

# Senate Bill 179

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## 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**.

Modifies provisions relating to attorneys.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to attorneys; creating new provisions; amending ORS 9.050, 9.080, 9.142, 9.160, 9.241, 9.657,  
3 9.715, 9.725, 9.727, 9.735, 9.750 and 9.755; and declaring an emergency.

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

## BOARD OF GOVERNORS

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7  
8 **SECTION 1.** ORS 9.080 is amended to read:

9 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS  
10 9.136 to 9.155. The state bar has the authority to adopt, alter, amend and repeal bylaws and to adopt  
11 new bylaws containing provisions for the regulation and management of the affairs of the state bar  
12 not inconsistent with law. **Bylaws adopted by the board of governors are subject to review and**  
13 **approval by the Supreme Court. The board has authority to adopt bar policies not incon-**  
14 **sistent with the bylaws.** The board is charged with the executive functions of the state bar and  
15 shall at all times direct its power to serve the public interest by:

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

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

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

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

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

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

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

21 (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is  
22 considered to be the location where the attorney engages in the private practice of law more than  
23 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside  
24 Oregon and the main office to which the branch office is connected is in Oregon, the principal office  
25 of the attorney is not considered to be in Oregon unless the attorney engages in the private practice  
26 of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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

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

45

**CLIENT SECURITY FUND**

**SECTION 2.** ORS 9.657 is amended to read:

9.657. (1) Any person who has made a claim with the client security fund committee of the bar concerning a loss allegedly caused by the intentional dishonest conduct of the person's lawyer, or who has given information to the bar relative to a [*proposed or pending*] client security fund claim **or award** shall be absolutely immune from civil liability for such acts.

(2) The Oregon State Bar, its officers, the members of the client security fund committee, the board of governors, bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to [*proposed or pending*] client security fund claims **or awards**.

**CUSTODIANSHIP**

**SECTION 3.** ORS 9.715 is amended to read:

9.715. (1) When the Oregon State Bar **or an attorney** determines that one of the circumstances listed in ORS 9.710 exists, the bar **or the attorney** may petition the court ex parte to take immediate jurisdiction over the affected attorney's law practice as provided in ORS 9.705 to 9.757.

**(2) When an attorney files a petition under subsection (1) of this section, the attorney shall provide notice to the Oregon State Bar.**

**SECTION 4.** ORS 9.725 is amended to read:

9.725. (1) If the court assumes jurisdiction under ORS 9.705 to 9.757, it shall appoint the Oregon State Bar **or, if the bar declines the appointment, another attorney**, to act as custodian of the law practice of the affected attorney. Immediately upon appointment, the bar shall take possession and control of all property over which the court assumed jurisdiction. The court may order the bar **or the appointed attorney** to do one or more of the following:

(a) Examine the files and records of the law practice and obtain information as to any pending matters which may require attention;

(b) Notify persons and entities who appear to be clients of the affected attorney that the court has assumed jurisdiction and inform such persons that it may be in their best interest to obtain other legal counsel;

(c) Apply for extensions of time pending employment of other counsel by the client;

(d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;

(e) Give notice to appropriate persons and entities who may be affected, other than clients, that the court has assumed jurisdiction;

(f) Arrange for the surrender or delivery of clients' papers or property; and

(g) Do such other acts as the court may direct to carry out the purposes of ORS 9.705 to 9.757.

(2) The court has jurisdiction over that portion of the files, records and property of the affected attorney for the purposes of ORS 9.705 to 9.757 as established in the order, and may make all orders necessary or appropriate to protect the interest of the affected attorney, the clients of the affected attorney and the public.

(3) Any financial institution holding funds in a lawyer trust account of the affected lawyer shall release the funds to the bar **or the appointed attorney** upon presentment of a copy of the order appointing the [*bar as*] custodian. The bar **or the appointed attorney** shall determine the ownership

1 of the funds in the lawyer trust account and distribute the funds as directed by the interested client.  
2 Any funds for which ownership cannot be determined or for whom the owner cannot be located shall  
3 be turned over to the bar **or the appointed attorney** as provided in ORS 98.302 to 98.436.

4 (4) *[The bar may not be required to pay]* **The court may not charge** a filing fee for filing a  
5 petition under ORS 9.715.

