

Senate Bill 306

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation for Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies statutes to allow for nonattorney associate members of the Oregon State Bar to practice law in certain scope of practice.

A BILL FOR AN ACT

1
2 Relating to members of the Oregon State Bar; creating new provisions; and amending ORS 9.005,
3 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,
4 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,
5 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,
6 90.100, 90.555 and 90.634.

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

OREGON STATE BAR

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11 **SECTION 1.** ORS 9.005 is amended to read:

12 9.005. As used in ORS 9.005 to 9.757, unless the context or subject matter requires otherwise:

13 (1) "Attorney" [*and "member" mean a*] **means an attorney** member of the **Oregon State Bar**.

14 (2) "Board" and "board of governors" mean the board of governors of the bar.

15 (3) "Delegate" means a delegate of the house of delegates of the Oregon State Bar.

16 (4) "Governor" means a member of the board of governors of the bar.

17 (5) "House" and "house of delegates" mean the house of delegates of the Oregon State Bar.

18 **(6) "Member" means a member or associate member of the Oregon State Bar.**

19 [(6)] **(7)** "Oregon State Bar," "state bar" and "bar" mean the Oregon State Bar created by the
20 State Bar Act set forth in ORS 9.005 to 9.757.

21 [(7)] **(8)** "Rules of procedure" means the rules of procedure relative to admission, discipline,
22 resignation and reinstatement of members of the bar adopted by the board and approved by the
23 Supreme Court.

24 **SECTION 2.** ORS 9.010 is amended to read:

25 9.010. (1) [*An attorney*] **A member**, admitted to practice in this state, is an officer of the court.

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

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

30 (a) ORS 30.210 to 30.250.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (b) ORS 30.260 to 30.300.
 2 (c) ORS 30.310, 30.312, 30.390 and 30.400.
 3 (d) The Oregon Rules of Civil Procedure.
 4 (e) ORS 192.311 to 192.478.
 5 (f) ORS 192.610 to 192.690.
 6 (g) ORS 243.401 to 243.507.
 7 (h) ORS 244.010 to 244.040.
 8 (i) ORS 297.110 to 297.230.
 9 (j) ORS chapters 307, 308 and 311.
 10 (k) ORS 731.036 and 737.600.

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

14 (5) The Oregon State Bar has perpetual succession and a seal, and may sue and be sued.
 15 Notwithstanding the provisions of ORS 270.020 and 279.835 to 279.855 and ORS chapters 278, 279A,
 16 279B and 279C, the bar may, in its own name, for the purpose of carrying into effect and promoting
 17 its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal
 18 in and with and dispose of real and personal property.

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

21 **SECTION 3.** ORS 9.080 is amended to read:

22 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS
 23 9.136 to 9.155. The state bar has the authority to adopt, alter, amend and repeal bylaws and to adopt
 24 new bylaws containing provisions for the regulation and management of the affairs of the state bar
 25 not inconsistent with law. The board is charged with the executive functions of the state bar and
 26 shall at all times direct its power to serve the public interest by:

- 27 (a) Regulating the legal profession and improving the quality of legal services;
 28 (b) Supporting the judiciary and improving the administration of justice; and
 29 (c) Advancing a fair, inclusive and accessible justice system.

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

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

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

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

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

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

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

17 (c) For the purposes of paragraph (a) of this subsection, the principal office of [*an attorney*] **a**
18 **member** is considered to be the location where the [*attorney*] **member** engages in the private
19 practice of law more than 50 percent of the time engaged in that practice. In the case of [*an*
20 *attorney*] **a member practicing law** in a branch office outside Oregon and the main office to which
21 the branch office is connected is in Oregon, the principal office of the [*attorney*] **member** is not
22 considered to be in Oregon unless the [*attorney*] **member** engages in the private practice of law in
23 Oregon more than 50 percent of the time engaged in the private practice of law.

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

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

42 **SECTION 4.** ORS 9.114 is amended to read:

43 9.114. The Oregon State Bar shall adopt rules to establish minimum training requirements for
44 all active **attorney** members of the bar relating to the duties of attorneys under ORS 124.060 and
45 419B.010. Rules adopted under this section are subject to review and approval by the Supreme

1 Court.

2 **SECTION 5.** ORS 9.220 is amended to read:

3 9.220. An applicant for admission as *[attorney]* **a member of the bar** must apply to the Supreme
4 Court and show that the applicant:

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

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

7 (b) For purposes of this section and ORS 9.025, 9.070, 9.110, 9.210, 9.250 and 9.527, the lack of
8 “good moral character” may be established by reference to acts or conduct that reflect moral
9 turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts
10 about the individual’s honesty, fairness and respect for the rights of others and for the laws of the
11 state and the nation. The conduct or acts in question should be rationally connected to the
12 applicant’s fitness to practice law.

