section, a "judgment for a sum of money only" does not include a judgment or order for the payment of money for the support of any person under ORS 107.095, 107.105, 108.120, 109.155 or 419B.400.

SECTION 42. ORS 87.455 is amended to read:

87.455. (1) When an attorney **or other member of the Oregon State Bar licensed to practice law** claims a lien under ORS 87.445, if the judgment is for the possession, award or transfer of personal property, the attorney **or member** must file a notice of claim of lien not later than one year after entry of the judgment and disposition of any appeal of the judgment. The notice shall be filed with the recording officer of the county in which the judgment is rendered, with the recording officer of the county, if known, in which the personal property is located and with the recording officer of the county, if known, in which the attorney's **or member's** client resides. The recording officer of a county shall record the notices filed under this section in a book called "index of liens upon chattels."

(2) Except as provided in subsection (3) of this section, a lien under ORS 87.445 on a judgment for the possession, award or transfer of personal property must be foreclosed in the manner provided in ORS chapter 88, not later than one year after the notice of claim of lien is filed under subsection (1) of this section.

(3) An attorney **or member** and the client of the attorney **or member** may, by an agreement in writing, extend the period of time within which a lien created by ORS 87.445 must be foreclosed to two years after the notice of claim of lien is filed. An agreement to extend a foreclosure period under this subsection shall contain the time and place of the filing of the notice of claim of lien by

the attorney **or member** and shall be filed with the recording officer with whom the notice of claim of lien was filed.

SECTION 43. ORS 87.460 is amended to read:

87.460. (1) When an attorney **or other member of the Oregon State Bar licensed to practice law** claims a lien under ORS 87.445, if the judgment is for the possession, award or conveyance of real property, the attorney **or member** must file a notice of claim of lien not later than six months after entry of the judgment and disposition of any appeal of the judgment. The notice shall be filed with the recording officer of the county in which the real property, or any part of it, is situated. The recording officer of a county shall record the notices filed under this section in a book that shall be indexed in the same manner as the record of deeds and mortgages.

(2) Except as provided in subsection (3) of this section, a lien under ORS 87.445 upon a judgment for the possession, award or conveyance of real property must be foreclosed in the manner provided in ORS chapter 88, not later than one year after the notice of claim of lien is filed under subsection (1) of this section.

(3) An attorney **or member** and the client of the attorney **or member** may, by agreement, in writing, extend the period of time within which a lien created by ORS 87.445 must be foreclosed to two years after the notice of claim of lien is filed. An agreement to extend a foreclosure period under this subsection shall contain the time and place of the filing of the notice of claim of lien by the attorney **or member** and shall be filed with the recording officer with whom the notice of claim of lien was filed.

FAMILY LAW

SECTION 44. ORS 25.010 is amended to read:

25.010. As used in ORS 25.501 to 25.556 and ORS chapters 25, 107 and 109 and any other statutes providing for support payments or support enforcement procedures, unless the context requires otherwise:

(1) "Administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "**Attorney**" includes an associate member of the Oregon State Bar practicing law within the member's approved scope of practice.

[(2)] (3) "Child" has the meaning given that term in ORS 110.503.

[(3)] (4) "Child support rights" means the right to establish or enforce an obligation imposed or imposed by law to provide support, including but not limited to medical support as defined in ORS 25.321 and an unsatisfied obligation to provide support.

[(4)] (5) "Department" means the Department of Justice.

[(5)] (6) "Disposable income" means that part of the income of an individual remaining after the deduction from the income of any amounts required to be withheld by law except laws enforcing spousal or child support and any amounts withheld to pay medical or dental insurance premiums.

[(6)] (7) "Employer" means any entity or individual who engages an individual to perform work or services for which compensation is given in periodic payments or otherwise.

[(7)] (8) "Income" is any monetary obligation in excess of \$4.99 after the fee described in ORS 25.414 (6) has been deducted that is in the possession of a third party owed to a person and includes but is not limited to:

(a) Compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise;

(b) Periodic payments pursuant to a pension or retirement program;

(c) Cash dividends arising from stocks, bonds or mutual funds;

(d) Interest payments;

(e) Periodic payments from a trust account;

(f) Any program or contract to provide substitute wages during times of unemployment or disability;

(g) Any payment pursuant to ORS chapter 657; or

(h) Amounts payable to independent contractors.