6 **SECTION 5.** ORS 9.727 is amended to read:

7 9.727. The Oregon State Bar **or an attorney appointed as custodian of a law practice under**  
8 **ORS 9.725** shall serve a copy of an order appointing the [*bar as*] custodian [*of a law practice under*  
9 *ORS 9.725*] on the affected attorney or any person assisting in the suspension or termination of the  
10 affected attorney's practice. The bar **or appointed attorney** shall serve the copy of the order by  
11 regular mail to the last-known address of the affected attorney in the records of the bar or to a duly  
12 appointed fiduciary at the address provided in an official filing. The affected attorney or assisting  
13 person may, within 10 days of the service, request a hearing to challenge the order. After the  
14 hearing, the court may vacate or modify the custodianship order as the court finds appropriate.

15 **SECTION 6.** ORS 9.735 is amended to read:

16 9.735. The court shall enter a judgment awarding reasonable compensation and expenses to the  
17 Oregon State Bar **or another attorney appointed under ORS 9.725** for acting as custodian under  
18 ORS 9.705 to 9.757. The judgment shall be against the affected attorney or the estate of the affected  
19 attorney. The judgment is a lien upon all nontrust funds, office furnishings, supplies, equipment, li-  
20 brary and other personal property used in the law practice of the affected attorney retroactive to  
21 the date of filing of the petition for jurisdiction under ORS 9.705 to 9.757. The judgment lien takes  
22 priority over all general unsecured creditors, nonpossessory liens and security interests that were  
23 unperfected on the date the court assumed jurisdiction, and may be foreclosed as provided in ORS  
24 chapter 87.

25 **SECTION 7.** ORS 9.750 is amended to read:

26 9.750. Persons examining the files and records of the law practice of an affected attorney pur-  
27 suant to ORS 9.705 to 9.757 shall preserve the confidentiality of the information relating to the af-  
28 fected attorney's representation of a client and shall make disclosure only to the extent necessary  
29 to carry out the purposes of ORS 9.705 to 9.757. Such disclosure is a disclosure which is reasonably  
30 necessary for the accomplishment of the purpose for which the affected attorney was consulted.  
31 Communications between the Oregon State Bar or its designees **or another attorney appointed**  
32 **as custodian of a law practice under ORS 9.725** and a client of the affected attorney are subject  
33 to the attorney-client privilege to the same extent as it would have applied to communications by  
34 or to the affected attorney.

35 **SECTION 8.** ORS 9.755 is amended to read:

36 9.755. Whenever the purposes of ORS 9.705 to 9.757 have been accomplished with respect to the  
37 law practice of an affected attorney for which the Oregon State Bar **or another attorney** has been  
38 appointed as custodian under ORS 9.725, the bar **or the appointed attorney** shall file with the  
39 court a final report and accounting of all funds and property coming into the possession or control  
40 of the bar **or the appointed attorney** as custodian and a petition for compensation and expenses  
41 of the bar **or the appointed attorney** for acting as custodian. The bar **or the appointed attorney**  
42 shall mail a copy of the report and accounting and a copy of the petition [*of the bar*] for compen-  
43 sation and expenses to all persons upon whom service was made pursuant to ORS 9.727. Upon ap-  
44 proval by the court, an order shall be entered approving the final report and accounting, fixing the  
45 amount of compensation and expenses to be allowed to the bar **or the appointed attorney**, and

1 discharging the bar **or the attorney** from further duties.

2 **SECTION 9. Section 10 of this 2021 Act is added to and made a part of ORS 9.005 to 9.757.**

3 **SECTION 10. A circuit court has jurisdiction to determine who is entitled to property**  
 4 **contained in a lawyer trust account during a probate of a deceased attorney's estate.**

5  
 6 **COURT FACILITATORS**

7  
 8 **SECTION 11.** ORS 9.160 is amended to read:

9 9.160. (1) Except as provided in this section, a person may not practice law in this state, or  
 10 represent that the person is qualified to practice law in this state, unless the person is an active  
 11 member of the Oregon State Bar.

12 (2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in  
 13 person as provided in ORS 9.320.