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

17 **SECTION 6.** ORS 9.250 is amended to read:

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

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

28 **SECTION 7.** ORS 9.261 is amended to read:

29 9.261. (1) *[An attorney]* **A member** may resign from membership in the bar pursuant to rules
30 adopted by the board under ORS 9.542. After acceptance of the resignation by the Supreme Court,
31 the *[attorney]* **member** shall not be entitled to the rights nor subject to the disabilities or prohibi-
32 tions incident to membership, except that the *[attorney]* **member** is still subject to the power of the
33 court in respect to matters arising prior to the resignation.

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

36 **SECTION 8.** ORS 9.490 is amended to read:

37 9.490. (1) The board of governors, with the approval of the house of delegates given at any
38 regular or special meeting, shall formulate rules of professional conduct **for attorneys**, and when
39 such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall
40 be binding upon all **attorney** members of the bar.

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

45 **SECTION 9.** ORS 9.515 is amended to read:

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

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

6 **SECTION 10.** ORS 9.529 is amended to read:

7 9.529. Bar proceedings relating to discipline, admission and reinstatement are neither civil nor
 8 criminal in nature. They are sui generis and within the inherent power of the Supreme Court to
 9 control. The grounds for denying any applicant admission or reinstatement or for the discipline of
 10 [*attorneys*] **members** set forth in ORS 9.005 to 9.757 are not intended to limit or alter the inherent
 11 power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to dis-
 12 cipline a member of the bar.

13 **SECTION 11.** ORS 9.537 is amended to read:

14 9.537. (1) Any person who has made a complaint to the bar concerning the conduct of [*an at-*
 15 *torney*] **a member**, or who has given information or testimony in or relative to a proposed or
 16 pending admission, reinstatement or disciplinary proceeding is absolutely immune from civil liability
 17 for any such acts.

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

23 **SECTION 12.** ORS 9.542 is amended to read:

24 9.542. (1) The board of governors, subject to the approval of the Supreme Court, may adopt rules
 25 of procedure relating to the investigation of the conduct of [*attorneys*] **members** and applicants for
 26 admission and reinstatement to the bar, and relating to the conduct of admission, reinstatement and
 27 disciplinary proceedings.

28 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
 29 181A.195, the board of governors may require the fingerprints of a person who is applying for ad-
 30 mission or reinstatement to the bar or for renewal of a license issued by the bar.

31 **SECTION 13.** ORS 9.568 is amended to read:

32 9.568. (1)(a) The board of governors of the Oregon State Bar may create a state lawyers assist-
 33 ance committee for the purpose of implementing a [*lawyers*] **members** assistance program and,
 34 pursuant thereto, authorize the state lawyers assistance committee to investigate and resolve com-
 35 plaints or referrals regarding [*lawyers*] **members** whose performance or conduct may impair their
 36 ability to practice law or their professional competence.

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

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

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

1 agement.

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

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

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

11 (a) Confidential;

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

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

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

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

21 (5) The board may authorize the state lawyers assistance committee to act as the monitor or
22 supervisor for *[lawyers]* **members** placed on probation or in diversion in connection with a disci-
23 plinary investigation or proceeding, or who have been conditionally admitted or reinstated to the
24 practice of law. Any information provided to or obtained by the state lawyers assistance committee
25 when the committee acts as a monitor or supervisor under the provisions of this subsection is not
26 subject to subsection (3) of this section.

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

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

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

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

42 **SECTION 14.** ORS 9.655 is amended to read:

43 9.655. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss
44 payable from the client security fund, the board of governors or its designated representative shall
45 determine if the person named in the claim as the *[attorney]* **member** whose dishonest conduct

1 caused the loss was an active member of the Oregon State Bar engaged in the practice of law in
 2 Oregon at the time of the transaction out of which the claim arose and whether the transaction
 3 arose out of the person's practice of law in Oregon. The board or designated representative shall
 4 then determine whether the loss was caused by the person's dishonest conduct and if the person:

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

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

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

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

19 **SECTION 15.** ORS 9.657 is amended to read:

20 9.657. (1) Any person who has made a claim with the client security fund committee of the bar
 21 concerning a loss allegedly caused by the intentional dishonest conduct of [*the person's lawyer*] **a**
 22 **member representing the person**, or who has given information to the bar relative to a client
 23 security fund claim or award shall be absolutely immune from civil liability for such acts.

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

28 **SECTION 16.** ORS 9.665 is amended to read:

29 9.665. (1) Except as provided in this section, reimbursement from the client security fund is
 30 discretionary with the board of governors.

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

37 **SECTION 17.** ORS 9.685 is amended to read:

38 9.685. (1) Subject to the requirements of ORS 9.490, the Supreme Court may establish a trust
 39 account overdraft notification program for [attorneys] **members**.

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

44 **SECTION 18.** ORS 9.688 is amended to read:

45 9.688. A circuit court has jurisdiction to determine who is entitled to property contained in a

1 lawyer trust account during a probate of a deceased [attorney's] **member's** estate.

2 **SECTION 19.** ORS 9.695 is amended to read:

3 9.695. (1) Notwithstanding ORS 133.535, the files, papers, effects or work premises of a [lawyer]
4 **member** relating to the provision of legal service by the [lawyer] **member** shall not be subject to
5 search or seizure by any law enforcement officer, either by search warrant or otherwise.

