

Senate Bill 370

Sponsored by COMMITTEE ON JUDICIARY (at the request of Public Defense Services Commission)

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**.

Preserves lawyer-client privilege for communications made to office of public defense services as part of complaint against lawyer providing public defense services.

A BILL FOR AN ACT

1
2 Relating to lawyer-client privilege; creating new provisions; and amending ORS 40.225.

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

4 **SECTION 1.** ORS 40.225 is amended to read:

5 40.225. (1) As used in this section, unless the context requires otherwise:

6 (a) "Client" means a person, public officer, corporation, association or other organization or
7 entity, either public or private, who is rendered professional legal services by a lawyer, or who
8 consults a lawyer with a view to obtaining professional legal services from the lawyer.

9 (b) "Confidential communication" means a communication not intended to be disclosed to third
10 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
11 services to the client or those reasonably necessary for the transmission of the communication.

12 (c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized,
13 to practice law in any state or nation.

14 (d) "Representative of the client" means a principal, an employee, an officer or a director of the
15 client:

16 (A) Who provides the client's lawyer with information that was acquired during the course of,
17 or as a result of, such person's relationship with the client as principal, employee, officer or direc-
18 tor, and is provided to the lawyer for the purpose of obtaining for the client the legal advice or
19 other legal services of the lawyer; or

20 (B) Who, as part of such person's relationship with the client as principal, employee, officer or
21 director, seeks, receives or applies legal advice from the client's lawyer.

22 (e) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of
23 professional legal services, but does not include a physician making a physical or mental examina-
24 tion under ORCP 44.

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

28 (a) Between the client or the client's representative and the client's lawyer or a representative
29 of the lawyer;

30 (b) Between the client's lawyer and the lawyer's representative;

31 (c) By the client or the client's lawyer to a lawyer representing another in a matter of common

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 interest;

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

4 (e) Between lawyers representing the client.

5 (3) The privilege created by this section may be claimed by the client, a guardian or conservator
6 of the client, the personal representative of a deceased client, or the successor, trustee, or similar
7 representative of a corporation, association, or other organization, whether or not in existence. The
8 person who was the lawyer or the lawyer's representative at the time of the communication is pre-
9 sumed to have authority to claim the privilege but only on behalf of the client.

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

11 (a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or
12 plan to commit what the client knew or reasonably should have known to be a crime or fraud;

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

16 (c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or
17 by the client to the lawyer;

18 (d) As to a communication relevant to an issue concerning an attested document to which the
19 lawyer is an attesting witness; or

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

23 **(5) Notwithstanding subsection (4) of this section and ORS 40.280, a privilege is main-**
24 **tained under this section for a communication that is made to the office of public defense**
25 **services established under ORS 151.216 for the purpose of making, or providing information**
26 **regarding, a complaint against a lawyer providing public defense services.**

27 **SECTION 2. The amendments to ORS 40.225 by section 1 of this 2005 Act apply to com-**
28 **munications made on or after the effective date of this 2005 Act.**

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