14 **(3) Any employee or volunteer of the Judicial Department acting with the authorization**  
 15 **and direction of the Chief Justice or a presiding judge of a circuit court to provide assistance**  
 16 **to members of the public with court processes, selecting and completing court forms and**  
 17 **legal information is not engaged in the practice of law in violation of subsection (1) of this**  
 18 **section.**

19 [(3)] (4) An individual licensed under ORS 696.022 acting in the scope of the individual's license  
 20 to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled  
 21 with an option to purchase, lease for a term of one year or longer or rental of real property, is not  
 22 engaged in the practice of law in this state in violation of subsection (1) of this section.

23 [(4)] (5) A title insurer authorized to do business in this state, a title insurance agent licensed  
 24 under the laws of this state or an escrow agent licensed under the laws of this state is not engaged  
 25 in the practice of law in this state in violation of subsection (1) of this section if, for the purposes  
 26 of a transaction in which the insurer or agent provides title insurance or escrow services, the  
 27 insurer or agent:

28 (a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a  
 29 lien, encumbrance or obligation;

30 (b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in  
 31 blanks in any document selected by the principals;

32 (c) Presents to the principals to the transaction for their selection any blank form prescribed  
 33 by statute, rule, ordinance or other law; or

34 (d) Presents to the principals to the transaction for their selection a blank form prepared or  
 35 approved by a lawyer licensed to practice law in this state for one or more of the following:

36 (A) A mortgage.

37 (B) A trust deed.

38 (C) A promissory note.

39 (D) An assignment of a mortgagee's interest under a mortgage.

40 (E) An assignment of a beneficial interest under a trust deed.

41 (F) An assignment of a seller's or buyer's interest under a land sale contract.

42 (G) A power of attorney.

43 (H) A subordination agreement.

44 (I) A memorandum of an instrument that is to be recorded in place of the instrument that is the  
 45 subject of the memorandum.

1 [(5)] (6) In performing the services permitted in subsection [(4)] (5) of this section, a title insurer,  
 2 a title insurance agent or an escrow agent may not draft, select or give advice regarding any real  
 3 estate document if those activities require the exercise of informed or trained discretion.

4 [(6)] (7) The exemption provided by subsection [(4)] (5) of this section does not apply to any acts  
 5 relating to a document or form that are performed by an escrow agent under subsection [(4)(b)]  
 6 (5)(b), (c) or (d) of this section unless the escrow agent provides to the principals to the transaction  
 7 a notice in at least 12-point type as follows:

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8  
 9  
 10 YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT  
 11 CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE  
 12 DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU  
 13 MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN  
 14 ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR  
 15 ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT  
 16 YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

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17  
 18  
 19 [(7)] (8) The exemption provided by subsection [(4)] (5) of this section does not apply to any acts  
 20 relating to a document or form that are performed by an escrow agent under subsection [(4)(b)]  
 21 (5)(b), (c) or (d) of this section for a real estate sale and purchase transaction in which all or part  
 22 of the purchase price consists of deferred payments by the buyer to the seller unless the escrow  
 23 agent provides to the principals to the transaction:

- 24 (a) A copy of any proposed instrument of conveyance between the buyer and seller to be used  
 25 in the transaction;
- 26 (b) A copy of any proposed deferred payment security instrument between the buyer and seller  
 27 to be used in the transaction; and
- 28 (c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer  
 29 and seller to be used in the transaction.

30 [(8)] (9) The notice and copies of documents that must be provided under subsections [(6) and  
 31 (7)] (7) and (8) of this section must be delivered in the manner most likely to ensure receipt by the  
 32 principals to the transaction at least three days before completion of the transaction. If copies of  
 33 documents have been provided under subsection [(7)] (8) of this section and are subsequently  
 34 amended, copies of the amended documents must be provided before completion of the transaction.

35 [(9)] (10) Failure of any person to comply with the requirements of subsections [(3) to (8)] (4)  
 36 to (9) of this section does not affect the validity of any transaction and may not be used as a basis  
 37 to challenge any transaction.

38  
 39 **ELECTRONIC VOTING**

40  
 41 **SECTION 12.** ORS 9.142 is amended to read:

42 9.142. (1) The board of governors shall formulate rules for the conduct of the business of the  
 43 house of delegates. Rules adopted by the board become effective upon the adoption of the rules by  
 44 the house of delegates. The president of the Oregon State Bar may call special meetings of the  
 45 house. The president shall call a special meeting of the house if 25 or more delegates make a written

1 request for a special meeting. A majority of the total number of delegates constitutes a quorum for  
 2 any regular or special meeting of the house.

