

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JENNIFER YEAGER,

Plaintiff-Appellant,

vs.

CHANCE MONTGOMERY,

Defendant-Respondent.

Douglas County Circuit Court
No. 22CV05877

Case No. A179618

**BRIEF OF *AMICUS CURIAE* OREGON
ASSOCIATION OF DEFENSE COUNSEL**

Appeal from the Judgment entered September 15, 2022
in the Circuit Court for Douglas County
Honorable Robert B. Johnson, Judge

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TABLE OF CONTENTS

INTERESTS OF <i>AMICUS CURIAE</i>	1
QUESTION ON REVIEW	1
SUMMARY OF ARGUMENT	2
ARGUMENT	8
I. Background on HB 4212 (2020) and the Extension of Normal Limitation Periods during the COVID-19 Pandemic.....	8
II. Section 8 of HB 4212 Sets December 31, 2021 as a Firm Sunset Date for the Tolling Provision in Section 7.....	12
CONCLUSION	17
APPENDIX	OADC-Appx
NOTIFICATION OF RELATED CASES	i

TABLE OF AUTHORITIES

Cases

<i>Bennett v. Farmers Ins. Co.</i> , 332 Or 138, 26 P3d 138 (2001)	7
<i>Bond v. Shriners Hosp. for Children</i> , 2021 US Dist LEXIS 71251, 2021 WL 1343058 (D Or Mar 1, 2021)	10
<i>Bruesewitz v. Wyeth, LLC</i> , 562 US 223, 131 S Ct 1068, 179 L Ed 2d 1 (2011).....	6
<i>Bundy v. NuStar GP, LLC</i> , 506 Or App 193, 506 P3d 458 (2022)	6
<i>Newsom v. Greenwood</i> , 4 Or 119 (1871).....	13
<i>Phelps v. Wellpath Mgmt.</i> , 2022 US Dist LEXIS 209394, 2022 WL 17084187 (D Or Nov 18, 2022).....	16
<i>Rennie v. Pozzi</i> , 294 Or 334, 656 P2d 934 (1982).....	2
<i>State ex rel. Rosenblum v. Nisley</i> , 367 Or 78, 473 P3d 46 (2020).....	13
<i>State v. Branch</i> , 362 Or 351, 408 P3d 1035 (2018).....	13
<i>State v. Clemente-Perez</i> , 357 Or 745, 359 P3d 232 (2015).....	13
<i>State v. Gaines</i> , 346 Or 160, 206 P3d 1042 (2009)	12, 13
<i>Stevens v. Bispham</i> , 316 Or 221, 851 P2d 556 (1993).....	2

<i>United States v. Kubrick</i> , 444 US 111, 100 S Ct 352, 62 L Ed 2d 259 (1979).....	2
<i>Whipple v. Howser</i> , 291 Or 475, 632 P2d 782 (1981).....	17

Statutes

Or Laws 2020, ch 12, §§ 1-49.....	8
Or Laws 2020, ch 12, § 2.....	14
Or Laws 2020, ch 12, § 6.....	9
Or Laws 2020, ch 12, § 7.....	3, 5
Or Laws 2020, ch 12, § 7(1)	9
Or Laws 2020, ch 12, § 8.....	3
Or Laws 2020, ch 12, § 8(1)	10
Or Laws 2021, ch 199, § 3.....	11, 12, 13
Or Laws 2021, ch 499, § 1.....	5, 11
ORS 174.020(1)(a).....	12
ORS 174.030	16
ORS 174.070	15, 16

Other Authorities

Black’s Law Dictionary (9 th ed. 2009)	13
Executive Order 20-03 (March 8, 2020)	8
Executive Order 21-15 (June 25, 2021)	11
Executive Order 22-03 (April 1, 2022)	12
HB 4212 (2020), Staff Measure Summary	6
House Bill 4212 (2020).....	<i>passim</i>

SB 296 (2021)	11, 12
SB 296 (2021), Staff Measure Summary	11
SB 813	5, 10, 12
SB 813 (2021), Staff Measure Summary	10
Sutherland, <i>Statutory Construction</i> (7th ed 2021)	7, 14, 16
Written Testimony on SB 296 (2021), Chief Justice Martha Walters (Feb 4, 2021)	7

INTERESTS OF *AMICUS CURIAE*

Amicus curiae Oregon Association of Defense Counsel (“OADC”) is a volunteer, nonprofit association comprised of members of the Oregon State Bar who devote a substantial portion of their practice to civil litigation defense and to representing the interests of businesses and governments in Oregon courts. The mission of OADC is to support the professional development of its members, enhance legal services for the public, advocate for civil defense concerns, and work to protect the civil justice system. OADC submits this *amicus curiae* brief to address the correct interpretation and application of the “sunset provision” that repealed the extension of statutes of limitations for civil claims under section 7 of House Bill (“HB”) 4212 (2020), which was part of a broader set of emergency legislation enacted during the COVID-19 pandemic.

QUESTION ON REVIEW

Whether section 8 of HB 4212 was intended to set December 31, 2021 as the automatic repeal date of section 7, which was the provision extending the normal statutory time limitations for

commencing a civil action, or for giving notice of a civil claim, during the declared state of emergency related to the COVID-19 pandemic.

SUMMARY OF ARGUMENT

Statutes of limitations “define when an action is barred due to the passage of an excessive period of time from the accrual of the cause of action.” *Stevens v. Bispham*, 316 Or 221, 246, 851 P2d 556 (1993) (Unis, J., specially concurring). By setting a reasonable time limit to bring claims, “statutes of limitations are designed to promote stability in the affairs of persons and to avoid the unfairness and burdens inherent in defending stale claims.” *Id.*; see, e.g., *Rennie v. Pozzi*, 294 Or 334, 342, 656 P2d 934 (1982) (statutes of limitations serve to prevent stale claims and “to end the possibility of litigation after a reasonable time”); *United States v. Kubrick*, 444 US 111, 117, 100 S Ct 352, 62 L Ed 2d 259 (1979) (“[s]tatutes of limitations, which are found and approved in all systems of enlightened jurisprudence, represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time” (quotation marks and citation omitted)).

In HB 4212 (2020), the Oregon Legislative Assembly enacted a broad range of emergency measures to respond to the disruptions caused by the COVID-19 pandemic. One of those measures was section 7, which temporarily tolled the normal statutory time limitations for commencing civil actions, or for giving notice of civil claims, until 90 days after the expiration of any declared state of emergency related to COVID-19. OADC-Appx-6, Or Laws 2020, ch 12, § 7. In enacting this emergency tolling measure, the legislature intended from the outset that it would be temporary, and it gave notice of the measure's termination date by including a sunset provision. Specifically, in section 8 of HB 4212, the legislature unambiguously set December 31, 2021 as the automatic repeal date of the tolling of civil statutes of limitations under section 7. OADC-Appx-6, Or Laws 2020, ch 12, § 8. Although it subsequently revisited and made certain other adjustments to section 7 during the summer of 2021—as well as postponed the sunset date in section 8 for another measure related to court deadlines and other procedural issues in judicial proceedings—the legislature never changed the automatic repeal date of December 31, 2021 for section 7.

Contrary to the arguments of plaintiff and *amicus curiae* Oregon Trial Lawyers Association (“OTLA”) in this proceeding, the repeal date of December 31, 2021 in section 8 of HB 4212 is controlling and must be given effect. There is no ambiguity about the meaning of the repeal date in section 8. Nor is there any conflict between the repeal date in section 8 and the terms of the emergency tolling measure in section 7. During the time when it was in effect, section 7 operated to toll the expiration dates of civil statutes of limitations until 90 days after the end of any COVID-19-related state of emergency. By the plain terms of section 8, however, the tolling measure in section 7 terminated and was repealed on December 31, 2021. Although plaintiff argues that this Court should construe section 7 to toll the expiration date of any civil statutes of limitations until 90 days after the repeal date in section 8, there is no support for such an interpretation in the text, context, or history of the measures. Under the clear statutory text of HB 4212, the 90-day tolling period in section 7 is measured from the date after “the declaration [of a COVID-19-related state of emergency] and any extension is no longer in effect”; it is not measured from the date that

section 7 itself is repealed and is no longer in effect. Or Laws 2020, ch 12, § 7 (HB 4212); Or Laws 2021, ch 499, § 1 (SB 813). Plaintiff identifies nothing in the context or history to support any different reading of the plain text.¹

There also is no merit to OTLA’s position that this Court should just ignore the sunset provision in section 8 and extend the tolling measure under section 7 until June 30, 2022 (or 90 days after the April 1, 2022 ending date of the COVID-19-related state of emergency). Although OTLA insists that the legislature could not have intended to sunset the tolling measure in section 7 while a COVID-19-related state of emergency still was in effect, the text, context, and history of section 8 are to the contrary. The legislature knows how to set and adjust sunset dates for temporary legislation, as shown by its choices to delay the sunset date in section 8 for a different measure and to tie other sunset dates directly to the ending date of any COVID-19-related state of emergency. For section 7, the legislature determined to set a firm repeal date of December 31,

¹ OTLA appears to agree with defendant and OADC on this point, with OTLA acknowledging: “HB 4212 Section 7 is clear: it extends the time in which to file until 90 days after the state of emergency.” (OTLA-Bt. at 2.)

2021. OTLA identifies no authority to support the proposition that this Court may disregard a repeal date in a statute.

Moreover, although OTLA claims that the sunset date in section 8 “creates a trap for the unwary” and that it should be disregarded for that reason (OTLA-Br. at 21), that is not correct even if it were somehow permissible to disregard statutory repeal dates on policy grounds. Contrary to OTLA’s position, sunset provisions setting future repeal dates are commonly used as tools to enact temporary legislation. *See, e.g., Bundy v. NuStar GP, LLC*, 506 Or App 193, 203, 506 P3d 458 (2022) (noting legislature initially made measure “temporary through a sunset provision” setting a repeal date); *see also, e.g., Bruesewitz v. Wyeth, LLC*, 562 US 223, 242, 131 S Ct 1068, 179 L Ed 2d 1 (2011) (“Many provisions of federal law ... include sunset provisions.”). The legislative history of both HB 4212 and related subsequent legislation contains no hint of any confusion about the meaning and effect of the repeal date in section 8. *See, e.g.* OADC-Appx-21, HB 4212 (2020), Staff Measure Summary (summarizing section 8 as “[r]epeals provisions December 31, 2021”). Indeed, in requesting a delay of the sunset date in section 8 for a

different measure in 2021, Chief Justice Martha Walters explained to the legislature that “the current pandemic [may] extend beyond December 31, 2021—the date that this bill sunsets” under section 8 and that “[i]f the legislature does not act” to postpone the sunset date, the measure “is repealed on December 31, 2021” notwithstanding the state of the COVID-19 pandemic. Pl-ER-69, Written Testimony on SB 296 (2021), Chief Justice Martha Walters (Feb. 4, 2021). Neither OTLA nor plaintiff point to any evidence suggesting that the legislature did not intend the effect of the express repeal provision in section 8. *See* 1A Sutherland, *Statutory Construction* § 23:7 (7th ed 2021) (“The chief value of an express repeal is the fact that it generally leaves no uncertainty whether the statutes or parts of statutes designated have been repealed.”).

Under section 8, the legislature expressly provided for the tolling provision in section 7 to terminate on the firm date of December 31, 2021. Nothing in the text, context, and history supports any different interpretation. This Court should reject plaintiff’s and OTLA’s request to disregard the express repeal date in section 8 as outside of the scope of this Court’s judicial authority. *See*

Bennett v. Farmers Ins. Co., 332 Or 138, 149, 26 P3d 138 (2001) (“the creation of law for reasons of public policy ... is a task assigned to the legislature, not to the courts”).

ARGUMENT

I. Background on HB 4212 (2020) and the Extension of Limitation Periods during the COVID-19 Pandemic

Before addressing plaintiff’s and OTLA’s arguments on the intended meaning and operation of sections 7 and 8 of HB 4212, some additional background is helpful. On June 30, 2020—just three months after then-Governor Kate Brown initially declared a state of emergency related to the COVID-19 pandemic on March 8, 2020—the Oregon legislature enacted HB 4212 to address the unprecedented impacts of the COVID-19 and its health threats on normal governmental and other operations. OADC-Appx-1-19, Or Laws 2020, ch 12, §§ 1-49; *see also* Executive Order 20-03 (March 8, 2020) (initial declaration of state of emergency related to COVID-19). As to judicial proceedings, section 6 provided the Chief Justice with authority to extend or suspend certain court deadlines and to allow remote court appearances, as well as provided authority for presiding judges to extend or postpone the deadlines for certain procedural

events in criminal matters. OADC-Appx-4-6, Or Laws 2020, ch 12, §

6. For civil matters, section 7 tolled normal statutory time limitations for commencing a civil action, or for giving notice of a civil claim, until 90 days after any declaration of a state of emergency related to COVID-19 was no longer in effect. Specifically, section 7(1) of HB 4212 provided:

“If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of that declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, ***the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.***”

OADC-Appx-6, Or Laws 2020, ch 12, § 7(1) (emphasis added).