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

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

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

14 **SECTION 20.** ORS 9.705 is amended to read:

15 9.705. As used in ORS 9.705 to 9.757:

16 (1) "Affected [attorney] **member**" means a member or former member of the Oregon State Bar
17 whose law practice is placed within the jurisdiction of the court under ORS 9.720 or as to whom a
18 petition has been filed to place such law practice within the jurisdiction of the court under ORS
19 9.715.

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

22 **SECTION 21.** ORS 9.710 is amended to read:

23 9.710. The circuit court of the county in which [an attorney] **a member** engaged in the practice
24 of law in this state maintains or has maintained a principal office has jurisdiction as provided in
25 ORS 9.705 to 9.757 whenever the [attorney] **member** has died, is disbarred or suspended from the
26 active practice of law, is incarcerated or has abandoned the practice and:

27 (1) The [attorney] **member** failed to make arrangements for the orderly suspension or termi-
28 nation of the law practice of the [attorney] **member**; or

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

32 **SECTION 22.** ORS 9.715 is amended to read:

33 9.715. (1) When the Oregon State Bar or an attorney determines that one of the circumstances
34 listed in ORS 9.710 exists, the bar or the attorney may petition the court ex parte to take immediate
35 jurisdiction over the affected [attorney's] **member's** law practice as provided in ORS 9.705 to 9.757.

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

38 **SECTION 23.** ORS 9.720 is amended to read:

39 9.720. If the court finds that it has jurisdiction and finds that the assumption of such jurisdiction
40 is necessary in order to protect the interest of the clients of the affected [attorney] **member** or to
41 protect the public interest, the court may, by appropriate order, immediately take jurisdiction over
42 the law practice of the affected [attorney] **member** to the extent the court determines is necessary.
43 The exercise of jurisdiction may extend only to the affected [attorney's] **member's** lawyer trust ac-
44 count or may include all legal files, clients' trust funds, clients' property and all books, records,
45 funds and property used in the law practice of the affected [attorney] **member**.

1 **SECTION 24.** ORS 9.725 is amended to read:

2 9.725. (1) If the court assumes jurisdiction under ORS 9.705 to 9.757, it shall appoint the Oregon
3 State Bar or, if the bar declines the appointment, [another] **an** attorney, to act as custodian of the
4 law practice of the affected [attorney] **member**. Immediately upon appointment, the bar shall take
5 possession and control of all property over which the court assumed jurisdiction. The court may
6 order the bar or the appointed attorney to do one or more of the following:

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

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

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

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

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

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

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

19 (2) The court has jurisdiction over that portion of the files, records and property of the affected
20 [attorney] **member** for the purposes of ORS 9.705 to 9.757 as established in the order, and may make
21 all orders necessary or appropriate to protect the interest of the affected [attorney] **member**, the
22 clients of the affected [attorney] **member** and the public.

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

29 (4) The court may not charge a filing fee for filing a petition under ORS 9.715.

30 **SECTION 25.** ORS 9.727 is amended to read:

31 9.727. The Oregon State Bar or an attorney appointed as custodian of a law practice under ORS
32 9.725 shall serve a copy of an order appointing the custodian on the affected [attorney] **member** or
33 any person assisting in the suspension or termination of the affected [attorney's] **member's** practice.
34 The bar or appointed attorney shall serve the copy of the order by regular mail to the last-known
35 address of the affected [attorney] **member** in the records of the bar or to a duly appointed fiduciary
36 at the address provided in an official filing. The affected [attorney] **member** or assisting person may,
37 within 10 days of the service, request a hearing to challenge the order. After the hearing, the court
38 may vacate or modify the custodianship order as the court finds appropriate.

39 **SECTION 26.** ORS 9.730 is amended to read:

40 9.730. After appointment as custodian of a law practice under ORS 9.725, the Oregon State Bar
41 may engage the services of the Oregon State Bar Professional Liability Fund created under ORS
42 9.005 to 9.757 or any active member of the bar to assist in the performance of the bar's duties as
43 custodian. Acts performed by a member of the bar in assisting the custodian do not constitute ac-
44 ceptance of employment by any client of the affected [attorney] **member**.

45 **SECTION 27.** ORS 9.735 is amended to read:

1 9.735. The court shall enter a judgment awarding reasonable compensation and expenses to the
2 Oregon State Bar or *[another]* **an** attorney appointed under ORS 9.725 for acting as custodian under
3 ORS 9.705 to 9.757. The judgment shall be against the affected *[attorney]* **member** or the estate of
4 the affected *[attorney]* **member**. The judgment is a lien upon all nontrust funds, office furnishings,
5 supplies, equipment, library and other personal property used in the law practice of the affected
6 *[attorney]* **member** retroactive to the date of filing of the petition for jurisdiction under ORS 9.705
7 to 9.757. The judgment lien takes priority over all general unsecured creditors, nonpossessory liens
8 and security interests that were unperfected on the date the court assumed jurisdiction, and may
9 be foreclosed as provided in ORS chapter 87.