3 (2) The board of governors shall set a time and place for the annual meeting of the house of  
 4 delegates. At the annual meeting, the board of governors shall submit to the house of delegates re-  
 5 ports of the proceedings by the board since the last meeting of the house, reports of the officers and  
 6 committees of the state bar and recommendations of the board.

7 **(3) The house of delegates may vote through electronic ballot. If electronic ballots are**  
 8 **used at a meeting, the vote of each member must be recorded and published after the**  
 9 **meeting.**

10  
 11 **ASSOCIATE MEMBERSHIP**

12  
 13 **SECTION 13.** ORS 9.241 is amended to read:

14 9.241. (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the ap-  
 15 pearance in judicial and administrative proceedings by attorneys who have not been admitted to  
 16 practice law in this state. Subject to those rules, an attorney who has not been admitted to practice  
 17 law in this state may appear as counsel for a party in an action or proceeding before a court, or  
 18 may appear as counsel for a party in an administrative proceeding, if the attorney is associated with  
 19 an active member of the Oregon State Bar.

20 (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures  
 21 established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this  
 22 state to practice law in Oregon on a temporary basis, including performing transactional or prelitiga-  
 23 tion work.

24 **(3) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to ORS**  
 25 **9.210 to admit individuals with substantial legal education as associate members of the**  
 26 **Oregon State Bar without taking the examination required by ORS 9.210. An individual ad-**  
 27 **mitted as an associate member under this subsection must meet all character and fitness**  
 28 **requirements under ORS 9.220.**

29 [(3)] (4) The Supreme Court may by rule require the payment of a fee by an attorney appearing  
 30 as counsel for a party in an action or proceeding before a court under the provisions of subsection  
 31 (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the  
 32 provisions of this subsection shall be deposited with the Oregon State Bar and are continuously  
 33 appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this  
 34 subsection may be used only for the funding of legal services provided through the Legal Services  
 35 Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the  
 36 administration of the Legal Services Program and in collecting fees imposed under this subsection.

37  
 38 **REMOVAL OF MEMBERS OF BOARD OF GOVERNORS**

39  
 40 **SECTION 14.** ORS 9.050 is amended to read:

41 9.050. (1)(a) On petition signed by 25 percent of the members in any region for the recall of any  
 42 governor elected from that region, the chief executive officer of the Oregon State Bar shall serve  
 43 notice as soon as possible on the governor informing the governor that the petition has been filed.  
 44 If the governor does not resign within 10 days after the date the notice is served, the chief executive  
 45 officer shall distribute ballots to each active member of the bar within the region eligible to vote,

1 submitting the question whether the governor shall be recalled. If a majority of the members voting  
2 at the election vote in favor of the recall, the governor is recalled.

3 [(2)] (b) On the affirmative vote of two-thirds of the entire membership of the board of governors,  
4 the board shall refer the question of the recall of any governor from any region to a vote of the  
5 members of that region. The chief executive officer shall serve notice as soon as possible on the  
6 governor informing the governor that the board has approved a recall election. If the governor does  
7 not resign within 10 days after the notice is served, the chief executive officer shall distribute bal-  
8 lots to each active member of the bar within the region eligible to vote, submitting the question  
9 whether the governor shall be recalled. If a majority of the members voting at the election vote in  
10 favor of the recall, the governor is recalled.

11 [(3)] (c) The board of governors shall approve the ballot and any information submitted to the  
12 members in connection with a recall vote.

13 (2) The board of governors may remove a member of the board on the affirmative vote  
14 of two-thirds of the entire membership of the board. For purposes of a vote under this sub-  
15 section, three-fourths of the total number of members then in office shall constitute a quo-  
16 rum.

17  
18 **RECORDING OF MEETINGS**

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20 **SECTION 15. Section 1 (1)(b), chapter 12, Oregon Laws 2020 (1st special session), does**  
21 **not apply to the Oregon State Bar.**

22  
23 **CAPTIONS**

24  
25 **SECTION 16. The unit captions used in this 2021 Act are provided only for the conven-**  
26 **ience of the reader and do not become part of the statutory law of this state or express any**  
27 **legislative intent in the enactment of this 2021 Act.**

28  
29 **EMERGENCY CLAUSE**

30  
31 **SECTION 17. This 2021 Act being necessary for the immediate preservation of the public**  
32 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
33 **on its passage.**

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