

SENATE AMENDMENTS TO SENATE BILL 272

By COMMITTEE ON JUDICIARY

March 15

1 On page 1 of the printed bill, line 2, delete “9.040 and 9.080” and insert “9.040, 9.050, 9.568, 9.655
2 and 192.690”.

3 On page 2, delete lines 9 through 45 and delete page 3 and insert:

4 “**SECTION 2.** ORS 9.050 is amended to read:

5 “9.050. (1) On petition signed by 25 percent of the members in any region for the recall of any
6 governor elected from that region, the executive director shall serve notice as soon as possible on
7 the governor informing the governor that the petition has been filed. If the governor does not resign
8 within 10 days after the date the notice is served, the executive director shall mail ballots to each
9 active member of the bar within the region eligible to vote, submitting the question whether the
10 governor shall be recalled. If a majority of the members voting at the election vote in favor of the
11 recall, the governor *[shall be]* **is** recalled.

12 “(2) **On the affirmative vote of two-thirds of the entire membership of the board of gov-**
13 **ernors, the board shall refer the question of the recall of any governor from any region to**
14 **a vote of the members of that region. The executive director shall serve notice as soon as**
15 **possible on the governor informing the governor that the board has approved a recall**
16 **election. If the governor does not resign within 10 days after the notice is served, the exec-**
17 **utive director shall mail ballots to each active member of the bar within the region eligible**
18 **to vote, submitting the question whether the governor shall be recalled. If a majority of the**
19 **members voting at the election vote in favor of the recall, the governor is recalled.**

20 “(3) **The board of governors shall approve the ballot and any information submitted to**
21 **the members in connection with a recall vote.**

22 “**SECTION 3.** ORS 9.568 is amended to read:

23 “9.568. (1)(a) The board of governors of the Oregon State Bar may create a state lawyers as-
24 sistance committee for the purpose of implementing a lawyers assistance program and, pursuant
25 thereto, authorize the state lawyers assistance committee to investigate and resolve complaints or
26 referrals regarding lawyers whose performance or conduct may impair their ability to practice law
27 or **their** professional competence. *[The board may also create local lawyers assistance committees to*
28 *investigate complaints or referrals for the state lawyers assistance committee.]*

29 “(b) The board may adopt rules for the *[processing and resolution of complaints or referrals by]*
30 **operation of the** state *[and local]* lawyers assistance *[committees]* **committee.**

31 “(c) The purpose of **the** state *[and local]* lawyers assistance *[committees]* **committee** is the pro-
32 vision of supervision and assistance to those lawyers whose performance or conduct may impair
33 their ability to practice law or **their** professional competence.

34 “(2)(a) In addition to **the** state *[and local]* lawyers assistance *[committees]* **committee** created
35 under subsection (1) of this section, the board may create personal and practice management as-

1 assistance committees to provide assistance to lawyers who are suffering from impairment or other
2 circumstances that may adversely affect professional competence or conduct. Personal and practice
3 management assistance committees may also provide advice and training to lawyers in practice
4 management.

5 “(b) The board may adopt rules governing the provision of assistance to lawyers by personal and
6 practice management assistance committees.

7 “(c) The purpose of a personal and practice management assistance committee is the provision
8 of completely confidential assistance, advice and training to lawyers in a manner that fosters maxi-
9 mum openness in communications between a lawyer and the committee and that encourages a law-
10 yer to seek assistance from the committee.

11 “(3) Any information provided to or obtained by the state lawyers assistance committee[, *any*
12 *local lawyers assistance committee*] or any personal and practice management assistance committee,
13 or provided to or obtained by any agent of those committees, is:

14 “(a) Confidential;

15 “(b) Exempt from the provisions of ORS 192.410 to 192.505;

16 “(c) Not discoverable or admissible in any civil proceeding without the written consent of the
17 lawyer to whom the information pertains; and

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

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

24 “**(5) The board may authorize the state lawyers assistance committee to act as the**
25 **monitor or supervisor for lawyers placed on probation or in diversion in connection with a**
26 **disciplinary investigation or proceeding, or who have been conditionally admitted or rein-**
27 **stated to the practice of law. Any information provided to or obtained by the state lawyers**
28 **assistance committee when the committee acts as a monitor or supervisor under the pro-**
29 **visions of this subsection is not subject to subsection (3) of this section.**

30 “[*(5)*] **(6)** All meetings of the state lawyers assistance committee[, *the local lawyers assistance*
31 *committees*] and the personal and practice management assistance committees are exempt from the
32 provisions of ORS 192.610 to 192.690.