10 **SECTION 28.** ORS 9.745 is amended to read:

11 9.745. Any applicable statute of limitations or time limit for the filing set by statute or rule of
12 court as it relates to the affected *[attorney's]* **member's** clients shall be suspended automatically by
13 the filing of a petition for jurisdiction under ORS 9.705 to 9.757 for a period of 120 days following
14 the date of filing of such petition.

15 **SECTION 29.** ORS 9.750 is amended to read:

16 9.750. Persons examining the files and records of the law practice of an affected *[attorney]*
17 **member** pursuant to ORS 9.705 to 9.757 shall preserve the confidentiality of the information relating
18 to the affected *[attorney's]* **member's** representation of a client and shall make disclosure only to
19 the extent necessary to carry out the purposes of ORS 9.705 to 9.757. Such disclosure is a disclosure
20 which is reasonably necessary for the accomplishment of the purpose for which the affected
21 *[attorney]* **member** was consulted. Communications between the Oregon State Bar or its designees
22 or *[another]* **an** attorney appointed as custodian of a law practice under ORS 9.725 and a client of
23 the affected *[attorney]* **member** are subject to the attorney-client privilege to the same extent as it
24 would have applied to communications by or to the affected *[attorney]* **member**.

25 **SECTION 30.** ORS 9.755 is amended to read:

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

37 **SECTION 31.** ORS 9.757 is amended to read:

38 9.757. (1) Except as provided in subsection (2) of this section or by court order, the Oregon State
39 Bar may dispose of client papers and files that have not been claimed by a client of an affected
40 *[attorney]* **member** within six months after written notice to the client from the bar. The bar must
41 dispose of the papers and files in a manner reasonably calculated to protect the confidentiality of
42 the information contained in the papers and files.

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

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

45 (4) Upon receipt of satisfactory proof of identity, the bar shall release a will belonging to a

1 client to the client or to a duly appointed personal representative or conservator of the client.

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

5 **SECTION 32.** ORS 20.075 is amended to read:

6 20.075. (1) A court shall consider the following factors in determining whether to award attorney
7 fees in any case in which an award of attorney fees is authorized by statute and in which the court
8 has discretion to decide whether to award attorney fees:

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

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

12 (c) The extent to which an award of an attorney fee in the case would deter others from as-
13serting good faith claims or defenses in similar cases.

14 (d) The extent to which an award of an attorney fee in the case would deter others from as-
15serting meritless claims and defenses.

16 (e) The objective reasonableness of the parties and the diligence of the parties and their attor-
17neys during the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **(5) As used in this section and in any provision of law authorizing an award of attorney**

1 **fees, “attorney” includes an associate member of the Oregon State Bar practicing law in the**
 2 **member’s approved scope of practice.**

3
 4 **LAW PRACTITIONER-CLIENT PRIVILEGE**

5
 6 **SECTION 33.** ORS 40.225 is amended to read:

7 40.225. (1) As used in this section, unless the context requires otherwise:

8 (a) “Client” means:

9 (A) A person, public officer, corporation, association or other organization or entity, either
 10 public or private, who is rendered professional legal services by a [lawyer] **law practitioner**, or who
 11 consults a [lawyer] **law practitioner** with a view to obtaining professional legal services from the
 12 [lawyer] **law practitioner**.

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

16 (b) “Confidential communication” means a communication not intended to be disclosed to third
 17 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
 18 services to the client or those reasonably necessary for the transmission of the communication.

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

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

24 (e) “Representative of the client” means:

25 (A) A principal, an officer or a director of the client; or

26 (B) A person who has authority to obtain professional legal services, or to act on legal advice
 27 rendered, on behalf of the client, or a person who, for the purpose of effectuating legal represen-
 28 tation for the client, makes or receives a confidential communication while acting in the person’s
 29 scope of employment for the client.

30 (f) “Representative of the [lawyer] **law practitioner**” means one employed to assist the
 31 [lawyer] **law practitioner** in the rendition of professional legal services, but does not include a
 32 physician making a physical or mental examination under ORCP 44.

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

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

38 (b) Between the client’s [lawyer] **law practitioner** and the [lawyer’s] **law practitioner’s** repre-
 39 sentative or the client’s [lawyer] **legal** referral service;

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

42 (d) Between representatives of the client or between the client and a representative of the cli-
 43 ent;

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

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

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

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

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

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

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

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

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

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

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

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

31 **SECTION 34.** ORS 40.227 is amended to read:

32 40.227. (1) As used in this section, “client,” “confidential communication,” [*“lawyer” and “repre-*
 33 *sentative of the lawyer”*] **“law practitioner” and “representative of the law practitioner”** have
 34 the meanings given those terms in ORS 40.225.

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

37 (3)(a) Any evidence derived from a confidential communication that is privileged under ORS
 38 40.225, between a client and the client’s *[lawyer]* **law practitioner** or a representative of the
 39 *[lawyer]* **law practitioner**, is inadmissible in any proceeding to which the client is a party if the
 40 confidential communication was obtained or disclosed without the consent of the client.