The emergency measures for judicial proceedings in sections 6 and 7 were designed to be strictly temporary from the outset, with a date certain set for their termination. Specifically, in section 8 of HB 4212, the legislature included a sunset provision setting December 31, 2021 as the automatic repeal date for both sections 6 and 7. OADC-Appx-6, Or Laws 2020, ch 12, § 8(1) (“Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.”).

In the summer of 2021, roughly one year after HB 4212 went into effect, the legislature revisited and adjusted some of the measures in the emergency legislation, including some relating to judicial proceedings set out in sections 6, 7, and 8. To start, after the enactment of HB 4212 in June 2020, there were “conflicting opinions” from federal and state courts about the intended start date for the tolling provision under section 7, with some courts holding that section 7 applied to toll statutes of limitations only after the effective date of HB 4212. OADC-Appx-41, SB 813 (2021), Staff Measure Summary; *see also, e.g., Bond v. Shriners Hosp. for Children*, 2021 US Dist. LEXIS 71251, 2021 WL 1343058, at *9 (D Or Mar 1, 2021) (concluding that “[s]ection 7 did not revive the statute of limitations for civil actions that had already expired prior to June 30, 2020 [the effective date of HB 4212]”). In response to those conflicting judicial decisions, the legislature adopted SB 813 (2021) and amended section 7 to make clear that all civil statutes of limitations were tolled as of March 8, 2020—the date of the initial state of emergency related to COVID-19—rather than only after the

later effective date of HB 4212. OADC-Appx-37, Or Laws 2021, ch 499, § 1.

In addition to clarifying the intended start date of section 7, the legislature also revisited the sunset provision in section 8 of HB 4212 in the summer of 2021. By the end of June 2021, the declared state of emergency related to COVID-19 already had been extended eight times, and a state of emergency still was in effect. *See* Executive Order 21-15 (June 25, 2021) (extending the March 8, 2020 state of emergency for COVID-19 for the eighth time). Recognizing that operational disruptions and health threats from COVID-19 could continue for some time, the legislature added one year to the sunset date in section 8 for the emergency measures on court proceedings adopted in section 6. OADC-Appx-31, Or Laws 2021, ch 199, § 3; *see* OADC-Appx-35, SB 296 (2021), Staff Measure Summary. For the tolling measure for civil statutes of limitations in section 7, however, the legislature elected to retain the existing sunset date of December 31, 2021. *Id.* Specifically, SB 296 (2021) amended section 8 of HB 4212 to prescribe a new sunset date of December 31, 2022 for section 6 only, providing:

“(1) Section 6, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2022.

“(2) Section 7, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2021.”

OADC-Appx-31, Or Laws 2021, ch 199, § 3.

On December 31, 2021—just months after SB 296 and SB 813 went into effect on June 8, 2021 and July 14, 2021 respectively—section 8 of HB 4212 automatically repealed the tolling measure for civil statutes of limitations in section 7. Several months later, on April 1, 2022, then-Governor Brown issued an executive order finally ending the COVID-19-related state of emergency after more than two years of being in effect. Executive Order 22-03 (April 1, 2022).

II. Section 8 of HB 4212 Sets December 31, 2021 as a Firm Sunset Date for the Tolling Provision in Section 7

The meaning and intended operation of the emergency measures in sections 7 and 8 of HB 4212 is a question of statutory interpretation. In construing statutes, this Court’s “paramount goal” is to determine the legislature’s intent. *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009); *see also* ORS 174.020(1)(a). Because the words of a statute in context are the best evidence of the legislature’s intent, this Court gives “primary weight to the text and context” of

the statute. *State ex rel. Rosenblum v. Nisley*, 367 Or 78, 83, 473 P3d 46 (2020). Statutory context includes the historical context of the statute and related statutes. *State v. Clemente-Perez*, 357 Or 745, 766, 359 P3d 232 (2015). Context also includes other statutes enacted in the same bill as the statute at issue. *State v. Branch*, 362 Or 351, 360, 408 P3d 1035 (2018). After examining statutory text and context, this Court reviews legislative history where that history is useful to determining the legislature’s intent. *Gaines*, 346 Or at 172. If the intent remains unclear, this Court applies maxims of statutory construction to determine the meaning. *Id.*

Here, the text of section 8 in HB 4212 plainly states that section 7 “is repealed on December 31, 2021.” OADC-Appx-31, Or Laws 2021, ch 199, § 3. The statutory term “repeal” has a well-established meaning in this context—that is, to rescind or revoke a prior legislative act. *See* Black’s Law Dictionary (9 th ed. 2009) (defining “repeal” as “rescind” or “abrogation of an existing law by legislative act”); *see also, e.g., Newsom v. Greenwood*, 4 Or 119, 121 (1871) (“the effect of repealing a statute is to obliterate the statute repealed as completely as if it had never been passed”); Sutherland §

23:7 (“The repeal of a statute without any reservation takes away all remedies given by the repealed actions and defeats all actions and proceedings pending under it at the time of its repeal.”). Applying the plain meaning of “repeal” to the statutory text, section 8 provides that any tolling of statutes of limitations under section 7 ended completely on December 31, 2021.

The legislative intent for section 8 to set December 31, 2021 as a firm and certain repeal date for section 7 is confirmed by statutory context and history. As defendant correctly points out in his answering brief (at 8), other parts of HB 4212 included sunset provisions directly linking the repeal dates of different measures to the then-unknown ending date of the declared COVID-19 state of emergency, rather than setting a certain sunset date like the one in section 8. *See, e.g.*, OADC-Appx-2, Or Laws 2020, ch 12, § 2 (“Section 1 of this 2020 special session Act is repealed 30 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.”). The legislature also amended other parts of section 7 in 2021—as well as amended section 8 itself to postpone the

sunset date for section 6—but it opted to make no changes to the firm December 31, 2021 sunset date for section 7. Although plaintiff and OTLA posit that the legislature could not have intended to repeal section 7 during the pendency of the COVID-19-related state of emergency, the statutory context and history show that the legislature was well aware of its options for extending sunset provisions, and it elected not to do so for section 7.²

Finally, there is no merit to OTLA’s attempts to reach a different result with maxims of statutory construction. Citing to ORS 174.070, OTLA first argues that section 7 is “curative” and subject to the maxim that “[t]he repeal of a validating or curative Act shall not affect any validation of cure theretofore accomplished.” (OTLA-Br. at 19.) That is not correct. As explained by the Oregon federal district court in rejecting identical arguments to get around the unambiguous repeal of section 7, a “curative act” of legislation refers “to a statute ‘enacted to cure defects in prior law ... because of inadvertence or error in a statute’s original enactment or

² As defendant notes in his answering brief (at 13-17), the Oregon federal district court has issued numerous decisions reaching this same conclusion. The same is true for the Oregon circuit courts. *See, e.g.*, OADC-Appx-42-52 (providing examples).

administration.” *Phelps v. Wellpath Mgmt.*, 2022 US Dist LEXIS 209394, 2022 WL 17084187 (D Or Nov 18, 2022) (quoting 1A Sutherland, § 41:5). As correctly stated by the federal district court, “[s]ection 7(1) of H.B. 4212 temporarily paused the statute of limitations for certain causes of action during a global pandemic—it was not a statute enacted to ‘cure’ a defective prior law...” *Id.* OTLA identifies no authorities supporting its novel interpretation of the meaning of “curative” in ORS 174.070. *Id.*

OTLA’s arguments under ORS 174.030 fare no better. Claiming that sections 7 and 8 are “equally susceptible to two interpretations,” OTLA argues that this Court should adopt a “reading of HB 4212 ... [that] protects a person’s right to a remedy, rather than divests them of it.” (OTLA-Br. at 20.) But, as explained above, plaintiff and OTLA offer no plausible alternative interpretation of the sunset provision in section 7. In adopting the tolling provision in section 7 with a firm repeal date in section 8, the legislature balanced the need to take the extraordinary measure of tolling normal time limitations for commencing civil actions with the need to set a certain and reasonable date for the tolling to end.

Although OTLA may disagree with that legislative choice, this Court lacks authority to disregard a clear repeal date of a statute. *See, e.g., Whipple v. Howser*, 291 Or 475, 480, 632 P2d 782 (1981) (courts “are not at liberty to give effect to any supposed intention or meaning ... unless the words to be imported into the statute are, in substance at least, contained in it”). The repeal date in section 8 is firm and unambiguous, and section 8 must be given effect.

CONCLUSION

Plaintiff and OTLA offer no basis for this Court to disregard the statutory repeal date in section 8 of HB 4212. Any civil action filed after December 31, 2021 did not have the benefit of the tolling provision in section 7.

DATED this 9th day of June, 2023.

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INDEX TO OADC APPENDIX

- (1) House Bill 4212 (2020) OADC-Appx-1
 - (a) HB 4212 Overview and Measure History OADC-Appx-20
 - (b) HB 4212 Staff Measure Summary OADC-Appx-21
- (2) Senate Bill 296 (2021) OADC-Appx-28
 - (a) SB 296 Overview and Measure History OADC-Appx-33
 - (b) SB 296 Staff Measure Summary OADC-Appx-35
- (3) Senate Bill 813 (2021) OADC-Appx-37
 - (a) SB 813 Overview and Measure History OADC-Appx-39
 - (b) SB 813 Staff Measure Summary OADC-Appx-41
- (4) Opinion and Order on Defendant’s Motion to Dismiss
in *Flanders v. WinCo Foods LLC*, Multnomah
County Circuit Court Case No. 22CV11032..... OADC-Appx-42
- (5) Opinion and Order on Defendant’s Motion to Dismiss
in *Mouton v. Tri-Met*, Multnomah County Circuit
Court Case No. 22CV06834 OADC-Appx-47

80th OREGON LEGISLATIVE ASSEMBLY--2020 Special Session

Enrolled House Bill 4212

Sponsored by Representative KOTEK; Representatives KENY-GUYER, LEIF, NERON, NOSSE, PRUSAK, REARDON, SCHOUTEN, SOLLMAN, WILLIAMS (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; creating new provisions; amending ORS 18.784, 93.810, 194.225, 194.290, 194.305, 194.400 and 458.685; and declaring an emergency.

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

LOCAL GOVERNMENT AND SPECIAL GOVERNMENT BODY PUBLIC MEETINGS AND OPERATIONS

SECTION 1. (1) Notwithstanding ORS 192.610 to 192.690, the governing body of a public body may hold all meetings by telephone or video conferencing technology or through some other electronic or virtual means. When a governing body meets using telephone or video conferencing technology, or through other electronic or virtual means, the public body shall make available a method by which the public can listen to or observe the meeting. If a governing body meets using telephone or video conferencing technology, or through other electronic or virtual means:

(a) The public body does not have to provide a physical space for the public to attend the meeting; and

(b) If the telephone or video conferencing technology allows the public body to do so, the public body shall record the meeting and make the recording available to the public. This paragraph does not apply to executive sessions.

(2) If the governing body of the public body elects not to use telephone or video conferencing technology or other electronic or virtual means to conduct meetings, all persons attending meetings held in person must maintain social distancing, including maintaining intervals of six feet or more between individuals, wherever possible.

(3) For any executive session at which the media are permitted to attend, whether conducted in person or using electronic or virtual means, the governing body shall provide a means for media to attend the executive session through telephone or other electronic or virtual means.

(4) Notwithstanding ORS 192.610 to 192.690 or any other applicable law or policy, any public testimony or comment taken during a meeting need not be taken in person if the public body provides an opportunity to submit testimony or comment by telephone or video conferencing technology, or through other electronic or virtual means, or provides a means

of submitting written testimony, including by electronic mail or other electronic methods, and the governing body is able to consider the submitted testimony in a timely manner.

(5) Notwithstanding any requirement that establishes a quorum required for a governing body to act, the minimum number of members of a governing body required for the body to act shall exclude any member unable to attend because of illness due to COVID-19.