[(8)] (9) "Obligee" has the meaning given that term in ORS 110.503.

[(9)] (10) "Obligor" has the meaning given that term in ORS 110.503.

[(10)] (11) "Order to withhold" means an order or other legal process that requires a withholder to withhold support from the income of an obligor.

[(11)] (12) "Public assistance" has the meaning given that term in ORS 25.501.

[(12)] (13) "Withholder" means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

LANDLORD-TENANT LAW

SECTION 45. ORS 90.100 is amended to read:

90.100. As used in this chapter, unless the context otherwise requires:

(1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

(a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

(b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

(2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(3) "Applicant screening charge" means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) "**Attorney**" includes an associate member of the Oregon State Bar practicing law within the member's approved scope of practice.

[(4)] (5) "Building and housing codes" includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

[(5)] (6) "Carbon monoxide alarm" has the meaning given that term in ORS 105.836.

[(6)] (7) "Carbon monoxide source" has the meaning given that term in ORS 105.836.

[(7)] (8) "Conduct" means the commission of an act or the failure to act.

[(8)] (9) "DBH" means the diameter at breast height, which is measured as the width of a standing tree at four and one-half feet above the ground on the uphill side.

[(9)] (10) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

[(10)] (11) "Domestic violence" means:

(a) Abuse between family or household members, as those terms are defined in ORS 107.705; or

(b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.

[(11)] (12) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

[(12)] (13) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

[(13)] (14) "Essential service" means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.850:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.850:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy.

[(14)] (15) "Facility" means a manufactured dwelling park or a marina.

[(15)] (16) "Fee" means a nonrefundable payment of money.

[(16)] (17) "First class mail" does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

[(17)] (18) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

[(18)] (19) "Floating home" has the meaning given that term in ORS 830.700. "Floating home" includes an accessory building or structure.

[(19)] (20) "Good faith" means honesty in fact in the conduct of the transaction concerned.

[(20)] (21) "Hazard tree" means a tree that:

(a) Is located on a rented space in a manufactured dwelling park;

(b) Measures at least eight inches DBH; and

(c) Is considered, by an arborist licensed as a landscape construction professional pursuant to ORS 671.560 and certified by the International Society of Arboriculture, to pose an unreasonable risk of causing serious physical harm or damage to individuals or property in the near future.

[(21)] (22) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

[(22)] (23) "Informal dispute resolution" includes voluntary consultation between the landlord or landlord's agent and one or more tenants or voluntary mediation utilizing the services of a third party, but does not include mandatory mediation or arbitration.

[(23)] (24) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

[(24)] (25) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

[(25)] (26) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

[(26)] (27) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003 or a prefabricated structure. "Manufactured dwelling" includes an accessory building or structure.

[(27)] (28) "Manufactured dwelling park" means a place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

[(28)] (29) "Marina" means a moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

[(29)] (30) “Marina purchase association” means a group of three or more tenants who reside in a marina and have organized for the purpose of eventual purchase of the marina.

[(30)] (31) “Month-to-month tenancy” means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

[(31)] (32) “Organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

[(32)] (33) “Owner” includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

[(33)] (34) “Person” includes an individual or organization.

[(34)] (35) “Prefabricated structure” means a structure that is substantially constructed or assembled using closed construction at an off-site location in compliance with the state building code and that is sited and occupied by the owner in compliance with local codes.

[(35)] (36) “Premises” means:

(a) A dwelling unit and the structure of which it is a part and facilities and appurtenances therein;

(b) Grounds, areas and facilities held out for the use of tenants generally or the use of which is promised to the tenant; and

(c) A facility for manufactured dwellings or floating homes.

[(36)] (37) “Prepaid rent” means any payment of money to the landlord for a rent obligation not yet due. In addition, “prepaid rent” means rent paid for a period extending beyond a termination date.

[(37)] (38) “Recreational vehicle” has the meaning given that term in ORS 174.101.