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

42 **SECTION 35.** ORS 45.135 is amended to read:

43 45.135. (1) A deposition in a civil action may not be stenographically reported by:

44 (a) A party in the action;

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

- 1 (c) An attorney for a party in the action;
- 2 (d) An attorney for a person with a financial interest in the outcome of the action;
- 3 (e) An employee of a party in the action;
- 4 (f) An employee of an attorney for a party in the action;
- 5 (g) An employee of a person with a financial interest in the outcome of the action;
- 6 (h) An employee of an attorney for a person with a financial interest in the outcome of the
- 7 action; or
- 8 (i) A person related, by affinity or consanguinity within the third degree, to a party in the action
- 9 or to a person with a financial interest in the outcome of the action.

10 (2) Any deposition recorded or reported by a person in violation of this section may not be in-

11 troduced in evidence or used for any other purpose in a civil action.

12 **(3) As used in this section, “attorney” includes an associate member of the Oregon State**

13 **Bar practicing law in the member’s approved scope of practice.**

14 **SECTION 36.** ORS 45.142 is amended to read:

15 45.142. (1) Before recording or reporting a deposition, the person recording or reporting the

16 deposition must disclose if the person has a contract to provide reporting services for depositions

17 on a full-time or part-time basis for any of the following persons:

- 18 (a) A party in the action;
- 19 (b) A person with a financial interest in the outcome of the action;
- 20 (c) An attorney for a party in the action **or another law practitioner representing a party**
- 21 **in the action; or**
- 22 (d) An attorney for a person with a financial interest in the outcome of the action **or another**
- 23 **law practitioner representing a person with a financial interest in the outcome of the**
- 24 **action.**

25 (2) If the person recording or reporting a deposition has a contract to provide reporting services

26 for depositions on a full-time or part-time basis for any of the persons specified in subsection (1) of

27 this section, any party to the action may object to the person employed for the purpose of recording

28 or reporting the deposition. Upon objection, the parties shall attempt to agree upon a different

29 person who shall record or report the deposition. If the parties cannot reach agreement, any of the

30 parties may move the court to appoint an independent person who shall record or report the depo-

31 sition.

32 (3) A party that objects to a person employed for the purpose of recording or reporting a depo-

33 sition in the manner provided by this section is not subject to any penalty or sanction for making

34 the objection and is not required to pay any fee of the person objected to.

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

36 or incident.

37 (5) This section does not apply to a person who records or reports depositions for a public body,

38 as defined in ORS 30.260, or for a federal agency or any instrumentality of the federal government.

39

40 **POSSESSORY LIEN**

41

42 **SECTION 37.** ORS 87.430 is amended to read:

43 87.430. An attorney **or other member of the Oregon State Bar licensed to practice law** has

44 a lien for compensation whether specially agreed upon or implied, upon all papers, personal property

45 and money of the client in the possession of the attorney **or member** for services rendered to the

1 client. The attorney **or member** may retain the papers, personal property and money until the lien
 2 created by this section, and the claim based thereon, is satisfied, and the attorney **or member** may
 3 apply the money retained to the satisfaction of the lien and claim.

4 **SECTION 38.** ORS 87.435 is amended to read:

5 87.435. (1) The owner of papers or personal property subject to a lien created by ORS 87.430,
 6 or any other interested person, may file with the recording officer of the county in which the at-
 7 torney [*has the principal office of the attorney*] **or other member of the Oregon State Bar licensed**
 8 **to practice law has the attorney's or member's principal office** a bond executed by a corpo-
 9 ration authorized to issue surety bonds in the State of Oregon to the effect that the owner of the
 10 papers and personal property against which the lien is claimed shall pay the amount of the claim
 11 and all costs which are awarded against the papers and personal property on account of the lien.
 12 The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, and
 13 must be filed prior to the commencement of a foreclosure proceeding by the attorney **or member**.

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

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

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

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

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

34 **SECTION 39.** ORS 87.440 is amended to read:

35 87.440. If an attorney **or other member of the Oregon State Bar licensed to practice law**
 36 considers the bond filed with a recording officer or the irrevocable letter of credit deposited with
 37 the treasurer of a county inadequate to protect the claim of the attorney **or member** for lien for
 38 some reason other than the amount of the bond or irrevocable letter of credit, the attorney **or**
 39 **member** shall, within 10 days of receipt of the notice of filing, petition the court in which the suit
 40 to foreclose the lien may be brought for a determination of the adequacy of the bond or irrevocable
 41 letter of credit. The attorney **or member** shall state in detail the reasons for the inadequacy. If the
 42 court determines that the bond is inadequate for one or more of the reasons stated by the attorney
 43 **or member**, the court shall order such action as shall make the bond or irrevocable letter of credit
 44 adequate to protect the claim for lien.