(6) If the public health threat underlying the declaration of a state of emergency issued by the Governor on March 8, 2020, or compliance with an executive order issued under ORS 401.165 to 401.236 in connection with that emergency, causes a municipal corporation or council of governments to fail to comply with ORS 294.305 to 294.565 or 294.900 to 294.930, the municipal corporation or council of governments may make reasonable expenditures for continued operations within the existing or most recently adopted budget, provided that any failure to comply with ORS 294.305 to 294.565 or 294.900 to 294.930 is cured as soon as is reasonably practicable.

(7) Notwithstanding ORS 221.770, a city may satisfy the requirements of holding a public hearing under ORS 221.770 (1)(b) and (c) by holding the hearing in accordance with this section and by making certification to the Oregon Department of Administrative Services as soon as is reasonably practicable after the city adopts its budget.

(8) As used in this section:

(a) Terms used in this section have the meanings given those terms in ORS 192.610, except that “public body” excludes the state or any board, department, commission, council, bureau, committee, subcommittee, advisory group or other agency of the state.

(b) “Budget” and “municipal corporation” have the meanings given those terms in ORS 294.311.

(c) “Council of governments” has the meaning given that term in ORS 294.900.

SECTION 2. Section 1 of this 2020 special session Act is repealed 30 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

GARNISHMENT MODIFICATIONS

SECTION 3. ORS 18.784 is amended to read:

18.784. (1) Except as provided in subsection (6) of this section, if a writ of garnishment is delivered to a financial institution that has an account of the debtor, the financial institution shall conduct a garnishment account review of all accounts in the name of the debtor before taking any other action that may affect funds in those accounts. If the financial institution determines from the garnishment account review that one or more payments described in subsection (3) of this section were deposited in an account of the debtor by direct deposit or electronic payment during the lookback period described in subsection (2) of this section, an amount equal to the lesser of the sum of those payments or the total balance in the debtor’s account is not subject to garnishment.

(2)(a) The provisions of this section apply *[only]* to payments described in subsection (3)(a) to (f) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on:

[(a)] (A) The day in the second calendar month preceding the month in which the garnishment account review is conducted, that has the same number as the day on which the period ends; or

[(b)] (B) If there is no day as described in *[paragraph (a) of this subsection,]* **subparagraph (A) of this paragraph**, the last day of the second calendar month preceding the month in which the garnishment account review is conducted.

(b) **The provisions of this section apply to payments described in subsection (3)(g) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on March 8, 2020.**

(3) The provisions of this section apply only to:

(a) Federal benefit payments;

- (b) Payments from a public or private retirement plan as defined in ORS 18.358;
- (c) Public assistance or medical assistance, as defined in ORS 414.025, payments from the State of Oregon or an agency of the State of Oregon;
- (d) Unemployment compensation payments from the State of Oregon or an agency of the State of Oregon;
- (e) Black lung benefits payments from the United States Department of Labor; *[and]*
- (f) Workers' compensation payments from a workers' compensation carrier~~].~~; **and**
- (g) **Recovery rebate payments made under section 2201(a) of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) deposited in an account of the debtor at any time, unless:**

- (A) **The writ of garnishment is issued to collect:**
 - (i) **A judgment in a criminal action that requires the defendant to pay restitution; or**
 - (ii) **A civil judgment against a person who has been convicted of a crime if the civil judgment is based on the same underlying facts as the conviction; and**
- (B) **The writ of garnishment contains the following statement: "This Garnishment Has Been Issued to Collect a Criminal Money Judgment that Awards Restitution or a Civil Judgment Based on a Criminal Offense."**

(4) The provisions of this section apply only to a payment that a financial institution can identify as being one of the types of payments described in subsection (3) of this section from information transmitted to the financial institution by the payor.

(5) A financial institution shall perform a garnishment account review only one time for a specific garnishment. If the same garnishment is served on a financial institution more than once, the financial institution may not perform a garnishment account review or take any other action relating to the garnishment based on the second and subsequent service of the garnishment.

(6) A financial institution may not conduct a garnishment account review under this section if a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment as provided in 31 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached to or included in the garnishment, the financial institution shall proceed on the garnishment as otherwise provided in ORS 18.600 to 18.850.

(7) The provisions of this section do not affect the ability of a debtor to claim any exemption that otherwise may be available to the debtor under law for any amounts in an account in a financial institution.

SECTION 4. ORS 18.784, as amended by section 3 of this 2020 special session Act, is amended to read:

18.784. (1) Except as provided in subsection (6) of this section, if a writ of garnishment is delivered to a financial institution that has an account of the debtor, the financial institution shall conduct a garnishment account review of all accounts in the name of the debtor before taking any other action that may affect funds in those accounts. If the financial institution determines from the garnishment account review that one or more payments described in subsection (3) of this section were deposited in an account of the debtor by direct deposit or electronic payment during the lookback period described in subsection (2) of this section, an amount equal to the lesser of the sum of those payments or the total balance in the debtor's account is not subject to garnishment.

(2)~~[(a)]~~ The provisions of this section apply **only** to payments described in subsection (3)~~[(a) to (f)]~~ of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on:

~~[(A)]~~ (a) The day in the second calendar month preceding the month in which the garnishment account review is conducted, that has the same number as the day on which the period ends; or

~~[(B)]~~ (b) If there is no day as described in ~~[subparagraph (A) of this paragraph,]~~ **paragraph (a) of this subsection**, the last day of the second calendar month preceding the month in which the garnishment account review is conducted.

[(b) The provisions of this section apply to payments described in subsection (3)(g) of this section that are deposited during the lookback period that ends on the day before the day on which the garnishment account review is conducted and begins on March 8, 2020.]

(3) The provisions of this section apply only to:

- (a) Federal benefit payments;
- (b) Payments from a public or private retirement plan as defined in ORS 18.358;
- (c) Public assistance or medical assistance, as defined in ORS 414.025, payments from the State of Oregon or an agency of the State of Oregon;
- (d) Unemployment compensation payments from the State of Oregon or an agency of the State of Oregon;
- (e) Black lung benefits payments from the United States Department of Labor; **and**
- (f) Workers' compensation payments from a workers' compensation carrier[; and].

[(g) Recovery rebate payments made under section 2201(a) of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) deposited in an account of the debtor at any time, unless:]

[(A) The writ of garnishment is issued to collect:]

[(i) A judgment in a criminal action that requires the defendant to pay restitution; or]

[(ii) A civil judgment against a person who has been convicted of a crime if the civil judgment is based on the same underlying facts as the conviction; and]

[(B) The writ of garnishment contains the following statement: "This Garnishment Has Been Issued to Collect a Criminal Money Judgment that Awards Restitution or a Civil Judgment Based on a Criminal Offense."]

(4) The provisions of this section apply only to a payment that a financial institution can identify as being one of the types of payments described in subsection (3) of this section from information transmitted to the financial institution by the payor.

(5) A financial institution shall perform a garnishment account review only one time for a specific garnishment. If the same garnishment is served on a financial institution more than once, the financial institution may not perform a garnishment account review or take any other action relating to the garnishment based on the second and subsequent service of the garnishment.

(6) A financial institution may not conduct a garnishment account review under this section if a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment as provided in 31 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached to or included in the garnishment, the financial institution shall proceed on the garnishment as otherwise provided in ORS 18.600 to 18.850.

(7) The provisions of this section do not affect the ability of a debtor to claim any exemption that otherwise may be available to the debtor under law for any amounts in an account in a financial institution.

SECTION 5. (1) The amendments to ORS 18.784 by section 4 of this 2020 special session Act become operative on September 30, 2020.

(2) The amendments to ORS 18.784 by section 3 of this 2020 special session Act apply to garnishments issued on or before the operative date specified in subsection (1) of this section.

JUDICIAL PROCEEDING EXTENSIONS AND ELECTRONIC APPEARANCES

SECTION 6. (1)(a) Notwithstanding any other statute or rule to the contrary, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, and upon a finding of good cause, the Chief Justice of the Supreme Court may extend or suspend any time period or time requirement established by statute or rule that:

(A) Applies in any case, action or proceeding after the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;

(B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;

(C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

(b) The Chief Justice may extend or suspend a time period or time requirement under this subsection notwithstanding the fact that the date of the time period or time requirement has already passed as of the effective date of this 2020 special session Act.

(2)(a) Notwithstanding ORS 133.060 (1), during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 90 days after the declaration and any extension is no longer in effect, the date specified in a criminal citation on which a person served with the citation shall appear may be more than 30 days after the date the citation was issued.

(b) During the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, the presiding judge of a circuit court may, upon the motion of a party or the court's own motion, and upon a finding of good cause, postpone the date of appearance described in paragraph (a) of this subsection for all proceedings within the jurisdiction of the court.

(3)(a) Notwithstanding ORS 136.290 and 136.295, and subject to paragraph (b) of this subsection, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect, the presiding judge of a circuit court may, upon the motion of a party or its own motion, and upon a finding of good cause, order an extension of custody and postponement of the date of the trial beyond the time limits described in ORS 136.290 and 136.295.

(b) Notwithstanding paragraph (a) of this subsection, for a defendant to whom ORS 136.290 and 136.295 applies, the presiding judge may not extend custody and postpone the defendant's trial date if, as a result, the defendant will be held in custody before trial for more than a total of 180 days, unless the court holds a hearing and proceeds as follows:

(A) If the defendant is charged with a violent felony, the court may deny release upon making the findings described in ORS 135.240 (4), notwithstanding the fact that a court did not previously make such findings; or

(B) If the defendant is charged with a person crime, the court may set a trial date that results in the defendant being held in custody before trial for more than a total of 180 days, but not more than a total of 240 days, if the court:

(i) Determines the extension of custody is based upon good cause due to circumstances caused by the COVID-19 pandemic, public health measures resulting from the COVID-19 pandemic or a situation described in ORS 136.295 (4)(b) caused by or related to COVID-19; and

(ii) Finds, by clear and convincing evidence, that there is a substantial and specific danger of physical injury or sexual victimization to the victim or members of the public by the defendant if the defendant is released, and that no release condition, or combination of release conditions, is available that would sufficiently mitigate the danger.

(c) The result of a hearing held pursuant to this subsection does not affect the ability of a party to request a modification of the release decision under ORS 135.285.

(d) This subsection does not authorize a defendant to be held in custody before trial for a period longer than the maximum term of imprisonment the defendant could receive as a sentence under ORS 161.605 and 161.615.

(e) If the court proceeds under paragraph (b)(B) of this subsection, the defendant shall continue to be eligible for security release and the court may maintain, lower or raise the security amount at the hearing.

(f) As used in this subsection:

(A) "Good cause" means situations described in ORS 136.295 (4)(b), circumstances caused by the COVID-19 pandemic or public health measures resulting from the COVID-19 pandemic.

(B) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(C) "Release decision" has the meaning given that term in ORS 135.230.

(4)(a) Notwithstanding any other statute or rule to the contrary, during the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, and continuing for 90 days after the declaration and any extension is no longer in effect, the Chief Justice may direct or permit any appearance before a court or magistrate to be by telephone, other two-way electronic communication device or simultaneous electronic transmission.

(b) If an appearance is set to occur by electronic means as described in paragraph (a) of this subsection, a presiding judge may instead order that the appearance be in person if, upon the request of a party, the presiding judge determines that there is a particular need for an in-person hearing or that a party has a constitutional right to an in-person hearing.

(5) The Chief Justice may delegate the exercise of any of the powers described in this section to the presiding judge of a court.

(6) Nothing in this section affects the rights of a defendant under the Oregon and United States Constitutions.

SECTION 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

(2) Subsection (1) of this section applies to:

(a) Time periods for commencing an action established in ORS chapter 12;

(b) The time period for commencing an action for wrongful death established in ORS 30.020;

(c) The time period for commencing an action or giving a notice of claim under ORS 30.275; and

(d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute.

(3) Subsection (1) of this section does not apply to:

(a) Time limitations for the commencement of criminal actions;

(b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;

(c) The initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(d) The initiation of any type of case or proceeding in the Supreme Court.

SECTION 8. (1) Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.

(2) The repeal of section 6 of this 2020 special session Act by subsection (1) of this section does not affect the release status of a defendant determined under section 6 (3) of this 2020 special session Act.

EMERGENCY SHELTER

SECTION 9. ORS 446.265 and sections 10 and 11 of this 2020 special session Act are added to and made a part of ORS chapter 197.

