

Senate Bill 381

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 **as introduced**.

Directs Board of Governors of Oregon State Bar to establish position on board for active member of bar who maintains principal office outside State of Oregon.

Authorizes board to establish due date for making contributions to professional liability fund.

Modifies provisions relating to attorneys in default in payment of membership fees or contributions to professional liability fund. Eliminates fixed timeline for notice of default and authorizes board to set reasonable time for attorney to cure default before automatic suspension.

Modifies appointment process for board of bar examiners of Oregon State Bar. Directs board of governors to nominate individuals for appointment to board of bar examiners by Supreme Court and formulate rules for carrying out functions of board of bar examiners.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon State Bar; creating new provisions; amending ORS 9.025, 9.080, 9.136, 9.145,
3 9.200 and 9.210; and declaring an emergency.

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

BOARD OF GOVERNORS

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6
7
8 **SECTION 1.** ORS 9.025 is amended to read:

9 9.025. (1)(a) The Oregon State Bar shall be governed by a board of governors consisting of [18]
10 **19** members[.]:

11 (A) Fourteen of the members shall be active members of the Oregon State Bar[, *who at the time*
12 *of appointment, at the time of filing a statement of candidacy, at the time of election, and during the*
13 *full term for which the member was appointed or elected, maintain the principal office of law practice*
14 *in the region of this state in which the active members of the Oregon State Bar eligible to vote in the*
15 *election at which the member was elected maintain their principal offices.*] **elected from the regions**
16 **established under subsection (2)(a) of this section. A member elected under this subpara-**
17 **graph must maintain the member's principal office in the region for which the member seeks**
18 **election throughout the member's candidacy and term of office.**

19 (B) **One member shall be an active member of the Oregon State Bar elected from the**
20 **region established under subsection (2)(b) of this section. The member elected under this**
21 **subparagraph must maintain the member's principal office in the region established under**
22 **subsection (2)(b) of this section throughout the member's candidacy and term of office.**

23 (C) Four of the members shall be appointed by the board of governors from among the public.
24 [They shall] **The public members must** be residents of this state **throughout their terms of office**
25 and may not be active or inactive members of the Oregon State Bar.

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 (b) A person charged with official duties under the executive and legislative departments of
 2 state government, including but not limited to elected officers of state government, may not serve
 3 on the board of governors. Any other person in the executive or legislative department of state
 4 government who is otherwise qualified may serve on the board of governors.

5 (2) The board of governors shall **establish regions for the purpose of electing board mem-**
 6 **bers as follows:**

7 (a) **The board shall** divide the State of Oregon into regions for the purpose of [*determining el-*
 8 *igibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board*
 9 *of governors, and eligibility to vote in board of governors elections. The regions shall*] **electing board**
 10 **members described in subsection (1)(a)(A) of this section. Regions established under this**
 11 **paragraph must** be based on the number of attorneys who have their principal offices in the region.
 12 To the extent that it is reasonably possible, [*the regions shall*] **regions established under this**
 13 **paragraph must** be configured by the board so that the representation of board members to attor-
 14 ney population in each region is equal to the representation provided in other regions. At least once
 15 every 10 years the board shall review the number of attorneys in the regions and shall alter or add
 16 regions as the board determines is appropriate in seeking to attain the goal of equal representation.

17 (b) **The board shall establish one region composed of all areas not located in the State**
 18 **of Oregon for the purpose of electing the board member described in subsection (1)(a)(B) of**
 19 **this section.**

20 (3) Members of the board of governors may be elected only by the active members of the Oregon
 21 State Bar who maintain their principal offices in the regions established by the board **under sub-**
 22 **section (2) of this section.** The regular term of a member of the board is four years. The board
 23 may establish special terms for positions that are shorter than four years for the purpose of stag-
 24 gering the terms of members of the board. The board must identify a position with a special term
 25 before accepting statements of candidacy for the region in which the position is located. The board
 26 shall establish rules for determining which of the elected members for a region is assigned to the
 27 position with a special term.

28 (4) [*No*] **A** judge of a municipal, state or federal court or any other full-time judicial officer[,
 29 *shall be*] **is not** eligible for appointment or election to the board of governors.

30 (5) The term of any member of the board of governors [*shall terminate*] **terminates** on the date
 31 of the death or resignation of the member[,] or, if the member of the board is required to be a
 32 member of the Oregon State Bar, the term terminates on the date:

33 (a) Of the termination of active membership in the Oregon State Bar for any reason;

34 (b) When the member discontinues to maintain the principal office of law practice in the region
 35 in which it was maintained at the time of the appointment or election of the member; or

36 (c) When the member assumes office as a judge of a municipal, state or federal court, or fills a
 37 full-time judicial office.

