

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 358**

1 On page 1 of the printed bill, line 2, after “lawyers;” delete the rest of the
2 line and insert “creating new provisions; amending ORS 9.080, 9.191, 9.565
3 and 9.675; and prescribing an effective”.

4 On page 2, line 17, delete “any” and insert “another”.

5 In line 19, delete the third “or”.

6 Delete lines 20 and 21 and insert:

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

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

17 “(d) The person admitted to practice law failed to withhold or remit per-
18 sonal income taxes on behalf of an employee of an entity in which the person
19 has a direct ownership interest, the person has not filed an appeal contesting
20 the tax with the department by the filing deadline and the department has
21 been unable to obtain payment of the tax through other methods of col-

1 lection.”.

2 In line 24, after “violation” delete the rest of the line.

3 In line 25, delete “or report”.

4 Delete lines 26 through 29 and insert:

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

11 On page 3, after line 15, insert:

12 **“SECTION 4.** ORS 9.080 is amended to read:

13 “9.080. (1) The state bar shall be governed by the board of governors, ex-
14 cept as provided in ORS 9.136 to 9.155. [*The board is charged with the exec-*
15 *utive functions of the state bar and shall at all times direct its power to the*
16 *advancement of the science of jurisprudence and the improvement of the ad-*
17 *ministration of justice. It]* **The state bar** has the authority to adopt, alter,
18 amend and repeal bylaws and to adopt new bylaws containing provisions for
19 the regulation and management of the affairs of the state bar not inconsis-
20 tent with law. **The board is charged with the executive functions of the**
21 **state bar and shall at all times direct its power to serve the public**
22 **interest by:**

23 **“(a) Regulating the legal profession and improving the quality of**
24 **legal services;**

25 **“(b) Supporting the judiciary and improving the administration of**
26 **justice; and**

27 **“(c) Advancing a fair, inclusive and accessible justice system.**

28 “(2)(a)(A) The board has the authority to require all active members of
29 the state bar engaged in the private practice of law whose principal offices
30 are in Oregon to carry professional liability insurance and is empowered,

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

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

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

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

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

30 “(b) For purposes of paragraph (a) of this subsection, an attorney is not

1 engaged in the private practice of law if the attorney is a full-time employee
2 of a corporation other than a corporation incorporated under ORS chapter
3 58, the state, an agency or department thereof, a county, city, special district
4 or any other public or municipal corporation or any instrumentality thereof.
5 However, an attorney who practices law outside of the attorney's full-time
6 employment is engaged in the private practice of law.

7 “(c) For the purposes of paragraph (a) of this subsection, the principal
8 office of an attorney is considered to be the location where the attorney
9 engages in the private practice of law more than 50 percent of the time en-
10 gaged in that practice. In the case of an attorney in a branch office outside
11 Oregon and the main office to which the branch office is connected is in
12 Oregon, the principal office of the attorney is not considered to be in Oregon
13 unless the attorney engages in the private practice of law in Oregon more
14 than 50 percent of the time engaged in the private practice of law.

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

20 “(4) Except as provided in this subsection, an employee of the state bar
21 shall not be considered an ‘employee’ as the term is defined in the public
22 employees’ retirement laws. However, an employee of the state bar may, at
23 the option of the employee, for the purpose of becoming a member of the
24 Public Employees Retirement System, be considered an ‘employee’ as the
25 term is defined in the public employees’ retirement laws. The option, once
26 exercised by written notification directed to the Public Employees Retire-
27 ment Board, may not be revoked subsequently, except as may otherwise be
28 provided by law. Upon receipt of such notification by the Public Employees
29 Retirement Board, an employee of the state bar who would otherwise, but for
30 the exemption provided in this subsection, be considered an ‘employee,’ as

1 the term is defined in the public employees' retirement laws, shall be so
2 considered. The state bar and its employees shall be exempt from the pro-
3 visions of the State Personnel Relations Law. No member of the state bar
4 shall be considered an 'employee' as the term is defined in the public
5 employees' retirement laws, the unemployment compensation laws and the
6 State Personnel Relations Law solely by reason of membership in the state
7 bar.

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

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

14 **“SECTION 7. Section 6 of this 2019 Act and the amendments to ORS**
15 **9.080 by section 4 of this 2019 Act become operative on January 1,**
16 **2020.”.**

17 In line 16, delete “4” and insert “8”.

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