SECTION 10. (1) As used in this section and section 11 of this 2020 special session Act, “emergency shelter” means a building that provides shelter on a temporary basis for individuals and families who lack permanent housing.

(2) A building used as an emergency shelter under an approval granted under section 11 of this 2020 special session Act:

(a) May resume its use as an emergency shelter after an interruption or abandonment of that use for two years or less, notwithstanding ORS 215.130 (7).

(b) May not be used for any purpose other than as an emergency shelter except upon application for a permit demonstrating that the construction of the building and its use could be approved under current land use laws and local land use regulations.

SECTION 11. (1) A local government shall approve an application for the development or use of land for an emergency shelter on any property, notwithstanding ORS chapter 195, 197, 215 or 227 or ORS 197A.300 to 197A.325, 197A.405 to 197A.409 or 197A.500 to 197A.521 or any statewide land use planning goal, rule of the Land Conservation and Development Commission, local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:

(a) Includes sleeping and restroom facilities for clients;

(b) Will comply with applicable building codes;

(c) Is located inside an urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

(d) Will not result in the development of a new building that is sited within an area designated under a statewide land use planning goal relating to natural disasters and hazards, including floodplains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

(e) Has adequate transportation access to commercial and medical services; and

(f) Will not pose any unreasonable risk to public health or safety.

(2) An emergency shelter allowed under this section must be operated by:

(a) A local government as defined in ORS 174.116;

(b) An organization with at least two years’ experience operating an emergency shelter using best practices that is:

(A) A local housing authority as defined in ORS 456.375;

(B) A religious corporation as defined in ORS 65.001; or

(C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals and that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code on or before January 1, 2017; or

(c) A nonprofit corporation partnering with any other entity described in this subsection.

(3) An emergency shelter approved under this section:

(a) May provide on-site for its clients and at no cost to the clients:

(A) Showering or bathing;

(B) Storage for personal property;

(C) Laundry facilities;

(D) Service of food prepared on-site or off-site;

(E) Recreation areas for children and pets;

(F) Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or

(G) Any other services incidental to shelter.

(b) May include youth shelters, veterans’ shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.

(4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from

unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

(5) The approval of an emergency shelter under this section is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

SECTION 12. Sections 10 and 11 of this 2020 special session Act are repealed 90 days after the effective date of this 2020 special session Act.

SECTION 12a. The repeal of sections 10 and 11 of this 2020 special session Act by section 12 of this 2020 special session Act does not affect an application for the development of land for an emergency shelter that was completed and submitted before the date of the repeal.

SECTION 13. (1) Notwithstanding ORS 203.082 (2), a political subdivision may allow any person to offer any number of overnight camping spaces on the person's property to homeless individuals who are living in vehicles, without regard to whether the motor vehicle was designed for use as temporary living quarters. A religious institution offering camping space under this section shall also provide campers with access to sanitary facilities, including toilet, handwashing and trash disposal facilities.

(2) A local government may regulate vehicle camping spaces under this section as transitional housing accommodations under ORS 446.265.

SECTION 14. Section 13 of this 2020 special session Act is repealed 90 days after the effective date of this 2020 special session Act.

SECTION 15. Section 16 of this 2020 special session Act is added to and made a part of ORS 458.600 to 458.665.

SECTION 16. (1) As used in this section:

(a) "Low-barrier emergency shelter" means an emergency shelter, as defined in section 10 of this 2020 special session Act, that follows established best practices to deliver shelter services that minimize barriers and increase access to individuals and families experiencing homelessness.

(b) "Navigation center" means a low-barrier emergency shelter that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.

(2) The Oregon Department of Administrative Services may award grants to local governments to:

(a) Plan the location, development or operations of a navigation center;

(b) Construct, purchase or lease a building for use as a navigation center;

(c) Operate a navigation center that has been constructed, purchased or leased under paragraph (b) of this subsection; or

(d) Contract for the performance of activities described in this subsection.

SECTION 17. Section 16 of this 2020 special session Act is repealed on January 2, 2022.

NOTE: Section 18 was deleted by amendment. Subsequent sections were not renumbered.

NOTARIAL ACTS

SECTION 19. Section 20 of this 2020 special session Act is added to and made a part of ORS chapter 194.

SECTION 20. (1) As used in this section:

(a) "Communication technology" means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a visual, hearing or speech impairment.

(b) "Foreign state" means a jurisdiction other than the United States, a state or a federally recognized Indian tribe.

(c) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States.

(e) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual may comply with ORS 194.235 by using communication technology to appear before a notary public.

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(A) Has personal knowledge under ORS 194.240 (1) of the identity of the remotely located individual;

(B) Has satisfactory evidence of the identity of the remotely located individual by a verification on oath or affirmation from a credible witness appearing before and identified by the notary public as a remotely located individual under this section or in the physical presence of the notary public under ORS 194.240 (2); or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(b) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(c) The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and

(d) For a remotely located individual who is located outside the United States:

(A) The record:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or

(ii) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(4) If a notarial act is performed under this section, the certificate of notarial act required by ORS 194.280 and the short form certificate provided in ORS 194.285 must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in ORS 194.285 for a notarial act subject to this section is sufficient if it:

(a) Complies with rules adopted under subsection (8)(a) of this section; or

(b) Is in the form provided in ORS 194.285 and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(6) A notary public, a guardian, conservator, trustee or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subsection (3)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subsection (8)(d) of this section, the recording must be maintained for a period of at least 10 years after the recording is made.

(7) Before a notary public performs the notary public’s initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards

under subsection (8) of this section or ORS 194.360 for approval of communication technology or identity proofing, the communication technology and identity proofing used by the notary public must conform to those standards.

(8) In addition to adopting rules under ORS 194.360, the Secretary of State may adopt rules under this section regarding the performance of a notarial act. The rules may:

(a) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(b) Establish standards for communication technology and identity proofing;

(c) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(d) Establish standards and a period for the retention of an audiovisual recording created under subsection (3)(c) of this section.

(9) Before adopting, amending or repealing a rule governing the performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(b) Standards, practices and customs of other jurisdictions that have laws substantially similar to this section; and

(c) The views of governmental officials and entities and other interested persons.

SECTION 21. ORS 194.225 is amended to read:

194.225. (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either the officer or the officer's spouse has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

SECTION 22. ORS 194.225, as amended by section 21 of this 2020 special session Act, is amended to read:

194.225. (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either the officer or the officer's spouse has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

[(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.]

SECTION 23. ORS 194.290 is amended to read:

194.290. (1) The official stamp of a notary public must:

[(1)] (a) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State by rule; and

[(2)] (b) Be a legible imprint capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(2) The official stamp of a notary public is an official notarial seal for all purposes under the laws of this state.

SECTION 24. ORS 194.290, as amended by section 23 of this 2020 special session Act, is amended to read:

194.290. [(1)] The official stamp of a notary public must:

[(a)] (1) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State by rule; and

[(b)] (2) Be a legible imprint capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

[(2) The official stamp of a notary public is an official notarial seal for all purposes under the laws of this state.]

SECTION 25. ORS 194.305 is amended to read:

194.305. (1) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State, by rule, has established standards pursuant to ORS 194.360 for approval of technology, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

(3) A county clerk may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 26. ORS 194.305, as amended by section 25 of this 2020 special session Act, is amended to read:

194.305. (1) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State, by rule, has established standards pursuant to ORS 194.360 for approval of technology, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

[(3) A county clerk may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.]

SECTION 27. A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act satisfies any requirement that the record be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 28. ORS 93.810 is amended to read:

93.810. The following are subjects of validating or curative Acts applicable to this chapter:

- (1) Evidentiary effect and recordation of conveyances before 1854.
- (2) Evidentiary effect and recordation of certified copies of deeds issued by the State Land Board before 1885 where the original deed was lost.
- (3) Defective acknowledgments of married women to conveyances before 1891.
- (4) Foreign instruments executed before 1903.
- (5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.
- (6) Conveyances by reversioners and remainderpersons to life tenant.
- (7) Decrees or judgments affecting lands in more than one county.
- (8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, personal representatives, administrators, conservators and guardians; vested rights arising by adverse title; recordation.

(9) Defective acknowledgments.

(10) Title to lands from or through aliens.

(11) An instrument that is presented for recording as an electronic image or by electronic means and that is recorded before June 16, 2011.

(12) A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act.

SECTION 29. ORS 93.810, as amended by section 28 of this 2020 special session Act, is amended to read:

93.810. The following are subjects of validating or curative Acts applicable to this chapter:

(1) Evidentiary effect and recordation of conveyances before 1854.

(2) Evidentiary effect and recordation of certified copies of deeds issued by the State Land Board before 1885 where the original deed was lost.

(3) Defective acknowledgments of married women to conveyances before 1891.

(4) Foreign instruments executed before 1903.

(5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.

(6) Conveyances by reversioners and remainderpersons to life tenant.

(7) Decrees or judgments affecting lands in more than one county.

(8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, personal representatives, administrators, conservators and guardians; vested rights arising by adverse title; recordation.

(9) Defective acknowledgments.

(10) Title to lands from or through aliens.

(11) An instrument that is presented for recording as an electronic image or by electronic means and that is recorded before June 16, 2011.

[(12) A tangible copy of an electronic record containing a notarial certificate that is accepted for recording by a county clerk before the effective date of this 2020 special session Act.]

SECTION 30. ORS 194.400 is amended to read:

194.400. (1) The fee that a notary public may charge for performing a notarial act may not exceed \$10 per notarial act, **except that a notary public may charge a fee not to exceed \$25 per notarial act for a notarial act performed under section 20 of this 2020 special session Act.**

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

(a) The notary public explains to the person requesting the notarial act that the fee is in addition to a fee specified in subsection (1) of this section and is in an amount not determined by law; and

(b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display, in English, a list of the fees the notary public will charge.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5) A public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

SECTION 31. ORS 194.400, as amended by section 30 of this 2020 special session Act, is amended to read:

194.400. (1) The fee that a notary public may charge for performing a notarial act may not exceed \$10 per notarial act, *except that a notary public may charge a fee not to exceed \$25 per notarial act for a notarial act performed under section 20 of this 2020 special session Act*.

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

(a) The notary public explains to the person requesting the notarial act that the fee is in addition to a fee specified in subsection (1) of this section and is in an amount not determined by law; and

(b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display, in English, a list of the fees the notary public will charge.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5) A public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

SECTION 32. (1) Sections 19, 20 and 27 of this 2020 special session Act are repealed on June 30, 2021.

(2) The amendments to ORS 93.810, 194.225, 194.290, 194.305 and 194.400 by sections 22, 24, 26, 29 and 31 of this 2020 special session Act become operative on June 30, 2021.

NOTE: Section 33 was deleted by amendment. Subsequent sections were not renumbered.

ENTERPRISE ZONE TERMINATION EXTENSIONS

SECTION 34. Section 35 of this 2020 special session Act is added to and made a part of ORS 285C.050 to 285C.250.

SECTION 35. (1) Notwithstanding ORS 285C.245 (2):

(a) An enterprise zone that would otherwise terminate on June 30, 2020, shall terminate on December 31, 2020.

(b) If this section takes effect after June 30, 2020, the sponsor of an enterprise zone that terminated on June 30, 2020, may rescind the termination and the enterprise zone shall terminate on December 31, 2020.

(2) Notwithstanding ORS 285C.250 (1)(a), the sponsor of an enterprise zone described in subsection (1) of this section may redesignate the enterprise zone under ORS 285C.250 on any date before January 1, 2021. The redesignation may not take effect before December 31, 2020.

(3) All other deadlines that relate to the termination date and redesignation of an enterprise zone described in subsection (1) of this section shall be interpreted as relating to December 31, 2020.

INDIVIDUAL DEVELOPMENT ACCOUNT MODIFICATIONS

SECTION 36. ORS 458.685 is amended to read:

458.685. (1) A person may establish an individual development account only for a purpose approved by a fiduciary organization. Purposes that the fiduciary organization may approve are:

(a) The acquisition of post-secondary education or job training.

(b) If the account holder has established the account for the benefit of a household member who is under the age of 18 years, the payment of extracurricular nontuition expenses designed to prepare the member for post-secondary education or job training.

(c) If the account holder has established a savings network account for higher education under ORS 178.300 to 178.360 on behalf of a designated beneficiary, the funding of qualified higher education expenses as defined in ORS 178.300 by one or more deposits into a savings network account for higher education on behalf of the same designated beneficiary.

