

A-Engrossed Senate Bill 272

Ordered by the Senate March 15
Including Senate Amendments dated March 15

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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.

Directs board of governors of Oregon State Bar to establish deadline for filing nominating petitions for positions on board.

[Prohibits employee of bar from electing to become member of Public Employees Retirement System after December 31, 2005. Authorizes bar to provide retirement plan for employees of bar who do not receive benefits from Public Employees Retirement System.]

Establishes procedure for resignation or recall of governor if two-thirds of entire membership of board of governors vote affirmatively to put question of recall to members of governor's region.

Eliminates board's authority to create local lawyers assistance committees to investigate complaints against lawyers. Allows board to authorize state lawyers assistance committee to act as monitor or supervisor for lawyers placed on bar probation or in diversion in connection with disciplinary investigations or proceedings.

Requires board or authorized representative of board to determine if person against whom claim of dishonest conduct is filed is active member of Oregon State Bar and whether transaction in question arose out of person's practice of law in Oregon.

A BILL FOR AN ACT

1
2 Relating to Oregon State Bar; amending ORS 9.040, 9.050, 9.568, 9.655 and 192.690.

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

4 **SECTION 1.** ORS 9.040 is amended to read:

5 9.040. (1) The election of governors shall be held annually on a date set by the board of gover-
6 nors. Nomination shall be by petition signed by at least 10 members entitled to vote for such nomi-
7 nee. Election shall be by ballot. Nominating petitions [*shall*] **must** be filed with the executive
8 director of the bar [*at least 30 days before the election*]. **The board shall establish a deadline for**
9 **filing nominating petitions.**

10 (2)(a) The executive director shall mail ballots, containing the nominations for the office of
11 governor in each region, to every eligible active member in such region. Ballots must be returned
12 in person or by mail to the executive director on or before the day of the election in order to be
13 counted. The executive director shall canvass the votes and record the result thereof.

14 (b) The board by rule may provide for electronic elections in lieu of using mailed ballots under
15 paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic
16 distribution of election materials and electronic tabulation of votes.

17 (3) In a region in which only one position is to be filled, the candidate receiving the highest vote
18 shall be declared elected. If a region has more than one position to be filled, the candidate with the
19 most votes received shall be declared elected, the candidate with the next highest number of votes

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 received shall then be declared elected, and so on until all positions are filled. The balloting shall
 2 be so conducted that only eligible active members can vote, and the secrecy of the ballot shall be
 3 preserved.

4 (4) Notwithstanding subsection (1) of this section, **the board may not conduct** an election
 5 [*shall not be held*] for any position for which only a single candidate has been nominated. If only a
 6 single candidate has been nominated, the board shall declare the single candidate elected to the
 7 position on a date specified by the board.

8 (5) A vacancy in the office of elective member of the board of governors that occurs more than
 9 24 months before the expiration of the term shall be filled for the remainder of the term by a gov-
 10 ernor elected at a special election held in the manner provided in this section as soon as possible
 11 after the occurrence of the vacancy, or as provided in subsection (4) of this section if only a single
 12 candidate is nominated. The vacancy may be filled for the period between the occurrence of the
 13 vacancy and the election of a new governor by a person appointed by the board. A vacancy in the
 14 office of elective member that occurs 24 months or less before the expiration of the term shall be
 15 filled for the remainder of the term by a person appointed by the board.

16 (6) A vacancy in the office of public member of the board of governors shall be filled for the
 17 remainder of the term by a governor appointed by the board.

18 **SECTION 2.** ORS 9.050 is amended to read:

19 9.050. (1) On petition signed by 25 percent of the members in any region for the recall of any
 20 governor elected from that region, the executive director shall serve notice as soon as possible on
 21 the governor informing the governor that the petition has been filed. If the governor does not resign
 22 within 10 days after the date the notice is served, the executive director shall mail ballots to each
 23 active member of the bar within the region eligible to vote, submitting the question whether the
 24 governor shall be recalled. If a majority of the members voting at the election vote in favor of the
 25 recall, the governor [*shall be*] **is** recalled.

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

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

36 **SECTION 3.** ORS 9.568 is amended to read:

37 9.568. (1)(a) The board of governors of the Oregon State Bar may create a state lawyers assist-
 38 ance committee for the purpose of implementing a lawyers assistance program and, pursuant thereto,
 39 authorize the state lawyers assistance committee to investigate and resolve complaints or referrals
 40 regarding lawyers whose performance or conduct may impair their ability to practice law or **their**
 41 professional competence. [*The board may also create local lawyers assistance committees to investigate*
 42 *complaints or referrals for the state lawyers assistance committee.*]

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

45 (c) The purpose of **the state [and local] lawyers assistance [committees] committee** is the pro-

1 vision of supervision and assistance to those lawyers whose performance or conduct may impair
2 their ability to practice law or **their** professional competence.

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

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

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

15 (3) Any information provided to or obtained by the state lawyers assistance committee[, *any lo-*
16 *cal lawyers assistance committee*] or any personal and practice management assistance committee,
17 or provided to or obtained by any agent of those committees, is:

18 (a) Confidential;

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

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

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

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

28 **(5) The board may authorize the state lawyers assistance committee to act as the moni-**
29 **tor or supervisor for lawyers placed on probation or in diversion in connection with a disci-**
30 **plinary investigation or proceeding, or who have been conditionally admitted or reinstated**
31 **to the practice of law. Any information provided to or obtained by the state lawyers assist-**
32 **ance committee when the committee acts as a monitor or supervisor under the provisions**
33 **of this subsection is not subject to subsection (3) of this section.**

34 [(5)] (6) All meetings of the state lawyers assistance committee[, *the local lawyers assistance*
35 *committees*] and the personal and practice management assistance committees are exempt from the
36 provisions of ORS 192.610 to 192.690.

37 [(6)] (7) Any person who makes a complaint or referral to the bar as to the competence of an
38 attorney or provides information or testimony in connection with the state lawyers assistance
39 committee[, *any local lawyers assistance committee*] or any personal and practice management as-
40 sistance committee is not subject to an action for civil damages as a result thereof.

41 [(7)] (8) With respect to their acts in connection with the state lawyers assistance committee[,
42 *any local lawyers assistance committee*] or any personal and practice management assistance com-
43 mittee, the same privileges and immunities from civil and criminal proceedings that apply to prose-
44 cuting and judicial officers of the state shall apply to the board, all officers and employees of the
45 bar, and the members of the committees and their agents.

1 [(8)] (9) For the purposes of this section, agents of the state lawyers assistance committee[, a
2 local lawyers assistance committee] or a personal and practice management assistance committee in-
3 clude investigators, attorneys, counselors, staff personnel and any other individual or entity acting
4 on behalf of or at the request of the committees.

5 **SECTION 4.** ORS 9.655 is amended to read:

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

13 (a) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused
14 the loss;

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

18 (c) Has been the object of a judgment entered in any proceeding arising out of the claimed dis-
19 honest conduct which caused the loss and, if the object of a judgment for money entered in favor
20 of the claimant, has failed to pay the judgment, and execution issued on the judgment has been re-
21 turned uncollected or that issuance of execution would be a useless act.

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

29 **SECTION 5.** ORS 192.690 is amended to read:

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

1 (2) Because of the grave risk to public health and safety that would be posed by misappropri-
2 ation or misapplication of information considered during such review and approval, ORS 192.610 to
3 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting
4 Council pursuant to ORS 469.530.

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