

Enrolled Senate Bill 272

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CHAPTER

AN ACT

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

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

SECTION 1. ORS 9.040 is amended to read:

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

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

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

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be so conducted that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

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

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

office of elective member that occurs 24 months or less before the expiration of the term shall be filled for the remainder of the term by a person appointed by the board.

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

SECTION 2. ORS 9.050 is amended to read:

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

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

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

SECTION 3. ORS 9.568 is amended to read:

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

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

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

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

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

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

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

(a) Confidential;

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

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

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

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

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

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

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

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

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

SECTION 4. ORS 9.655 is amended to read:

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

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

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

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

(2) After complying with subsection (1) of this section, if the board or representative requires additional information to determine the claim, the board or the representative may compel by subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The

subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served.

SECTION 5. ORS 192.690 is amended to read:

192.690. (1) ORS 192.610 to 192.690 [shall] **do** not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of **the** state [or local] lawyers assistance [committees] **committee** operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

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

Passed by Senate March 22, 2005

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Secretary of Senate

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President of Senate

Passed by House June 8, 2005

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Speaker of House

Received by Governor:

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Approved:

.....M,....., 2005

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Governor

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Secretary of State