[(38)] (39) “Rent” means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others and to use the premises. “Rent” does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.562.

[(39)] (40) “Rental agreement” means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. “Rental agreement” includes a lease. A rental agreement is either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

[(40)] (41) “Roomer” means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

[(41)] (42) “Screening or admission criteria” means a written statement of any factors a landlord considers in deciding whether to accept or reject an applicant and any qualifications required for acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the applicant.

[(42)] (43) “Security deposit” means a refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement. “Security deposit” does not include a fee.

[(43)] (44) “Sexual assault” has the meaning given that term in ORS 147.450.

[(44)] (45) “Squatter” means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter” does not include a tenant who holds over as described in ORS 90.427 (11).

[(45)] (46) “Stalking” means the behavior described in ORS 163.732.

[46] (47) “Statement of policy” means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

[47] (48) “Surrender” means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit.

[48] (49) “Tenant”:

(a) Except as provided in paragraph (b) of this subsection:

(A) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.

(B) Means a minor, as defined and provided for in ORS 109.697.

(b) For purposes of ORS 90.505 to 90.850, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(c) Does not mean a guest or temporary occupant.

[49] (50) “Transient lodging” means a room or a suite of rooms.

[50] (51) “Transient occupancy” means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

[51] (52) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

[52] (53) “Victim” means:

(a) The person against whom an incident related to domestic violence, sexual assault or stalking is perpetrated; or

(b) The parent or guardian of a minor household member against whom an incident related to domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the perpetrator.

[53] (54) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord’s and the tenant’s rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

SECTION 46. ORS 90.555 is amended to read:

90.555. (1) As used in this section:

(a) “Actively markets for sale” means that the facility tenant:

(A) Places a for-sale sign on the dwelling or home;

(B) Retains a broker, real estate agent, or manufactured structure dealer to assist in the sale; and

(C) Advertises the dwelling or home for sale in a newspaper or online.

(b) “Facility landlord” means the landlord of the facility.

(c) “Facility tenant” means the owner of the manufactured dwelling or floating home, who is the tenant of the facility landlord under the rental agreement.

(d) “Rental agreement” means the rental agreement between the facility landlord and facility tenant.

(e) "Renter" means a person other than the facility tenant who is lawfully occupying the manufactured dwelling or floating home under a subleasing agreement.

(f) "Subleasing agreement" means the written agreement between the facility landlord, facility tenant, and renter concerning the occupancy of the renter and the rights of the parties.

(2) A facility tenant may not rent the facility tenant's manufactured dwelling or floating home to another person for a period exceeding three days unless the facility landlord, facility tenant and renter enter into a written subleasing agreement specifying the rights and obligations of the facility landlord, facility tenant and renter during the renter's occupancy of the dwelling or home. The subleasing agreement shall require the renter to timely pay to the facility landlord the space rent, any separately assessed fees payable under the rental agreement and any separately billed utility or service charge described in ORS 90.560 to 90.584. The subleasing agreement shall also grant the renter the same rights as the facility tenant to cure a violation of the rental agreement for the facility space, to require the facility landlord to comply with ORS 90.730 and to be protected from retaliatory conduct under ORS 90.765. This subsection does not authorize a facility tenant to sublease to a renter in violation of the rental agreement.

(3) Notwithstanding ORS 90.100 [(48)] (49), a facility tenant who enters into a subleasing agreement remains the tenant of the facility space and retains all rights and obligations under the rental agreement and this chapter. The occupancy by a renter does not constitute abandonment of the dwelling or home by the facility tenant.

(4) The rights and obligations of the renter under a subleasing agreement are in addition to the rights and obligations retained by the facility tenant under subsection (3) of this section and any rights or obligations of the facility tenant and renter under ORS 90.100 to 90.465.

(5) Unless otherwise provided in the subleasing agreement, and without regard to whether the facility landlord terminates the rental agreement, a facility landlord may terminate a subleasing agreement:

(a) Without cause by giving the renter written notice not less than 30 days prior to the termination;

(b) If a condition described in ORS 90.380 (5)(b) exists for the facility space, by giving the renter the same notice to which the facility tenant is entitled under ORS 90.380 (5)(b); or

(c) Subject to the right to cure:

(A) For nonpayment of facility space rent under ORS 90.394 or 90.630; or

(B) For any conduct by the renter that would be a violation of the rental agreement under ORS 90.396 or 90.398 if committed by the facility tenant.