(d) The purchase of a primary residence. In addition to payment on the purchase price of the residence, account moneys may be used to pay any usual or reasonable settlement, financing or

other closing costs. The account holder must not have owned or held any interest in a residence during the three years prior to making the purchase. However, this three-year period shall not apply to displaced homemakers, individuals who have lost home ownership as a result of divorce or owners of manufactured homes.

(e) The rental of a primary residence when housing stability is essential to achieve state policy goals. Account moneys may be used for security deposits, first and last months' rent, application fees and other expenses necessary to move into the primary residence, as specified in the account holder's personal development plan for increasing the independence of the person.

(f) The capitalization of a small business. Account moneys may be used for capital, plant, equipment and inventory expenses and to hire employees upon capitalization of the small business, or for working capital pursuant to a business plan. The business plan must have been developed by a financial institution, nonprofit microenterprise program or other qualified agent demonstrating business expertise and have been approved by the fiduciary organization. The business plan must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(g) Improvements, repairs or modifications necessary to make or keep the account holder's primary dwelling habitable, accessible or visitable for the account holder or a household member. This paragraph does not apply to improvements, repairs or modifications made to a rented primary dwelling to achieve or maintain a habitable condition for which ORS 90.320 (1) places responsibility on the landlord. As used in this paragraph, "accessible" and "visitable" have the meanings given those terms in ORS 456.508.

(h) The purchase of equipment, technology or specialized training required to become competitive in obtaining or maintaining employment or to start or maintain a business, as specified in the account holder's personal development plan for increasing the independence of the person.

(i) The purchase or repair of a vehicle, as specified in the account holder's personal development plan for increasing the independence of the person.

(j) The saving of funds for retirement, as specified in the account holder's personal development plan for increasing the independence of the person.

(k) The payment of debts owed for educational or medical purposes when the account holder is saving for another allowable purpose, as specified in the account holder's personal development plan for increasing the independence of the person.

(L) The creation or improvement of a credit score by obtaining a secured loan or a financial product that is designed to improve credit, as specified in the account holder's personal development plan for increasing the independence of the person.

(m) The replacement of a primary residence when replacement offers significant opportunity to improve habitability or energy efficiency.

(n) The establishment of savings for emergency expenses to promote financial stability and to protect existing assets. As used in this paragraph, "emergency expenses" includes expenses for extraordinary medical costs or other unexpected and substantial personal expenses that would significantly impact the account holder's noncash assets, health, housing or standard of living if not promptly addressed.

(2)(a) *[If an emergency occurs,]* An account holder may withdraw all or part of the account holder's deposits to an individual development account for *[a purpose not described in subsection (1) of this section. As used in this paragraph, "emergency" includes making payments for necessary medical expenses, to avoid eviction of the account holder from the account holder's residence and for necessary living expenses following a loss of employment.]* **emergency expenses as defined in subsection (1)(n) of this section, without regard to whether the account was established for emergency savings.**

(b) The account holder must reimburse *[the account]* **an account established for a purpose listed under subsection (1)(a) to (m) of this section** for the amount withdrawn under this subsection *[within 12 months after the date of the withdrawal. Failure of an account holder to make a timely reimbursement to the account is grounds for removing the account holder from the individual*

development account program]. Until the reimbursement has been made in full, an account holder may not withdraw any matching deposits or accrued interest on matching deposits from the account **except under this subsection.**

(3) If an account holder withdraws moneys from an individual development account for other than an approved purpose, the fiduciary organization may remove the account holder from the program.

(4)(a) If the account holder of an account established for the purpose set forth in subsection (1)(c) or (j) of this section has achieved the account's approved purpose in accordance with the personal development plan developed by the account holder under ORS 458.680, the account holder may withdraw, or authorize the withdrawal of, the remaining amount of all deposits, including matching deposits, and interest in the account as follows:

(A) For an account established for the purpose set forth in subsection (1)(c) of this section, by rolling over the entire withdrawal amount, not to exceed the limit established pursuant to ORS 178.335, into one or more of the savings network accounts for higher education under ORS 178.300 to 178.360, the establishment of which is the purpose of the individual development account; or

(B) For an account established for the purpose set forth in subsection (1)(j) of this section, by rolling over the entire withdrawal amount into an individual retirement account, a retirement plan or a similar account or plan established under the Internal Revenue Code.

(b) Upon withdrawal of all moneys in the individual development account as provided in paragraph (a) of this subsection, the account relationship shall terminate.

(c) The rollover of moneys into a savings network account for higher education under this subsection may not cause the amount in the savings network account for higher education to exceed the limit on total contributions established pursuant to ORS 178.335.

(d) Any amount of the rollover that has been subtracted on the taxpayer's federal return pursuant to section 219 of the Internal Revenue Code shall be added back in the determination of taxable income.

(5) If an account holder moves from the area where the program is conducted or is otherwise unable to continue in the program, the fiduciary organization may remove the account holder from the program.

(6) If an account holder is removed from the program under subsection [(2),] (3) or (5) of this section, all matching deposits in the account and all interest earned on matching deposits shall revert to the fiduciary organization. The fiduciary organization shall use the reverted funds as a source of matching deposits for other accounts.

NOTE: Sections 37 through 39 were deleted by amendment. Subsequent sections were not re-numbered.

RACE AND ETHNICITY DATA COLLECTION AND REPORTING DURING COVID-19 PANDEMIC

SECTION 40. (1) As used in this section:

(a) **"COVID-19"** means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) **"Encounter"** means an interaction between a patient, or the patient's legal representative, and a health care provider, whether that interaction is in person or through telemedicine, for the purpose of providing health care services related to COVID-19, including but not limited to ordering or performing a COVID-19 test.

(c) **"Health care provider"** means:

(A) **An individual licensed or certified by the:**

(i) **State Board of Examiners for Speech-Language Pathology and Audiology;**

(ii) **State Board of Chiropractic Examiners;**

(iii) **State Board of Licensed Social Workers;**

(iv) **Oregon Board of Licensed Professional Counselors and Therapists;**

- (v) Oregon Board of Dentistry;
- (vi) State Board of Massage Therapists;
- (vii) Oregon Board of Naturopathic Medicine;
- (viii) Oregon State Board of Nursing;
- (ix) Oregon Board of Optometry;
- (x) State Board of Pharmacy;
- (xi) Oregon Medical Board;
- (xii) Occupational Therapy Licensing Board;
- (xiii) Oregon Board of Physical Therapy;
- (xiv) Oregon Board of Psychology; or
- (xv) Board of Medical Imaging;
- (B) An emergency medical services provider licensed by the Oregon Health Authority under ORS 682.216;
- (C) A clinical laboratory licensed under ORS 438.110; and
- (D) A health care facility as defined in ORS 442.015.
- (d) "Telemedicine" means the delivery of a health service through a two-way communication medium, including but not limited to telephone, Voice over Internet Protocol, transmission of telemetry or any Internet or electronic platform that allows a provider to interact in real time with a patient, a parent or guardian of a patient or another provider acting on a patient's behalf.
- (2) The authority shall adopt rules:
 - (a) Requiring a health provider to:
 - (A) Collect encounter data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with the standards adopted by the authority under ORS 413.161; and
 - (B) Report the data in accordance with rules adopted under ORS 433.004 for the reporting of diseases.
 - (b) Prescribing the manner of reporting.
 - (c) Ensuring, to the extent practicable, that the data collected and reported under this section by health care providers is not duplicative.
 - (d) Establishing phased in deadlines for the collection of data under this section, beginning no later than October 1, 2020.
- (3) The authority may provide incentives to health care providers and facilities to help defer the costs of making changes to electronic health records or similar systems.
- (4) Data collected by health care providers under this section is confidential and subject to disclosure only in accordance with the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or other state or federal laws limiting the disclosure of health information.
- SECTION 41.** Section 40 of this 2020 special session Act may be enforced by any means permitted under the law by:
 - (1) A health professional regulatory board specified in section 40 of this 2020 special session Act with respect to a provider under the jurisdiction the board.
 - (2) The Oregon Health Authority or the Department of Human Services with regard to health care facilities under each agency's respective jurisdiction.
 - (3) The authority with regard to emergency medical services providers licensed under ORS 682.216 and clinical laboratories licensed under ORS 438.110.
- SECTION 41a.** Section 40 of this 2020 special session Act is amended to read:

Sec. 40. (1) As used in this section:

 - (a) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
 - (b) "Encounter" means an interaction between a patient, or the patient's legal representative, and a health care provider, whether that interaction is in person or through telemedicine, for the

purpose of providing health care services related to COVID-19, including but not limited to ordering or performing a COVID-19 test.

(c) "Health care provider" means:

(A) An individual licensed or certified by the:

(i) State Board of Examiners for Speech-Language Pathology and Audiology;

(ii) State Board of Chiropractic Examiners;

(iii) State Board of Licensed Social Workers;

(iv) Oregon Board of Licensed Professional Counselors and Therapists;

(v) Oregon Board of Dentistry;

(vi) State Board of Massage Therapists;

(vii) Oregon Board of Naturopathic Medicine;

(viii) Oregon State Board of Nursing;

(ix) Oregon Board of Optometry;

(x) State Board of Pharmacy;

(xi) Oregon Medical Board;

(xii) Occupational Therapy Licensing Board;

(xiii) Oregon Board of Physical Therapy;

(xiv) Oregon Board of Psychology; or

(xv) Board of Medical Imaging;

(B) An emergency medical services provider licensed by the Oregon Health Authority under ORS 682.216;

(C) A clinical laboratory licensed under ORS 438.110; and

(D) A health care facility as defined in ORS 442.015.

(d) "Telemedicine" means the delivery of a health service through a two-way communication medium, including but not limited to telephone, Voice over Internet Protocol, transmission of telemetry or any Internet or electronic platform that allows a provider to interact in real time with a patient, a parent or guardian of a patient or another provider acting on a patient's behalf.

(2) The authority shall adopt rules:

(a) Requiring a health provider to:

(A) Collect encounter data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with the standards adopted by the authority under ORS 413.161; and

(B) Report the data in accordance with rules adopted under ORS 433.004 for the reporting of diseases.

(b) Prescribing the manner of reporting.

(c) Ensuring, to the extent practicable, that the data collected and reported under this section by health care providers is not duplicative.

[(d) Establishing phased in deadlines for the collection of data under this section, beginning no later than October 1, 2020.]

(3) The authority may provide incentives to health care providers and facilities to help defer the costs of making changes to electronic health records or similar systems.

(4) Data collected by health care providers under this section is confidential and subject to disclosure only in accordance with the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or other state or federal laws limiting the disclosure of health information.

SECTION 41b. (1) Section 41 of this 2020 special session Act becomes operative on December 31, 2020.

(2) The amendments to section 40 of this 2020 special session Act by section 41a of this 2020 special session Act become operative on December 31, 2021.

SECTION 42. Section 43 of this 2020 special session Act is added to and made a part of the Insurance Code.

SECTION 43. An insurer transacting insurance in this state may not consider any information collected and reported under section 40 of this 2020 special session Act to:

- (1) Deny, limit, cancel, rescind or refuse to renew a policy of insurance;
- (2) Establish premium rates for a policy of insurance; or
- (3) Establish the terms and conditions of a policy of insurance.

PHYSICIAN ASSISTANTS

SECTION 44. Section 45 of this 2020 special session Act is added to and made a part of ORS 677.495 to 677.535.

SECTION 45. (1) Notwithstanding any other provision of ORS 677.495 to 677.535, a physician assistant may, without entering into a practice agreement, perform services and provide patient care within the physician assistant's scope of practice in accordance with subsection (2) of this section.

(2) A physician assistant may perform services and provide patient care as described in subsection (1) of this section only in compliance with guidelines and standards established by one or more supervising physicians.

(3) A physician assistant who performs services and provides patient care under this section is exempt from any chart review and onsite supervision requirements described in ORS 677.495 to 677.535 or rules adopted by the Oregon Medical Board pursuant to ORS 677.495 to 677.535.

(4) The board may adopt rules to carry out this section.

SECTION 46. (1) As used in this section:

(a) "Physician assistant":

(A) Has the meaning given that term in ORS 677.495; and

(B) Means a person licensed to practice as a physician assistant in another state or territory of the United States.

(b) "Telehealth" means the use of electronic and telecommunications technologies to provide health care services.

(2) A physician assistant may use telehealth to perform services for and provide patient care to a patient who is located across state lines from the physician assistant if the services and patient care are within the physician assistant's scope of practice.