45 **SECTION 40.** ORS 87.445 is amended to read:

1 87.445. An attorney **or other member of the Oregon State Bar licensed to practice law** has
2 a lien upon actions, suits and proceedings after the commencement thereof, and judgments, orders
3 and awards entered therein in the client's favor and the proceeds thereof to the extent of fees and
4 compensation specially agreed upon with the client, or if there is no agreement, for the reasonable
5 value of the services of the attorney **or member**.

6 **SECTION 41.** ORS 87.450 is amended to read:

7 87.450. (1) When an attorney **or other member of the Oregon State Bar licensed to practice**
8 **law** claims a lien under ORS 87.445, if the judgment is for a sum of money only, the attorney **or**
9 **member** must file a notice of claim of lien with the clerk of the court that entered the judgment
10 within three years after the judgment is entered. The clerk shall enter the notice in the register of
11 the court and in the judgment lien record maintained by the court administrator under ORS 18.075.

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

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

17 (4) For purposes of this section, a "judgment for a sum of money only" does not include a
18 judgment or order for the payment of money for the support of any person under ORS 107.095,
19 107.105, 108.120, 109.155 or 419B.400.

20 **SECTION 42.** ORS 87.455 is amended to read:

21 87.455. (1) When an attorney **or other member of the Oregon State Bar licensed to practice**
22 **law** claims a lien under ORS 87.445, if the judgment is for the possession, award or transfer of per-
23 sonal property, the attorney **or member** must file a notice of claim of lien not later than one year
24 after entry of the judgment and disposition of any appeal of the judgment. The notice shall be filed
25 with the recording officer of the county in which the judgment is rendered, with the recording offi-
26 cer of the county, if known, in which the personal property is located and with the recording officer
27 of the county, if known, in which the attorney's **or member's** client resides. The recording officer
28 of a county shall record the notices filed under this section in a book called "index of liens upon
29 chattels."

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

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

40 **SECTION 43.** ORS 87.460 is amended to read:

41 87.460. (1) When an attorney **or other member of the Oregon State Bar licensed to practice**
42 **law** claims a lien under ORS 87.445, if the judgment is for the possession, award or conveyance of
43 real property, the attorney **or member** must file a notice of claim of lien not later than six months
44 after entry of the judgment and disposition of any appeal of the judgment. The notice shall be filed
45 with the recording officer of the county in which the real property, or any part of it, is situated.

1 The recording officer of a county shall record the notices filed under this section in a book that
 2 shall be indexed in the same manner as the record of deeds and mortgages.

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

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

13
 14 **FAMILY LAW**
 15

16 **SECTION 44.** ORS 25.010 is amended to read:

17 25.010. As used in ORS 25.501 to 25.556 and ORS chapters 25, 107 and 109 and any other statutes
 18 providing for support payments or support enforcement procedures, unless the context requires
 19 otherwise:

20 (1) "Administrator" means either the Administrator of the Division of Child Support of the De-
 21 partment of Justice or a district attorney, or the administrator's or a district attorney's authorized
 22 representative.

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

25 [(2)] (3) "Child" has the meaning given that term in ORS 110.503.

26 [(3)] (4) "Child support rights" means the right to establish or enforce an obligation imposed or
 27 impossible by law to provide support, including but not limited to medical support as defined in ORS
 28 25.321 and an unsatisfied obligation to provide support.

29 [(4)] (5) "Department" means the Department of Justice.

30 [(5)] (6) "Disposable income" means that part of the income of an individual remaining after the
 31 deduction from the income of any amounts required to be withheld by law except laws enforcing
 32 spousal or child support and any amounts withheld to pay medical or dental insurance premiums.

33 [(6)] (7) "Employer" means any entity or individual who engages an individual to perform work
 34 or services for which compensation is given in periodic payments or otherwise.

35 [(7)] (8) "Income" is any monetary obligation in excess of \$4.99 after the fee described in ORS
 36 25.414 (6) has been deducted that is in the possession of a third party owed to a person and includes
 37 but is not limited to:

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

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

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

42 (d) Interest payments;

43 (e) Periodic payments from a trust account;

44 (f) Any program or contract to provide substitute wages during times of unemployment or disa-
 45 bility;

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

2 (h) Amounts payable to independent contractors.

3 [(8)] (9) “Obligee” has the meaning given that term in ORS 110.503.

4 [(9)] (10) “Obligor” has the meaning given that term in ORS 110.503.

5 [(10)] (11) “Order to withhold” means an order or other legal process that requires a withholder
6 to withhold support from the income of an obligor.

7 [(11)] (12) “Public assistance” has the meaning given that term in ORS 25.501.

8 [(12)] (13) “Withholder” means any person who disburses income and includes but is not limited
9 to an employer, conservator, trustee or insurer of the obligor.

10
11 **LANDLORD-TENANT LAW**

12
13 **SECTION 45.** ORS 90.100 is amended to read:

14 90.100. As used in this chapter, unless the context otherwise requires:

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

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

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

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

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

27 (4) **“Attorney” includes an associate member of the Oregon State Bar practicing law**
28 **within the member’s approved scope of practice.**

29 [(4)] (5) “Building and housing codes” includes any law, ordinance or governmental regulation
30 concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or
31 appearance of any premises or dwelling unit.