38 (6) [*No*] **A** member of the board of governors [*shall be*] **is not** eligible[,] during the **member's**
 39 term of office[,] for service pro tempore as a judge of any municipal, state or federal court.

40 **SECTION 2.** ORS 9.136 is amended to read:

41 9.136. (1) The house of delegates of the Oregon State Bar is created. The house consists of
 42 elected and ex officio voting delegates. All delegates must be active members of the state bar except
 43 for the public members of the board of governors and the public members appointed by the board
 44 pursuant to ORS 9.145.

45 (2) The members of the board of governors of the Oregon State Bar are ex officio voting deleg-

1 ates.

2 (3) The chairperson of each Oregon State Bar section is an ex officio voting delegate.

3 (4) The elected president of each county bar association is an ex officio voting delegate. Not
4 more than one county bar association from each county may be represented by a delegate under this
5 subsection.

6 (5) Elected delegates shall be elected from the regions established by ORS 9.025 [*and an addi-*
7 *tional region composed of all areas not located in this state*]. Only active members of the bar may vote
8 for delegates. A member [*who maintains a principal office in one of the regions established by ORS*
9 *9.025*] may vote for delegates from the region [*where*] **in which** the member maintains the **member's**
10 **principal** office. [*A member who does not maintain a principal office in this state but who has an*
11 *address on file with the bar may vote for delegates from the region composed of all areas not located*
12 *in this state.*]

13 (6) Each region shall elect at least five delegates. If more than 550 active members maintain
14 their principal offices in the region, the members shall elect delegates as follows:

15 (a) The members shall elect one delegate for each 100 members who maintain their principal
16 offices in the region.

17 (b) The members shall elect one additional delegate if more than 50 members who maintain their
18 principal offices in the region are not accounted for after the allocation provided for in paragraph
19 (a) of this subsection.

20 (7) Elected delegates shall serve for terms of three years. A vacancy in the office of an elected
21 delegate shall be filled for the remainder of the term by a delegate appointed by the board of gov-
22 ernors.

23 (8) An elected delegate may not serve as a member of the board of governors, as a section
24 chairperson or as a county bar association president during the delegate's term.

25 (9) For the purposes of this section, "county bar association" means a general purpose bar as-
26 sociation established by the lawyers of one or more counties for the purpose of maintaining good
27 professional relations between members of the bench and of the bar in the county or counties, and
28 for the purpose of improving the administration of justice in the county or counties.

29 **SECTION 3.** ORS 9.145 is amended to read:

30 9.145. The board of governors shall appoint a public member delegate for each region **in the**
31 **State of Oregon** established by ORS 9.025 **(2)(a)**. A public member delegate shall serve a three-year
32 term. A vacant public member delegate position shall be filled for the remainder of the term by a
33 delegate appointed by the board of governors. The appointment of public member delegates shall be
34 made by the board before the time set for the election of delegates under ORS 9.152. The term of
35 a public member delegate shall commence on the same date that the term of an elected delegate
36 commences.

37
38 **MEMBERSHIP FEES AND CONTRIBUTIONS TO PROFESSIONAL LIABILITY FUND**

39
40 **SECTION 4.** ORS 9.080 is amended to read:

41 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS
42 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all
43 times direct its power to the advancement of the science of jurisprudence and the improvement of
44 the administration of justice. It [*shall have*] **has** the authority to adopt, alter, amend and repeal by-
45 laws and to adopt new bylaws containing provisions for the regulation and management of the af-

1 fairs of the state bar not inconsistent with law.

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

14 (B) The board [*shall have*] **has** the authority to assess each active member of the state bar en-
15 gaged in the private practice of law whose principal office is in Oregon for contributions to [*such*]
16 **the professional liability** fund[,] **and to establish the date by which contributions must be**
17 **made.**

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

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

27 (E) Records of a claim against the **professional liability** fund are exempt from disclosure under
28 ORS 192.410 to 192.505.

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

35 (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is
36 considered to be the location where the attorney engages in the private practice of law more than
37 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside
38 Oregon and the main office to which the branch office is connected is in Oregon, the principal office
39 of the attorney is not considered to be in Oregon unless the attorney engages in the private practice
40 of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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

45 (4) Except as provided in this subsection, an employee of the state bar shall not be considered

1 an “employee” as the term is defined in the public employees’ retirement laws. However, an em-
 2 ployee of the state bar may, at the option of the employee, for the purpose of becoming a member
 3 of the Public Employees Retirement System, be considered an “employee” as the term is defined in
 4 the public employees’ retirement laws. The option, once exercised by written notification directed
 5 to the Public Employees Retirement Board, may not be revoked subsequently, except as may other-
 6 wise be provided by law. Upon receipt of such notification by the Public Employees Retirement
 7 Board, an employee of the state bar who would otherwise, but for the exemption provided in this
 8 subsection, be considered an “employee,” as the term is defined in the public employees’ retirement
 9 laws, shall be so considered. The state bar and its employees shall be exempt from the provisions
 10 of the State Personnel Relations Law. No member of the state bar shall be considered an
 11 “employee” as the term is defined in the public employees’ retirement laws, the unemployment
 12 compensation laws and the State Personnel Relations Law solely by reason of membership in the
 13 state bar.