(3) The Oregon Medical Board may adopt rules to carry out this section.

SECTION 47. Sections 45 and 46 of this 2020 special session Act are repealed on the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

CAPTIONS

SECTION 48. The unit captions used in this 2020 special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 special session Act.

EMERGENCY CLAUSE

SECTION 49. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by House June 26, 2020

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 26, 2020

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

.....
Bev Clarno, Secretary of State

2020 1st Special Session

HB 4212 Enrolled

[Overview](#)
[Text](#)
[Analysis](#)
[Amendments](#)
[Testimony](#)
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Overview ▾

At the request of:	(at the request of Joint Committee on the First Special Session of 2020)
Chief Sponsors:	Representative Koteck
Regular Sponsors:	Representative Keny-Guyer, Leif, Neron , Nosse , Prusak, Reardon, Schouten, Soliman , Williams
Bill Title:	Relating to strategies to protect Oregonians from the effects of the COVID-19 pandemic; and declaring an emergency.
Catchline/Summary:	Authorizes governing bodies of public bodies, other than State of Oregon, to conduct all public meetings using telephone or video conferencing technology or through other electronic or virtual means. 🔗
Chapter Number:	Chapter 12
Fiscal Impact:	Fiscal Impact Issued
Revenue Impact:	Has Minimal Revenue Impact
Measure Analysis:	Staff Measure Summary / Impact Statements
Current Location:	Chapter Number Assigned
Current Committee:	
Current Subcommittee:	
Subsequent Referral(s):	
Potential Conflicts of Interest/Vote Explanations:	Potential Conflicts of Interest/Vote Explanation Documents

Measure History ▾

6-24 (H)	First reading. Referred to Speaker's desk.
6-24 (H)	Referred to The First Special Session of 2020.
6-25 (H)	Public Hearing and Work Session held. 🔗 🔗
6-26 (H)	Recommendation: Do pass with amendments and be printed A-Engrossed.
6-26 (H)	Second reading.
6-26 (H)	Rules suspended. Third reading. Carried by Holvey. Passed. Ayes, 47; Nays, 10—Bonham, Boshart Davis, Breese-Iverson, Drazan, Hayden, Nearman, Owens, Post, Reschke, Wallan; Excused, 3—Barker, Barreto, Clem. 🔗
6-26 (H)	Vote explanation(s) filed by Leif.
6-26 (S)	First reading. Referred to President's desk.
6-26 (S)	Referred to The First Special Session of 2020.
6-26 (S)	Recommendation: Do pass the A-Eng. bill.
6-26 (S)	Rules suspended. Second reading.
6-26 (S)	Rules suspended. Third reading. Carried by Prozanski. Passed. Ayes, 21; Nays, 4—Boquist, Findley, Giron, Heard; Excused, 5—Baertschiger Jr, Hansell, Linthicum, Olsen, Thomsen. 🔗
6-26 (S)	Vote explanation filed by Boquist.
6-29 (H)	Speaker signed.
6-30 (S)	President signed.
6-30 (H)	Governor signed.
7-7 (H)	Chapter 12, (2020 Laws): Effective date June 30, 2020.

Scheduled Events ➤

HB 4212 A STAFF MEASURE SUMMARY**Carrier:** Rep. Holvey**Joint Committee On The First Special Session of 2020****Action Date:** 06/25/20**Action:** Do pass with amendments. (Printed A-Eng.)**House Vote****Yeas:** 7 - Bynum, Drazan, Holvey, Lewis, Salinas, Speaker Kotek, Stark**Senate Vote****Yeas:** 6 - Burdick, Frederick, Knopp, President Courtney, Prozanski, Thatcher**Nays:** 1 - Girod**Fiscal:** Fiscal impact issued**Revenue:** Has minimal revenue impact**Prepared By:** Melissa Leoni, LPRO Analyst**Meeting Dates:** 6/25**WHAT THE MEASURE DOES:**

Makes changes to various statutes to address the effects of the COVID-19 pandemic, including local government and special government body public meetings and operations, garnishment modifications, judicial proceeding extensions and electronic appearances, emergency shelter approval, notarial acts, enterprise zone termination extensions, individual development account modifications, race and ethnicity data collection and reporting, and physician assistant practice authorization. Declares emergency; effective on passage.

Local Government and Special Government Body Public Meetings and Operations: Allows local governments to hold all meetings of their governing bodies, including taking public testimony, by telephone or video conference, provided a method is made available for the public to listen or observe the meeting. Requires recording of meetings, to be made available to public, if technology allows. Specifies that meetings held in person must maintain social distancing. Clarifies meeting notice requirements. Specifies that quorum requirements exclude persons unable to attend because of illness due to COVID-19. Authorizes reasonable expenditures if local government is unable to comply with local budget law during Governor's declared state of emergency.

Garnishment Modifications: Protects CARES Act recovery rebate payments from garnishment. Applies to garnishments issued on or before September 30, 2020.

Judicial Proceeding Extensions and Electronic Appearances: Authorizes the Chief Justice to extend or suspend a time period requirement relating to the initiation of a court case or proceeding requirement related to a pending court case during a state of emergency declaration issued by the Governor related to COVID-19. Permits Chief Justice to extend or suspend timelines to continue for 90 days after the declaration is no longer in effect. Allows orders to appear for criminal citations issued to be more than 30 days after the date of issue. Authorizes the extension of pre-trial custody of defendants beyond statutory limits if a court makes certain findings relating to the dangerousness of the individual. Includes within the definition of "good cause" for extension of custody or postponement of trials caused by COVID-19. Extends expiration of period to commence or give notice of civil action by 90 days from the end of Governor-declared COVID-19 state of emergency if expiration of claim or period for notice falls within the time period of the emergency declaration. Applies to civil claims, wrongful death actions, tort claims against public bodies, or any other civil cause of action. Excludes time periods for commencement of criminal actions, appeals to Tax Court or Court of Appeals, or initiation of cases or proceedings before the Supreme Court. Repeals provisions December 31, 2021.

Emergency Shelter: Defines "emergency shelter" as a building that provides shelter on a temporary basis for individuals and families who lack permanent housing. Stipulates that a building used as an emergency shelter may

HB 4212 A STAFF MEASURE SUMMARY

resume its use as an emergency shelter after that use has been stopped if the interruption was two years or less. Prohibits use of building for any purpose other than an emergency shelter except upon the approved application of a permit for other use under current land use laws and regulations. Requires local governments to approve an application for an emergency shelter if specified requirements are met, including: (1) providing sleeping and restroom facilities; (2) complying with building codes; (3) being located within an urban growth boundary or area zoned for rural residential; (4) not resulting in the development of a new building in an area designated as a natural disaster area or floodplain; (5) providing adequate access to public transit; (6) not posing an unreasonable risk to public health or safety; and, (7) being operated by a public benefit corporation, religious corporation, local government, or nonprofit corporation in partnership with another eligible entity. Includes youth shelters, winter or warming shelters, veterans' shelters, day shelters, and family violence shelters as facilities eligible for approval as emergency shelters. Allows emergency shelters to provide additional services assisting individuals transitioning from unsheltered homeless status and to charge a fee of up to \$300 per month per client to clients able to pay the fee and who request the services. Specifies that the approval of an emergency shelter is not a land use decision. Specifies an application for the development of land for an emergency shelter that was completed and submitted before the repeal date is not affected. Repeals provisions 90 days after effective date of measure. Stipulates that a political subdivision may allow any person to offer any number of overnight camping spots on the person's property to homeless individuals living in vehicles. Requires religious institutions offering this service to provide campers access to sanitary facilities. Allows local governments to regulate vehicle camping spaces as transitional housing accommodations. Repeals provisions 90 days after effective date of measure. Defines "low-barrier emergency shelter" and "navigation center," and outlines the operations for both. Allows Oregon Department of Administrative Services (DAS) to award grants to local governments to: (1) plan the location, development, or operations of a navigation center; (2) construct, purchase, or lease a building for use as a navigation center; (3) operate a navigation center; or, (4) contract for any of these activities. Repeals provisions on January 2, 2022.

Notarial Acts: Establishes pilot program for remote notarization services. Allows notary public to perform notarial acts, including taking acknowledgments, administering oaths or affirmations, witnessing or attesting a signature, or certifying or attesting copies of documents, with individuals who are not in the physical presence of the notary. Requires technology that allows simultaneous sight and sound, or appropriate adaptive technologies, between notary and individual. Requires personal knowledge of the identity of the remote individual, a recorded oath or affirmation from a credible witness of the identity of the individual, or identity proofing. Requires notary to make audiovisual recording of the performance of the notarial act and retain the recording for a period of at least 10 years. Requires Secretary of State to establish remote notarization rules. Allows notary public to charge up to \$25 per remote notarial act. Repeals provisions on June 30, 2021.

Enterprise Zone Termination Extensions: Allows an enterprise zone that would otherwise terminate on June 30, 2020, to terminate on December 31, 2020. Authorizes sponsor to redesignate otherwise terminating enterprise zones prior to January 1, 2021, but specifies that redesignation will not take effect before December 31, 2020.

Individual Development Account Modifications: Permits the use of an individual development account (IDA) for establishing emergency savings. Defines "emergency expenses" as extraordinary medical costs or other substantial personal expenses that significantly impact the account holder's noncash assets, health, housing, or standard of living if not promptly addressed. Allows funds in the IDA to be withdrawn for emergency expenses without regard to whether the account was established for emergency savings. Requires the account holder to reimburse a non-emergency IDA savings account for the amount withdrawn before withdrawing any matching deposits or accrued interest for a non-emergency expense. Eliminates the requirement that an account holder be removed from the program if the funds are not reimbursed within 12 months.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: Requires licensed or certified health care providers to collect data on race, ethnicity, preferred spoken and written languages, English proficiency, interpreter needs and disability status (REALD) during the provision of health services related to

HB 4212 A STAFF MEASURE SUMMARY

COVID-19. Defines "COVID-19," "encounter," "telemedicine," and "health care provider." Directs Oregon Health Authority (OHA) to adopt rules requiring health care providers to collect and report data using existing standards (ORS 413.161), specifies timelines for data collection, and allows OHA to provide incentives to health care providers to comply with requirements. Clarifies data collected by providers is confidential and subject to federal and state laws limiting any disclosure of health information. Grants enforcement authority to OHA, the Department of Human Services (DHS), and professional regulatory boards beginning December 31, 2020. Clarifies insurers cannot use collected data to deny, limit, cancel, refuse to renew, or increase premiums for an insurance policy.

Physician Assistants: Authorizes physician assistants (PAs) to provide patient care services within their scope of practice without entering into a practice agreement and with specified supervision requirements. Authorizes PAs to provide patient services to individuals located outside of Oregon if services are within the PA's scope of practice. Repeals these authorities on the date the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

ISSUES DISCUSSED:

- Membership of work group that developed the consensus -36 amendments; clarification on the pre-trial extension limit; and who is affected by the limit
- Liability limits in -38 amendments, including how to prove gross negligence, how businesses prove they are following existing guidance, making "good faith" efforts, setting regulations, establishing standards, protection of front-line workers, and avoiding harm to workers and businesses
- Opportunities for student participation in sports without the -10 amendments
- Clarifications in emergency shelter provisions by -7 and -27 amendments
- Inequitable impact of COVID-19 crisis on low-income communities and communities of color
- Creating flexibility in currently held individual development account funds
- Change to public meeting notice requirement (-23 amendments)
- Use of REALD data collection for public health purposes and importance of data collection to communities of color (-30 amendments)
- Providing more flexibility for physicians assistants and allowing practice at top of scope during the pandemic (-33 amendments)

EFFECT OF AMENDMENT:

Local Government and Special Government Body Public Meetings and Operations: Deletes requirement that a public body posting meeting notices on its website shall also send notices by electronic mail to persons who have requested notice.

Garnishment Modifications: Changes end date for garnishment protection from 90 days after emergency declaration is no longer in effect to September 30, 2020.

Judicial Proceeding Extensions and Electronic Appearances: Removes provision authorizing court to extend pre-trial detention beyond the 180-day statutory limit for cases involving non-person felony charges. Allows courts to extend pre-trial detention beyond 180-day statutory limit for certain cases involving person felony and misdemeanor charges. Prohibits any pre-trial extension under these provisions to exceed 240 days.