32 [(5)] (6) “Carbon monoxide alarm” has the meaning given that term in ORS 105.836.

33 [(6)] (7) “Carbon monoxide source” has the meaning given that term in ORS 105.836.

34 [(7)] (8) “Conduct” means the commission of an act or the failure to act.

35 [(8)] (9) “DBH” means the diameter at breast height, which is measured as the width of a
36 standing tree at four and one-half feet above the ground on the uphill side.

37 [(9)] (10) “Dealer” means any person in the business of selling, leasing or distributing new or
38 used manufactured dwellings or floating homes to persons who purchase or lease a manufactured
39 dwelling or floating home for use as a residence.

40 [(10)] (11) “Domestic violence” means:

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

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

43 [(11)] (12) “Drug and alcohol free housing” means a dwelling unit described in ORS 90.243.

44 [(12)] (13) “Dwelling unit” means a structure or the part of a structure that is used as a home,
45 residence or sleeping place by one person who maintains a household or by two or more persons

1 who maintain a common household. “Dwelling unit” regarding a person who rents a space for a
2 manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for
3 a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and
4 not the manufactured dwelling, recreational vehicle or floating home itself.

5 [(13)] **(14)** “Essential service” means:

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

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

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

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

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

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

21 [(14)] **(15)** “Facility” means a manufactured dwelling park or a marina.

22 [(15)] **(16)** “Fee” means a nonrefundable payment of money.

23 [(16)] **(17)** “First class mail” does not include certified or registered mail, or any other form of
24 mail that may delay or hinder actual delivery of mail to the recipient.

25 [(17)] **(18)** “Fixed term tenancy” means a tenancy that has a fixed term of existence, continuing
26 to a specific ending date and terminating on that date without requiring further notice to effect the
27 termination.

28 [(18)] **(19)** “Floating home” has the meaning given that term in ORS 830.700. “Floating home”
29 includes an accessory building or structure.

30 [(19)] **(20)** “Good faith” means honesty in fact in the conduct of the transaction concerned.

31 [(20)] **(21)** “Hazard tree” means a tree that:

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

33 (b) Measures at least eight inches DBH; and

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

37 [(21)] **(22)** “Hotel or motel” means “hotel” as that term is defined in ORS 699.005.

38 [(22)] **(23)** “Informal dispute resolution” includes voluntary consultation between the landlord
39 or landlord’s agent and one or more tenants or voluntary mediation utilizing the services of a third
40 party, but does not include mandatory mediation or arbitration.

41 [(23)] **(24)** “Landlord” means the owner, lessor or sublessor of the dwelling unit or the building
42 or premises of which it is a part. “Landlord” includes a person who is authorized by the owner,
43 lessor or sublessor to manage the premises or to enter into a rental agreement.

44 [(24)] **(25)** “Landlord’s agent” means a person who has oral or written authority, either express
45 or implied, to act for or on behalf of a landlord.

1 [(25)] **(26)** “Last month’s rent deposit” means a type of security deposit, however designated, the
2 primary function of which is to secure the payment of rent for the last month of the tenancy.

3 [(26)] **(27)** “Manufactured dwelling” means a residential trailer, a mobile home or a manufac-
4 tured home as those terms are defined in ORS 446.003 or a prefabricated structure. “Manufactured
5 dwelling” includes an accessory building or structure.

6 [(27)] **(28)** “Manufactured dwelling park” means a place where four or more manufactured
7 dwellings are located, the primary purpose of which is to rent space or keep space for rent to any
8 person for a charge or fee.

9 [(28)] **(29)** “Marina” means a moorage of contiguous dwelling units that may be legally trans-
10 ferred as a single unit and are owned by one person where four or more floating homes are secured,
11 the primary purpose of which is to rent space or keep space for rent to any person for a charge or
12 fee.

13 [(29)] **(30)** “Marina purchase association” means a group of three or more tenants who reside in
14 a marina and have organized for the purpose of eventual purchase of the marina.

15 [(30)] **(31)** “Month-to-month tenancy” means a tenancy that automatically renews and continues
16 for successive monthly periods on the same terms and conditions originally agreed to, or as revised
17 by the parties, until terminated by one or both of the parties.

18 [(31)] **(32)** “Organization” includes a corporation, government, governmental subdivision or
19 agency, business trust, estate, trust, partnership or association, two or more persons having a joint
20 or common interest, and any other legal or commercial entity.

21 [(32)] **(33)** “Owner” includes a mortgagee in possession and means one or more persons, jointly
22 or severally, in whom is vested:

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

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

26 [(33)] **(34)** “Person” includes an individual or organization.

27 [(34)] **(35)** “Prefabricated structure” means a structure that is substantially constructed or as-
28 sembled using closed construction at an off-site location in compliance with the state building code
29 and that is sited and occupied by the owner in compliance with local codes.

30 [(35)] **(36)** “Premises” means:

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

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

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

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

39 [(37)] **(38)** “Recreational vehicle” has the meaning given that term in ORS 174.101.