14 **SECTION 5.** ORS 9.200 is amended to read:

15 9.200. (1) Any member in default in payment of membership fees established under ORS 9.191 (1)
 16 [*for a period of 30 days, or any person in default in payment of membership fees established under*
 17 *ORS 9.191 (2) for a period of 30 days after admission or as otherwise provided by the board,*] or any
 18 member in default in payment of assessed contributions to a professional liability fund **established**
 19 under ORS 9.080 (2) [*for a period of 30 days, shall, after 60 days’ written notice of the delinquency,*
 20 *be suspended from membership in the bar*] **shall be given written notice of delinquency and a**
 21 **reasonable time to cure the default.** The executive director of the Oregon State Bar shall send
 22 the notice of delinquency to the [*delinquent*] member at the member’s electronic mail address on file
 23 with the bar on the date of the notice. The executive director shall send the notice by mail to any
 24 member who is not required to have an electronic mail address on file with the bar under the rules
 25 of procedure. If a [*delinquent*] member fails to pay the fees or contributions within [*60 days after the*
 26 *date of*] **the time allowed to cure the default as stated in** the notice, the member is automatically
 27 suspended. The executive director shall provide the names of all members suspended under this
 28 section to the State Court Administrator and to each of the judges of the Court of Appeals, circuit
 29 and tax courts of the state.

30 (2) An active member delinquent in the payment of fees or contributions is not entitled to vote.

31 (3) A member suspended for delinquency under this section may be reinstated only on compli-
 32 ance with the rules of the Supreme Court and the rules of procedure and payment of all required
 33 fees or contributions.

34 35 **BOARD OF BAR EXAMINERS**

36
37 **SECTION 6.** ORS 9.210 is amended to read:

38 9.210. [*The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar*
 39 *examiners. The Supreme Court shall also appoint two public members to the board who are not active*
 40 *or inactive members of the Oregon State Bar. The board shall examine applicants and recommend to*
 41 *the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law*
 42 *and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and*
 43 *collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the*
 44 *bar.*]

45 (1) **The Board of Governors of the Oregon State Bar shall nominate for appointment by**

1 the Supreme Court a board of bar examiners to examine applicants, investigate their char-
 2 acter and fitness and other qualifications and certify to the Supreme Court for admission to
 3 the Oregon State Bar those applicants who fulfill the requirements prescribed by law and the
 4 rules of the Supreme Court. The composition of the board of bar examiners shall be as pro-
 5 vided in the rules adopted under subsection (2) of this section. The Supreme Court may ap-
 6 point the nominated individuals or may appoint other individuals to the board of bar
 7 examiners.

8 (2) The board of governors shall formulate rules for carrying out the functions of the
 9 board of bar examiners and rules governing the qualifications, requirements and procedures
 10 for admission to the bar by examination and otherwise. After the rules are adopted by the
 11 Supreme Court, the board of governors has the power to enforce the rules.

12 (3) With the approval of the Supreme Court, the board of governors shall fix and collect
 13 fees to be paid by applicants for admission to the bar.

14 (4) Applications for admission and any other materials pertaining to individual applicants
 15 are confidential and may be disclosed only as provided in the rules described in subsection
 16 (2) of this section. The bar's consideration of an individual applicant's qualifications is a ju-
 17 dicial proceeding for purposes of ORS 192.610 to 192.690.

18 SECTION 7. The Board of Governors of the Oregon State Bar shall first nominate and
 19 the Supreme Court shall first appoint the board of bar examiners in accordance with the
 20 amendments to ORS 9.210 by section 6 of this 2015 Act on or before September 1, 2015.

21
 22 **UNIT CAPTIONS**
 23

24 SECTION 8. The unit captions used in this 2015 Act are provided only for the convenience
 25 of the reader and do not become part of the statutory law of this state or express any leg-
 26 islative intent in the enactment of this 2015 Act.

27
 28 **EMERGENCY CLAUSE**
 29

30 SECTION 9. This 2015 Act being necessary for the immediate preservation of the public
 31 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
 32 on its passage.
 33