Emergency Shelter: Adds veterans' shelters to the list of facilities eligible for approval as an emergency shelter. Allows emergency shelters to provide additional services assisting individuals transitioning from unsheltered homeless status and to charge a fee of up to \$300 per month per client to clients able to pay the fee and who request the services. Specifies that the repeal of the emergency shelter provisions 90 days after the measure's effective date does not affect an application for the development of land for an emergency shelter that was completed and submitted before the repeal date. Makes DAS navigation center award grants to local governments optional.

HB 4212 A STAFF MEASURE SUMMARY

Individual Development Account Modifications: Removes the limitation for use of emergency savings during periods of unanticipated unemployment, modifying the definition of “emergency expenses” to include expenses for extraordinary medical costs or other unexpected and substantial personal expenses that would significantly impact the account holder’s non-cash assets, health, housing, or standard of living if not promptly addressed.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: Requires licensed or certified health care providers to collect data on race, ethnicity, preferred spoken and written languages, English proficiency, interpreter needs and disability status (REALD) during the provision of health services related to COVID-19. Defines “COVID-19,” “encounter,” “telemedicine” and “health care provider.” Directs Oregon Health Authority (OHA) to adopt rules requiring health care providers to collect and report data using existing standards (ORS 413.161), specifies timelines for data collection, and allows OHA to provide incentives to health care providers to comply with requirements. Clarifies data collected by providers is confidential and subject to federal and state law limiting any disclosure of health information. Grants enforcement authority to OHA, the Department of Human Services (DHS), and professional regulatory boards beginning December 31, 2020. Clarifies insurers cannot use collected data to deny, limit, cancel, refuse to renew, or increase premiums for an insurance policy.

Physician Assistants: Authorizes physician assistants (PAs) to provide patient care services within their scope of practice without entering into a practice agreement and with specified supervision requirements. Authorizes PAs to provide patient services to individuals located outside of Oregon if services are within the PA’s scope of practice. Repeals these authorities on the date the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

Other: Removes the Low Income Utility Bill Assistance, Isolation Shelter Liability Limits, and Oregon OSHA Infectious Disease Standards sections.

BACKGROUND:

Local Government and Special Government Body Public Meetings and Operations: Government agencies at all levels in Oregon are subject to public meeting laws generally codified in ORS 192.610 and following, as well as ORS 221.770 for revenue distribution for cities. Meetings of governing bodies must be open to the public, provide adequate public notice, and abide by quorum requirements. House Bill 4212-A outlines procedures for meeting by electronic means during the Governor’s declared state of emergency issued on March 8, 2020.

Garnishment Modifications: Courts impose financial obligations through judgments, and creditors can enforce judgments using a procedure called garnishment. When a writ of garnishment is delivered to a financial institution, the financial institution must conduct a review of the debtor’s account. The following deposits in the 60-day lookback period are not subject to garnishment: federal benefit payments, certain retirement benefits, public assistance and medical assistance payments from the state, unemployment benefit payments, black lung benefit payments, and workers’ compensation payments. House Bill 4212-A adds CARES Act recovery rebate payments to those deposits that are not subject to garnishment. Executive Order 20-18, signed on April 17, 2020, provides a similar protection.

Judicial Proceeding Extensions and Electronic Appearances: In March 2020, the Oregon Judicial Department sought legislative authority to extend or suspend certain mandatory statutory timelines that apply to the procedure of cases during the COVID-19 state of emergency, including the mandatory timelines to conduct jury trials. Following concerns expressed about the broad authority proposed to extend certain timelines relating to pre-trial custody, a work group was convened to develop a proposal that addressed those concerns.

Civil actions must commence within the court system within a certain period of time from the injury or discovery of the injury. This period is commonly called the “statute of limitation.” For example, a civil suit to recover for breach of contract must be commenced within six years of the breach occurring (ORS 12.080), while the statute of

HB 4212 A STAFF MEASURE SUMMARY

limitation for a wrongful death claim is three years from the death of the decedent (ORS 30.020).

House Bill 4212-A extends the statute of limitation in civil actions when the statute of limitation falls within a Governor-declared COVID-19 emergency order. The period of extension is for 90 days beyond the end date of the emergency order. The extension does not apply to the time periods for commencing criminal actions, appeals of the Tax Court, appeals to the Court of Appeals, or any initiation of cases or proceedings before the Oregon Supreme Court.

Emergency Shelter: Oregon's rate of homeless individuals who are unsheltered, at 64 percent (10,142 individuals in 2019), is one of the highest in the US. Many of these unsheltered homeless individuals are in families (65 percent). At the national level, two-thirds of unsheltered homeless individuals in families were located in the states of Oregon, California, Florida, or Colorado. In Oregon, unaccompanied youth, of which 1,590 were identified in the 2019 Point in Time count, are largely unsheltered (72 percent). The count also identified 1,438 homeless veterans, an increase of 11 percent in five years.

The health and economic impacts of the COVID-19 crisis have heightened the need for more safe shelter space to slow the spread of the disease and accommodate a growing homeless population. According to the National Institute for Health Care Management, homeless individuals infected by COVID-19 are two times as likely to be hospitalized and two to three times more likely to die than the general population when infected with COVID-19.

Low Income Utility Bill Assistance: The federal Low-Income Home Energy Assistance Act (LIHEAP) of 1981 (Public Law 97-35), as amended, provides grants to states and tribes to assist low-income households that pay a high proportion of household income for home energy, primarily to meet immediate home energy needs. LIHEAP includes bill payment assistance, heating or cooling equipment repairs and replacement, and energy education. In 2014, according to the American Community Survey, 436,520 Oregon households qualified for the program based on income. The LIHEAP income-eligibility for 2014 was defined as the greater of 150 percent of the 2012 Federal Poverty Guidelines published by the U.S. Department of Health and Human Services, or 60 percent of the state's median income. Oregon also provides the Oregon Energy Assistance Program (OEAP). OEAP is a ratepayer-funded program that aims to reduce service disconnection.

Notarial Acts: A notary public, or notary, is a person commissioned by the Secretary of State to provide witnessing, acknowledging, or certifying services. To perform a notarial act, the notary and the individual must be in the same physical location so the notary can verify signatures, check identification, and detect possible fraud or coercion. Currently, notaries may charge \$10 for each notarial act. With social distancing requirements resulting from COVID-19, many notarial services are unavailable.

The Oregon Law Commission convened a work group in May of 2019 to examine adoption of the Revised Uniform Law on Notarial Acts, which addressed remote notarization. In the fall of 2019, the Law Commission approved the measure for introduction, but was unable to introduce the bill in the 2020 session.

House Bill 4212-A allows remote notarization services until June 30, 2021. The measure requires recorded sight and sound, or appropriate adaptive technologies, of the notarial act. Individuals must prove their identity and the notary must be able to reasonably confirm that the record before the notary is the same record before the individual. Notaries would be able to charge up to \$25 per remote notarial act. The measure requires the Secretary of State to adopt rules on the use of remote notarization.

Isolation Shelter Liability Limits: Best practices for individuals who are diagnosed with COVID-19 or have been exposed to the virus is to isolate. This may be problematic for individuals who lack housing and may already be in vulnerable health conditions. Shelters may not be able to provide housing for COVID-19 positive individuals or individuals who have been exposed to the virus because of the risk of transmission to the rest of the shelter population. In response to this issue, some hotels, motels, and short-term rentals have signed agreements with state and local government to provide housing for COVID-19 exposed or positive individuals for the purpose of

HB 4212 A STAFF MEASURE SUMMARY

isolation and treatment.

Enterprise Zone Termination Extensions: Enterprise zones exempt businesses from local property taxes on new investments for a specified amount of time based on the specific zone program (standard or special). Enterprise zones aim to help attract private business investment and help resident businesses to reinvest and grow in communities facing economic challenges. Enterprise zones are sponsored and administered by a city, county, tribe, port, or combination of such governments. There are currently 74 enterprise zones in Oregon; five terminate on June 30, 2020: Columbia River, Dallas/Independence/Monmouth, Grande Ronde (La Grande), Greater Redmond Area, and Salem.

The process to redesignate an enterprise zone includes advising Business Oregon 45 days in advance, consulting with local taxing districts, meeting certain economic criteria, and completing a sponsoring resolution. The consultation with local taxing districts includes an open, public meeting with notice sent 21 days in advance. Extension of the termination deadline for these enterprise zones will allow zone sponsors to complete the redesignation process without further operational interruptions that would be caused by zone termination on June 30, 2020.

Individual Development Account Modifications: The Oregon Investment Account Initiative was established in 1999. It aims to alleviate poverty and build pathways of opportunity by matching funds in savings accounts, called individual development accounts (IDAs), for Oregonians with lower incomes. Participants plan and save for a defined goal (such as a home purchase, education, or microenterprise) and the matching funds are drawn from various private resources. Neighborhood Partnerships manages the initiative, while Oregon Housing and Community Services and the Department of Revenue provide oversight.

Oregon OSHA Infectious Disease Standards: Within the Department of Consumer and Business Services, the Oregon Occupational Safety and Health Division (Oregon-OSHA) enforces occupational safety and health regulations in workplaces. Oregon-OSHA operates under an agreement with the federal Occupational Safety and Health Administration (OSHA). The federal OSHA has been working on an infectious disease standard since 2010 in the aftermath of the H1N1 pandemic. Development of the standard is currently on the long-term portion of the U.S. Department of Labor's regulatory agenda.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: In 2013, the Oregon Legislature passed House Bill 2134, which directed the Oregon Health Authority (OHA) and the Department of Human Services (DHS) to collaborate in standardizing and improving how race, ethnicity, spoken and written language, and disability (REALD) demographics are collected. These data collection standards provide a consistent method to gather information across all state data systems and are used to measure and compare service and health disparities. According to OHA, REALD data standards can help Oregon understand, identify, track, and address social and health inequities, guide the development of culturally specific and accessible services, and inform the equitable allocation of resources to address health inequities.

In response to COVID-19, OHA has released daily updates and weekly reports of the state's COVID-19 cases by demographic groups often with missing or unknown race or ethnicity data for COVID-19 related testing, test results, and hospitalizations. Nationally, Black, indigenous, and people of color represent a higher percent of COVID-19 confirmed cases compared to the general population. According to the Centers for Disease Control and Prevention, one-third of people hospitalized by the virus nationwide are African American: two and a half times greater than the proportion of Black people in the overall U.S. population. In response to national and local data showing the disproportionate effect of COVID-19 on communities of color, OHA also established "Actions for an Equity-Centered Response to COVID-19." Data collection and standardization of demographic data is an important public health tool to assess and address the disproportionate effects of COVID-19 on communities of color in Oregon.

HB 4212 A STAFF MEASURE SUMMARY

Physician Assistants: In Oregon, a supervising physician may use the services of a physician assistant (PA) in accordance with a written practice agreement. The agreement describes what and how the PA will practice and requires a supervising physician or supervising physician organization to direct and review the medical services provided by a PA. In March 2020, the Joint Special Committee on Coronavirus Response considered allowing PAs to practice within their scope without supervision requirements during the COVID-19 pandemic. At the same time, the Oregon Medical Board adopted a temporary emergency rule to increase the number of PAs available to assist in the state's response to COVID-19.

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled Senate Bill 296

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Chief Justice Martha L. Walters for Oregon Judicial Department)

CHAPTER

AN ACT

Relating to judicial authority during statewide emergencies; creating new provisions; amending ORS 1.002, 1.012 and 133.060 and section 8, chapter 12, Oregon Laws 2020 (first special session); and declaring an emergency.

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

SECTION 1. ORS 1.002 is amended to read:

1.002. (1) The Supreme Court is the highest judicial tribunal of the judicial department of government in this state. The Chief Justice of the Supreme Court is the presiding judge of the court and the administrative head of the judicial department of government in this state. The Chief Justice shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure. The Chief Justice, to facilitate exercise of that administrative authority and supervision, may:

- (a) Make rules and issue orders appropriate to that exercise.
- (b) Require appropriate reports from the judges, other officers and employees of the courts of this state and municipal courts.
- (c) Pursuant to policies approved by the Judicial Conference of the State of Oregon, assign or reassign on a temporary basis all judges of the courts of this state to serve in designated locations within or without the county or judicial district for which the judge was elected.
- (d) Set staffing levels for all courts of the state operating under the Judicial Department and for all operations in the Judicial Department.
- (e) Establish time standards for disposition of cases.
- (f) Establish budgets for the Judicial Department and all courts operating under the Judicial Department.
- (g) Assign or reassign all court staff of courts operating under the Judicial Department.
- (h) Pursuant to policies approved by the Judicial Conference of the State of Oregon, establish personnel rules and policies for judges of courts operating under the Judicial Department.
- (i) Establish procedures for closing courts in emergencies.
- (j) Establish standards for determining when courts are closed for purposes of ORCP 10, ORS 174.120 and other rules and laws that refer to periods of time when courts are closed.
- (k) Take any other action appropriate to the exercise of the powers specified in this section and other law, and appropriate to the exercise of administrative authority and supervision by the Chief Justice over the courts of this state.