40 [(38)] **(39)** “Rent” means any payment to be made to the landlord under the rental agreement,
41 periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a
42 dwelling unit to the exclusion of others and to use the premises. “Rent” does not include security
43 deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.562.

44 [(39)] **(40)** “Rental agreement” means all agreements, written or oral, and valid rules and regu-
45 lations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the

1 use and occupancy of a dwelling unit and premises. “Rental agreement” includes a lease. A rental
2 agreement is either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

3 [(40)] (41) “Roomer” means a person occupying a dwelling unit that does not include a toilet and
4 either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and
5 where one or more of these facilities are used in common by occupants in the structure.

6 [(41)] (42) “Screening or admission criteria” means a written statement of any factors a landlord
7 considers in deciding whether to accept or reject an applicant and any qualifications required for
8 acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history,
9 character references, public records, criminal records, credit reports, credit references and incomes
10 or resources of the applicant.

11 [(42)] (43) “Security deposit” means a refundable payment or deposit of money, however desig-
12 nated, the primary function of which is to secure the performance of a rental agreement or any part
13 of a rental agreement. “Security deposit” does not include a fee.

14 [(43)] (44) “Sexual assault” has the meaning given that term in ORS 147.450.

15 [(44)] (45) “Squatter” means a person occupying a dwelling unit who is not so entitled under a
16 rental agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter”
17 does not include a tenant who holds over as described in ORS 90.427 (11).

18 [(45)] (46) “Stalking” means the behavior described in ORS 163.732.

19 [(46)] (47) “Statement of policy” means the summary explanation of information and facility
20 policies to be provided to prospective and existing tenants under ORS 90.510.

21 [(47)] (48) “Surrender” means an agreement, express or implied, as described in ORS 90.148 be-
22 tween a landlord and tenant to terminate a rental agreement that gave the tenant the right to oc-
23 cupy a dwelling unit.

24 [(48)] (49) “Tenant”:

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

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

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

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

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

34 [(49)] (50) “Transient lodging” means a room or a suite of rooms.

35 [(50)] (51) “Transient occupancy” means occupancy in transient lodging that has all of the fol-
36 lowing characteristics:

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

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

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

41 [(51)] (52) “Vacation occupancy” means occupancy in a dwelling unit, not including transient
42 occupancy in a hotel or motel, that has all of the following characteristics:

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

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

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

1 [(52)] (53) “Victim” means:

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

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

7 [(53)] (54) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

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

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

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

14 **SECTION 46.** ORS 90.555 is amended to read:

15 90.555. (1) As used in this section:

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

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

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

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

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

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

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

26 (e) “Renter” means a person other than the facility tenant who is lawfully occupying the man-
27 ufactured dwelling or floating home under a subleasing agreement.

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

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

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

45 (4) The rights and obligations of the renter under a subleasing agreement are in addition to the

1 rights and obligations retained by the facility tenant under subsection (3) of this section and any
2 rights or obligations of the facility tenant and renter under ORS 90.100 to 90.465.

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

6 (a) Without cause by giving the renter written notice not less than 30 days prior to the termi-
7 nation;

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

10 (c) Subject to the right to cure:

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

12 (B) For any conduct by the renter that would be a violation of the rental agreement under ORS
13 90.396 or 90.398 if committed by the facility tenant.

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

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

23 (b) If the facility landlord gives notice to the renter that the landlord is terminating the sub-
24 leasing agreement, the landlord shall also promptly give a copy of the notice to the facility tenant
25 by written notice.

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

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

31 (8) Before entering into a sublease agreement, the facility landlord may screen a renter under
32 ORS 90.303, but may not apply to the renter credit and conduct screening criteria that is more re-
33 strictive than the landlord applies to applicants for a tenancy of a dwelling or home that is either
34 owned by the landlord or on consignment with the landlord under ORS 90.680.

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

40 **SECTION 47.** ORS 90.634 is amended to read:

41 90.634. (1) A landlord may not assert a lien under ORS 87.162 for dwelling unit rent against a
42 manufactured dwelling or floating home located in a facility. Notwithstanding ORS 90.100 [(48)] (49)
43 and 90.675 and regardless of whether the owner of a manufactured dwelling or floating home occu-
44 pies the dwelling or home as a residence, a facility landlord that is entitled to unpaid rent and re-
45 ceives possession of the facility space from the sheriff following restitution pursuant to ORS 105.161

1 may sell or dispose of the dwelling or home as provided in ORS 90.675.

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

12 **SECTION 48. Section 49 of this 2023 Act is added to and made a part of ORS 105.105 to**
 13 **105.168.**

14 **SECTION 49. As used in ORS 105.105 to 105.168, “attorney” includes an associate member**
 15 **of the Oregon State Bar practicing law in the member’s approved scope of practice.**

16
 17 **CAPTIONS**
 18

19 **SECTION 50. The unit captions used in this 2023 Act are provided only for the conven-**
 20 **ience of the reader and do not become part of the statutory law of this state or express any**
 21 **legislative intent in the enactment of this 2023 Act.**

22 _____