

A-Engrossed
Senate Bill 358

Ordered by the Senate March 29
Including Senate Amendments dated March 29

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Board of Governors of the Oregon State Bar)

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.

Removes provisions prohibiting Oregon State Bar from charging membership fees to members admitted to practice law for 50 years or more.

Modifies provisions relating to information provided to bar by Department of Revenue. Provides that investigatory information developed or obtained by bar from department is confidential except in certain circumstances.

Modifies provisions regarding submission of certification and disclosures for lawyer trust accounts.

Modifies provisions regarding board of governors of bar.

Clarifies that statutes relating to bar do not affect authority of Supreme Court to adopt rules for operation of courts.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to regulation of lawyers; creating new provisions; amending ORS 9.080, 9.191, 9.565 and
3 9.675; and prescribing an effective date.

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

5 **SECTION 1.** ORS 9.191 is amended to read:

6 9.191. (1) Except as provided in subsection (2) of this section, the annual membership fees to be
7 paid by members of the Oregon State Bar shall be established by the Board of Governors of the
8 Oregon State Bar, and each year notice of the proposed fees for the coming year shall be published
9 and distributed to the membership not later than 20 days before the annual meeting of the house
10 of delegates. Any increase in annual membership fees over the amount established for the preceding
11 year must be approved by a majority of delegates of the house of delegates voting thereon at the
12 annual meeting of the house of delegates. The board shall establish the date by which annual mem-
13 bership fees must be paid.

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

19 (3) In establishing annual membership fees, the board shall consider and be guided by the an-
20 ticipated financial needs of the state bar for the year for which the fees are established, time periods
21 of membership and active or inactive status of members. Annual membership fees may include any
22 amount assessed under any plan for professional liability insurance for active members engaged in

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 the private practice of law whose principal offices are in Oregon as provided in ORS 9.080 (2). [The
 2 board may not require that a member who has been admitted to practice law in Oregon for 50 years
 3 or more pay membership fees, assessments or any amount under ORS 9.645, except that the member
 4 shall be required to pay any amount assessed under any plan for professional liability insurance if the
 5 member is engaged in the private practice of law and the member's principal office is in Oregon.]

6 **SECTION 2.** ORS 9.565 is amended to read:

7 9.565. [The Department of Revenue may furnish to the Oregon State Bar the name and address,
 8 if known, of any person admitted to practice law in this state who prepares a return or report permitted
 9 or required to be filed with the department for another, and may also furnish to the bar the name and
 10 address of the taxpayer, in instances where the department has reasonable grounds to believe the per-
 11 son preparing the return or report prepared it in violation of any provision of ORS 9.460 to 9.542 or
 12 9.705 to 9.757 or the disciplinary rules adopted thereunder. The department shall provide a statement
 13 of the basis for its belief that a violation may have occurred. The bar and any person or board de-
 14 scribed in ORS 9.537 (2), shall use the names, addresses and information furnished under this section
 15 solely in the enforcement of ORS 9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted
 16 thereunder. Any information disclosed by the department pursuant to this section may be used in any
 17 bar proceeding relating to the discipline, admission or reinstatement of the person preparing the return
 18 or report.]

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

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

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

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

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

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

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

1 (4) **The bar and any person or board described in ORS 9.537 (2) shall use the names, ad-**
 2 **resses and other information provided under this section solely in the enforcement of ORS**
 3 **9.460 to 9.542 or 9.705 to 9.757 or the disciplinary rules adopted thereunder. Information**
 4 **disclosed by the department pursuant to this section may be used in any bar proceeding re-**
 5 **lating to discipline or admission or reinstatement of any person to the bar.**

6 (5) **Information disclosed by the department pursuant to this section is confidential and**
 7 **not subject to disclosure by the bar unless the state professional responsibility board ap-**
 8 **pointed under ORS 9.532 has found probable cause of a rule violation or the matter investi-**
 9 **gated is finally resolved by disciplinary board action, a diversion or agreement or an order**
 10 **of the Supreme Court.**

11 **SECTION 3.** ORS 9.675 is amended to read:

12 9.675. (1) An active member of the Oregon State Bar shall certify annually to the bar whether
 13 the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more
 14 lawyer trust accounts, the member must disclose the financial institution in which each account is
 15 held and the account number for each account. The chief executive officer of the bar shall prescribe
 16 a form and due date for the certification and disclosures required by this section.

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

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

32 **SECTION 4.** ORS 9.080 is amended to read:

33 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS
 34 9.136 to 9.155. [*The board is charged with the executive functions of the state bar and shall at all times*
 35 *direct its power to the advancement of the science of jurisprudence and the improvement of the admin-*
 36 *istration of justice. It]* **The state bar** has the authority to adopt, alter, amend and repeal bylaws and
 37 to adopt new bylaws containing provisions for the regulation and management of the affairs of the
 38 state bar not inconsistent with law. **The board is charged with the executive functions of the**
 39 **state bar and shall at all times direct its power to serve the public interest by:**

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

43 (2)(a)(A) The board has the authority to require all active members of the state bar engaged in
 44 the private practice of law whose principal offices are in Oregon to carry professional liability in-
 45 surance and is empowered, either by itself or in conjunction with other bar organizations, to do

1 whatever is necessary and convenient to implement this provision, including the authority to own,
2 organize and sponsor any insurance organization authorized under the laws of the State of Oregon
3 and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active mem-
4 bers of the state bar engaged in the private practice of law whose principal offices are in Oregon,
5 all sums as may be provided under such plan which any such member shall become legally obligated
6 to pay as money damages because of any claim made against such member as a result of any act
7 or omission of such member in rendering or failing to render professional services for others in the
8 member's capacity as an attorney or caused by any other person for whose acts or omissions the
9 member is legally responsible.

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

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

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

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

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

30 (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is
31 considered to be the location where the attorney engages in the private practice of law more than
32 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside
33 Oregon and the main office to which the branch office is connected is in Oregon, the principal office
34 of the attorney is not considered to be in Oregon unless the attorney engages in the private practice
35 of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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

40 (4) Except as provided in this subsection, an employee of the state bar shall not be considered
41 an "employee" as the term is defined in the public employees' retirement laws. However, an em-
42 ployee of the state bar may, at the option of the employee, for the purpose of becoming a member
43 of the Public Employees Retirement System, be considered an "employee" as the term is defined in
44 the public employees' retirement laws. The option, once exercised by written notification directed
45 to the Public Employees Retirement Board, may not be revoked subsequently, except as may other-

1 wise be provided by law. Upon receipt of such notification by the Public Employees Retirement
2 Board, an employee of the state bar who would otherwise, but for the exemption provided in this
3 subsection, be considered an “employee,” as the term is defined in the public employees’ retirement
4 laws, shall be so considered. The state bar and its employees shall be exempt from the provisions
5 of the State Personnel Relations Law. No member of the state bar shall be considered an
6 “employee” as the term is defined in the public employees’ retirement laws, the unemployment
7 compensation laws and the State Personnel Relations Law solely by reason of membership in the
8 state bar.

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

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

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

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

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