33 “[*(6)*] **(7)** Any person who makes a complaint or referral to the bar as to the competence of an
34 attorney or provides information or testimony in connection with the state lawyers assistance
35 committee[, *any local lawyers assistance committee*] or any personal and practice management as-
36 sistance committee is not subject to an action for civil damages as a result thereof.

37 “[*(7)*] **(8)** With respect to their acts in connection with the state lawyers assistance
38 committee[, *any local lawyers assistance committee*] or any personal and practice management as-
39 sistance committee, the same privileges and immunities from civil and criminal proceedings that
40 apply to prosecuting and judicial officers of the state shall apply to the board, all officers and em-
41 ployees of the bar, and the members of the committees and their agents.

42 “[*(8)*] **(9)** For the purposes of this section, agents of the state lawyers assistance committee[, *a*
43 *local lawyers assistance committee*] or a personal and practice management assistance committee in-
44 clude investigators, attorneys, counselors, staff personnel and any other individual or entity acting
45 on behalf of or at the request of the committees.

1 “**SECTION 4.** ORS 9.655 is amended to read:

2 “9.655. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss
3 under ORS 9.625, the board **of governors** or its designated representative shall determine if the
4 person named in the claim as the attorney whose dishonest conduct caused the loss [*maintained an*
5 *office in the State of Oregon*] **was an active member of the Oregon State Bar engaged in the**
6 **practice of law in Oregon** at the time of the transaction out of which the claim arose and **whether**
7 **the transaction arose out of the person’s practice of law in Oregon. The board or designated**
8 **representative shall then determine if the person:**

9 “(a) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused
10 the loss;

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

14 “(c) Has been the object of a judgment entered in any proceeding arising out of the claimed
15 dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor
16 of the claimant, has failed to pay the judgment, and execution issued on the judgment has been re-
17 turned uncollected or that issuance of execution would be a useless act.

18 “(2) After complying with subsection (1) of this section, if the board or representative requires
19 additional information to determine the claim, the board or the representative may compel by
20 subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss,
21 or any other person having knowledge of the matter, to appear for the purpose of giving testimony,
22 and may compel by subpoena the production of records and documents pertinent to the claim. The
23 subpoena shall have the same force and effect as in a civil action in the circuit court, and may be
24 enforced by order of the circuit court for the county in which the person was served.

25 “**SECTION 5.** ORS 192.690 is amended to read:

26 “192.690. (1) ORS 192.610 to 192.690 [*shall*] **do** not apply to the deliberations of the State Board
27 of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies con-
28 ducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the re-
29 view by the Workers’ Compensation Board or the Employment Appeals Board of similar hearings
30 on contested cases, meetings of **the** state [*or local*] lawyers assistance [*committees*] **committee** op-
31 erating under the provisions of ORS 9.568, meetings of the personal and practice management as-
32 sistance committees operating under the provisions of ORS 9.568, the multidisciplinary teams
33 required to review child abuse and neglect fatalities in accordance with the provisions of ORS
34 418.747, the peer review committees in accordance with the provisions of ORS 441.055, mediation
35 conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and
36 Science University Board of Directors or its designated committee regarding candidates for the po-
37 sition of president of the university or regarding sensitive business, financial or commercial matters
38 of the university not customarily provided to competitors related to financings, mergers, acquisitions
39 or joint ventures or related to the sale or other disposition of, or substantial change in use of, sig-
40 nificant real or personal property, or related to health system strategies, or to Oregon Health and
41 Science University faculty or staff committee meetings.

42 “(2) Because of the grave risk to public health and safety that would be posed by misappropri-
43 ation or misapplication of information considered during such review and approval, ORS 192.610 to
44 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting
45 Council pursuant to ORS 469.530.”.

