

Enrolled
Senate Bill 358

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CHAPTER

AN ACT

Relating to regulation of lawyers; creating new provisions; amending ORS 9.080, 9.191, 9.565 and 9.675; and prescribing an effective date.

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

SECTION 1. ORS 9.191 is amended to read:

9.191. (1) Except as provided in subsection (2) of this section, the annual membership fees to be paid by members of the Oregon State Bar shall be established by the Board of Governors of the Oregon State Bar, and each year notice of the proposed fees for the coming year shall be published and distributed to the membership not later than 20 days before the annual meeting of the house of delegates. Any increase in annual membership fees over the amount established for the preceding year must be approved by a majority of delegates of the house of delegates voting thereon at the annual meeting of the house of delegates. The board shall establish the date by which annual membership fees must be paid.

(2) The board shall establish prorated membership fees payable for the year that a member is admitted to the practice of law in this state. If the new member is admitted on or before the date established by the board for the payment of annual membership fees under subsection (1) of this section, the new member must pay the full annual membership fees established under subsection (1) of this section.

(3) In establishing annual membership fees, the board shall consider and be guided by the anticipated financial needs of the state bar for the year for which the fees are established, time periods of membership and active or inactive status of members. Annual membership fees may include any amount assessed under any plan for professional liability insurance for active members engaged in the private practice of law whose principal offices are in Oregon as provided in ORS 9.080 (2). *[The board may not require that a member who has been admitted to practice law in Oregon for 50 years or more pay membership fees, assessments or any amount under ORS 9.645, except that the member shall be required to pay any amount assessed under any plan for professional liability insurance if the member is engaged in the private practice of law and the member's principal office is in Oregon.]*

SECTION 2. ORS 9.565 is amended to read:

9.565. *[The Department of Revenue may furnish to the Oregon State Bar the name and address, if known, of any person admitted to practice law in this state who prepares a return or report permitted or required to be filed with the department for another, and may also furnish to the bar the name and address of the taxpayer, in instances where the department has reasonable grounds to believe the per-*

son preparing the return or report prepared it in violation of any provision of ORS 9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted thereunder. The department shall provide a statement of the basis for its belief that a violation may have occurred. The bar and any person or board described in ORS 9.537 (2), shall use the names, addresses and information furnished under this section solely in the enforcement of ORS 9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted thereunder. Any information disclosed by the department pursuant to this section may be used in any bar proceeding relating to the discipline, admission or reinstatement of the person preparing the return or report.]

(1) The Department of Revenue may provide to the Oregon State Bar the name and address of any person admitted to practice law in this state if the department has reasonable grounds to believe that:

(a) The person admitted to practice law prepared a return or report for another person that is filed with the department and the return or report was prepared in violation of any provision of ORS 9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted thereunder;

(b) The person admitted to practice law failed to file a required return, the person has not filed an appeal contesting the tax with the department by the filing deadline and the department has been unable to obtain payment of the tax through other methods of collection;

(c) The person admitted to practice law failed to withhold or remit personal income taxes on behalf of an employee of an entity, the person has been held liable for the failure under ORS 316.207, the person has not filed an appeal contesting the tax with the department by the filing deadline and the department has been unable to obtain payment of the tax through other methods of collection; or

(d) The person admitted to practice law failed to withhold or remit personal income taxes on behalf of an employee of an entity in which the person has a direct ownership interest, the person has not filed an appeal contesting the tax with the department by the filing deadline and the department has been unable to obtain payment of the tax through other methods of collection.

(2) If the department provides the name and address of a person admitted to practice law under subsection (1) of this section, the department shall also provide to the bar a statement of the basis of the department's belief that a violation may have occurred.

(3) If the department provides the name and address of a person admitted to practice law under subsection (1) of this section with regard to a return or report prepared for a person other than the person admitted to practice law, or with regard to a failure to withhold and remit personal income taxes withheld, the department may also provide to the bar the name and address of the taxpayer.

(4) The bar and any person or board described in ORS 9.537 (2) shall use the names, addresses and other information provided under this section solely in the enforcement of ORS 9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted thereunder. Information disclosed by the department pursuant to this section may be used in any bar proceeding relating to discipline or admission or reinstatement of any person to the bar.

(5) Information disclosed by the department pursuant to this section is confidential and not subject to disclosure by the bar unless the state professional responsibility board appointed under ORS 9.532 has found probable cause of a rule violation or the matter investigated is finally resolved by disciplinary board action, a diversion or agreement or an order of the Supreme Court.

SECTION 3. ORS 9.675 is amended to read:

9.675. (1) An active member of the Oregon State Bar shall certify annually to the bar whether the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more lawyer trust accounts, the member must disclose the financial institution in which each account is held and the account number for each account. The chief executive officer of the bar shall prescribe a form and due date for the certification and disclosures required by this section.

(2) If a member does not file the [certificate] **certification** and disclosures required by this section [within 30 days after] **by** the due date prescribed under subsection (1) of this section, **the chief executive officer shall give the member written notice of default and prescribe a reasonable time to cure the default.** The chief executive officer shall send [written notice of] the **notice of default** to the member at the member's electronic mail address on file with the bar on the date of the notice **of default.** The chief executive officer shall send the notice **of default** by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a member does not file the [certificate] **certification** and disclosures required by this section within [60 days after the date of the notice] **the time allowed to cure the default as stated in the notice of default,** the person's membership in the bar is automatically suspended. The chief executive officer shall provide the names of all persons suspended under this section to the judges of the circuit courts, the Court of Appeals and the Oregon Tax Court.

(3) A person suspended under this section may be reinstated to membership in the bar only if the person pays all required fees and contributions and complies with all rules of procedure and rules of the Supreme Court relating to reinstatement.

SECTION 4. ORS 9.080 is amended to read:

9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.136 to 9.155. [The board is charged with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It] **The state bar** has the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law. **The board is charged with the executive functions of the state bar and shall at all times direct its power to serve the public interest by:**

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

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

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

(C) The board has the authority to establish definitions of coverage to be provided by the professional liability fund and to retain or employ legal counsel to represent the fund and defend and control the defense against any covered claim made against the member.

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

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

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

(c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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

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

SECTION 5. Section 6 of this 2019 Act is added to and made a part of ORS 9.005 to 9.757.

SECTION 6. Nothing in ORS 9.005 to 9.757 affects the inherent authority of the Supreme Court to adopt rules for the operation of the courts, including any rules relating to the regulation of the practice of law, that are deemed necessary by the court.

SECTION 7. Section 6 of this 2019 Act and the amendments to ORS 9.080 by section 4 of this 2019 Act become operative on January 1, 2020.

SECTION 8. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Passed by Senate April 2, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 22, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State