(6) Upon termination of a subleasing agreement by the facility landlord, whether with or without cause, the renter and the facility tenant are excused from continued performance under any subleasing agreement.

(7)(a) If, during the term of a subleasing agreement, the facility landlord gives notice to the facility tenant of a rental agreement violation, a law or ordinance violation or the facility's closure, conversion or sale, the landlord shall also promptly give a copy of the notice to the renter. The giving of notice to the renter does not constitute notice to the facility tenant unless the facility tenant has expressly appointed the renter as the facility tenant's agent for purposes of receiving notice.

(b) If the facility landlord gives notice to the renter that the landlord is terminating the subleasing agreement, the landlord shall also promptly give a copy of the notice to the facility tenant by written notice.

(c) If, during the term of a subleasing agreement, the facility tenant gives notice to the facility landlord of a rental agreement violation, termination of tenancy or sale of the manufactured dwelling or floating home, the facility tenant shall also promptly give a copy of the notice to the renter.

(d) If the renter gives notice to the facility landlord of a violation of ORS 90.730, the renter shall also promptly give a copy of the notice to the facility tenant.

(8) Before entering into a sublease agreement, the facility landlord may screen a renter under ORS 90.303, but may not apply to the renter credit and conduct screening criteria that is more re-

strictive than the landlord applies to applicants for a tenancy of a dwelling or home that is either owned by the landlord or on consignment with the landlord under ORS 90.680.

(9) Notwithstanding subsection (2) of this section, if a facility landlord rents or has a policy of renting manufactured dwellings or floating homes that are listed for sale by the facility landlord, the facility landlord may not prohibit the facility tenant from entering into a subleasing agreement while the facility tenant actively markets for sale the facility tenant's manufactured dwelling or floating home.

SECTION 47. ORS 90.634 is amended to read:

90.634. (1) A landlord may not assert a lien under ORS 87.162 for dwelling unit rent against a manufactured dwelling or floating home located in a facility. Notwithstanding ORS 90.100 [(48)] (49) and 90.675 and regardless of whether the owner of a manufactured dwelling or floating home occupies the dwelling or home as a residence, a facility landlord that is entitled to unpaid rent and receives possession of the facility space from the sheriff following restitution pursuant to ORS 105.161 may sell or dispose of the dwelling or home as provided in ORS 90.675.

(2) If a manufactured dwelling or floating home was occupied immediately prior to abandonment by a person other than the facility tenant, and the name and address of the person are known to the landlord, a landlord selling or disposing of the dwelling or home under subsection (1) of this section shall promptly send the person a copy of the notice sent to the facility tenant under ORS 90.675 (3). Notwithstanding ORS 90.425, the facility landlord may sell or dispose of goods left in the dwelling or home or upon the dwelling unit by the person in the same manner as if the goods were left by the facility tenant. If the name and address of the person are known to the facility landlord, the landlord shall promptly send the person a copy of the written notice sent to the facility tenant under ORS 90.425 (3) and allow the person the time described in the notice to arrange for removal of the goods.

SECTION 48. Section 49 of this 2023 Act is added to and made a part of ORS 105.105 to 105.168.

SECTION 49. As used in ORS 105.105 to 105.168, "attorney" includes an associate member of the Oregon State Bar practicing law in the member's approved scope of practice.

REPORTING

SECTION 50. For each year through 2026, the board of governors of the Oregon State Bar shall submit an annual report in the manner provided in ORS 192.245 to the committees or interim committees of the Legislative Assembly related to the judiciary on the aggregate covered claims submitted to the professional liability fund by members, as defined in ORS 9.005.

SECTION 51. Section 50 of this 2023 Act is repealed on January 2, 2028.

CAPTIONS

SECTION 52. The unit captions used in this 2023 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 2023 Act.

Passed by Senate February 14, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House April 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

.....
Shemia Fagan, Secretary of State