(2) The Chief Justice may make rules for the use of electronic applications in the courts, including but not limited to rules relating to any of the following:

- (a) Applications based on the use of the Internet and other similar technologies.
- (b) The use of an electronic document, or use of an electronic image of a paper document in lieu of the original paper copy, for any record of the courts maintained under ORS 7.095 and for any document, process or paper that is served, delivered, received, filed, entered or retained in any action or proceeding.
- (c) The use of electronic signatures or another form of identification for any document, process or paper that is required by any law or rule to be signed and that is:
 - (A) Served, delivered, received, filed, entered or retained in any action or proceeding; or
 - (B) Maintained under ORS 7.095.
- (d) The use of electronic transmission for:
 - (A) Serving documents in an action or proceeding, other than a summons or an initial complaint or petition;
 - (B) Filing documents with a court; and
 - (C) Providing certified electronic copies of court documents and other Judicial Department records to another person or public body.
- (e) Payment of statutory or court-ordered monetary obligations through electronic media.
- (f) Electronic storage of court documents.
- (g) Use of electronic citations in lieu of the paper citation forms as allowed under ORS 153.770, including use of electronic citations for parking ordinance violations that are subject to ORS 221.333 or 810.425.
- (h) Public access through electronic means to court documents that are required or authorized to be made available to the public by law.
- (i) Transmission of open court proceedings through electronic media.
- (j) Electronic transmission and electronic signature on documents relating to circuit court jurors under ORS 10.025.

(3) The Chief Justice may make rules relating to the data that state courts may require parties and other persons to submit for the purpose of distinguishing particular persons from other persons. If the rules require the submission of data that state or federal law does not require that the courts make public, the rules may also require courts to keep the data confidential and not release the data except pursuant to a court order issued for good cause shown. Data that is made confidential under the rules is not subject to disclosure under ORS 192.311 to 192.478.

(4) Rules adopted by the Chief Justice under subsection (2) of this section must be consistent with the laws governing courts and court procedures, but any person who serves, delivers, receives, files, enters or retains an electronic document, or an electronic image of a paper document in lieu of the original paper copy, in the manner provided by a rule of the Chief Justice under subsection (2) of this section shall be considered to have complied with any rule or law governing service, delivery, reception, filing, entry or retention of a paper document.

(5)(a) As used in this subsection, "period of statewide emergency" means the period of time during which any declaration of a state of emergency under ORS 401.165, public health emergency under ORS 433.441 or catastrophic disaster under Article X-A, section 1, of the Oregon Constitution, issued by the Governor, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect.

(b) During a period of statewide emergency, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule, other than ORS 133.060, 136.290 or 136.295, that:

(A) Applies in any case, action or proceeding after the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;

(B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;

(C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

(c)(A) Notwithstanding any other statute or rule to the contrary, during a period of statewide emergency, the Chief Justice may direct or permit any appearance before a court or magistrate to be by telephone, other two-way electronic communication device or simultaneous electronic transmission.

(B) If an appearance is set to occur by electronic means as described in subparagraph (A) of this paragraph, a presiding judge may instead order that the appearance be in person if, upon the request of a party, the presiding judge determines that there is a particular need for an in-person hearing or that a party has a constitutional right to an in-person hearing.

(C) Notwithstanding ORS 125.150 (3), during a period of statewide emergency, the Chief Justice may direct or permit that any interview of a person described in ORS 125.150 (3) by a visitor appointed by the court be conducted by telephone, other two-way electronic communication device or simultaneous electronic transmission.

(D) The presiding judge may delegate the authority described in this paragraph to another judge of the court.

(d) Nothing in this subsection affects the rights of a defendant under the Oregon and United States Constitutions.

[(5)] (6) Rules made and orders issued by the Chief Justice under this section shall permit as much variation and flexibility in the administration of the courts of this state as are appropriate to the most efficient manner of administering each court, considering the particular needs and circumstances of the court, and consistent with the sound and efficient administration of the judicial department of government in this state.

[(6)(a)] (7)(a) The Chief Justice may establish reasonable fees for the use of the Oregon Judicial Case Information Network, including fees for electronic access to documents.

(b)(A) Before permanently adopting or increasing fees under this subsection, the Chief Justice shall provide notice to interested persons and allow a reasonable opportunity for comment.

(B) Before temporarily adopting or increasing fees under this subsection, the Chief Justice shall provide notice to interested persons.

(C) The Chief Justice shall by order establish a process for notice and comment under this paragraph.

(c) Fees adopted under this subsection must be reasonably calculated to recover or offset costs of developing, maintaining, supporting or providing access to or use of state court electronic applications and systems.

[(7)] (8) The judges, other officers and employees of the courts of this state shall comply with rules made and orders issued by the Chief Justice. Rules and orders of a court of this state, or a judge thereof, relating to the conduct of the business of the court shall be consistent with applicable rules made and orders issued by the Chief Justice.

[(8)] (9) The Chief Judge of the Court of Appeals and the presiding judge of each judicial district of this state are the administrative heads of their respective courts. They are responsible and accountable to the Chief Justice of the Supreme Court in the exercise of their administrative authority and supervision over their respective courts. Other judges of the Court of Appeals or court under a presiding judge are responsible and accountable to the Chief Judge or presiding judge, and to the Chief Justice, in respect to exercise by the Chief Justice, Chief Judge or presiding judge of administrative authority and supervision.

[(9)] (10) The Chief Justice may delegate the exercise of any of the powers specified by this section to the presiding judge of a court, and may delegate the exercise of any of the administrative powers specified by this section to the State Court Administrator, as may be appropriate.

[(10)] (11) This section applies to justices of the peace and the justice courts of this state solely for the purpose of disciplining of justices of the peace and for the purpose of continuing legal education of justices of the peace.

SECTION 2. ORS 133.060 is amended to read:

133.060. (1) A person who has been served with a criminal citation shall appear before a magistrate of the county in which the person was cited at the time, date and court specified in the citation, which shall not be later than 30 days after the date the citation was issued.

(2) If the cited person fails to appear at the time, date and court specified in the criminal citation, and a complaint or information is filed, the magistrate shall issue a warrant of arrest, upon application for its issuance, upon the person's failure to appear.

(3)(a) **Notwithstanding subsection (1) of this section, during a period of statewide emergency, the date specified in a criminal citation on which a person served with the citation shall appear may be more than 30 days after the date the citation was issued.**

(b) **During a period of statewide emergency, the presiding judge of a circuit court may, upon the motion of a party or the court's own motion, and upon a finding of good cause, postpone the date of appearance described in paragraph (a) of this subsection for all proceedings within the jurisdiction of the court.**

(c) **The presiding judge may delegate the authority described in paragraph (b) of this subsection to another judge of the court.**

(d) **Nothing in this subsection affects the rights of a defendant under the Oregon and United States Constitutions.**

(e) **As used in this subsection, "period of statewide emergency" means the period of time during which any declaration of a state of emergency under ORS 401.165, public health emergency under ORS 433.441 or catastrophic disaster under Article X-A, section 1, of the Oregon Constitution, issued by the Governor, and any extension of the declaration, is in effect, and continuing for 60 days after the declaration and any extension is no longer in effect.**

SECTION 3. Section 8, chapter 12, Oregon Laws 2020 (first special session), is amended to read:

Sec. 8. (1) [Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.]

Section 6, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2022.

(2) Section 7, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2021.

[(2)] (3) The repeal of section 6, [of this 2020 special session Act] chapter 12, Oregon Laws 2020 (first special session), by subsection (1) of this section does not affect the release status of a defendant determined under section 6 (3), [of this 2020 special session Act] chapter 12, Oregon Laws 2020 (first special session).

SECTION 4. ORS 1.012 is amended to read:

1.012. (1) The State Court Technology Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the State Court Technology Fund shall be credited to the fund.

(2) All fees received on and after July 1, 2013, for the use of the Oregon Judicial Case Information Network under ORS 1.002 [(6)] (7) and for the use of other state court electronic applications and systems shall be deposited into the fund.

(3) The fund consists of the moneys deposited into the fund under subsection (2) of this section, the moneys deposited into the fund under ORS 21.006 and the moneys allocated to the fund under ORS 137.300.

(4) Moneys in the fund are continuously appropriated to the Judicial Department for the purposes of:

(a) Developing, maintaining and supporting state court electronic applications, services and systems and for providing access to and use of those applications, services and systems; and

(b) Providing electronic service and filing services.

SECTION 5. The Chief Justice of the Supreme Court may exercise the authority described in ORS 1.002 (5)(b) notwithstanding the fact that the date of the time period or time requirement has already passed as of the effective date of this 2021 Act.

SECTION 6. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 7, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 26, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

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2021 Regular Session

[SB 296 Enrolled](#)

Overview

Text ▾

Analysis










Amendments

Testimony

Register to Testify

[Submit Testimony](#)Overview ☐**At the request of:** (at the request of Chief Justice Martha L. Walters for Oregon Judicial Department)**Chief Sponsors:****Regular Sponsors:****Bill Title:** Relating to judicial authority during statewide emergencies; and declaring an emergency.**Catchline/Summary:** Authorizes Chief Justice of Supreme Court, during period of statewide emergency and upon finding of good cause, to extend or suspend time period or time requirement in rule or statute in specified court proceedings. ☐**Chapter Number:** Chapter 199**Fiscal Impact:** Has Minimal Fiscal Impact**Revenue Impact:** No Revenue Impact**Measure Analysis:** [Staff Measure Summary / Impact Statements](#)**Current Location:** Chapter Number Assigned**Current Committee:****Current
Subcommittee:****Subsequent
Referral(s):****Potential Conflicts
of Interest/Vote
Explanations:** [Potential Conflicts of Interest/Vote Explanation Documents](#)Measure History ☐

Measure History ▼

1-11 (S)	Introduction and first reading. Referred to President's desk.
1-19 (S)	Referred to Veterans and Emergency Preparedness.
2-4 (S)	Public Hearing held. 
2-23 (S)	Public Hearing held. 
3-16 (S)	Work Session held.  
4-1 (S)	Recommendation: Do pass with amendments. (Printed A-Eng.)
4-5 (S)	Second reading.
4-7 (S)	Third reading. Carried by Manning Jr. Passed. Ayes, 18; Nays, 10--Anderson, Boquist, Girod, Hansell, Heard, Kennemer, Knopp, Linthicum, Robinson, Thomsen; Excused, 2--Johnson, Thatcher. 
4-7 (S)	Vote explanation(s) filed by Boquist, Heard.
4-7 (H)	First reading. Referred to Speaker's desk.
4-12 (H)	Referred to Judiciary.
4-29 (H)	Public Hearing held. 
5-11 (H)	Work Session held.  
5-19 (H)	Recommendation: Do pass.
5-20 (H)	Second reading.
5-24 (H)	Rules suspended. Carried over to May 25, 2021 Calendar.
5-25 (H)	Rules suspended. Carried over to May 26, 2021 Calendar.
5-26 (H)	Third reading. Carried by Kropf. Passed. Ayes, 36; Nays, 23--Bonham, Boshart Davis, Breese-Iverson, Cate, Drazan, Evans, Hayden, Leif, Lew, Lewis, Morgan, Nearman, Owens, Post, Reschke, Smith DB, Smith G, Stark, Wallan, Weber, Wilde, Wright, Zika; Excused for Business of the House, 1--Speaker Kotek. 
5-27 (S)	President signed.
6-1 (H)	Speaker signed.
6-8 (S)	Governor signed.
6-15 (S)	Chapter 199, 2021 Laws.
6-15 (S)	Effective date, June 8, 2021.

SB 296 A STAFF MEASURE SUMMARY**Carrier:** Sen. Manning Jr**Senate Committee On Veterans and Emergency Preparedness**

Action Date: 03/16/21
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 3-2-0-0
Yeas: 3 - Manning Jr, Patterson, President Courtney
Nays: 2 - Linthicum, Thomsen
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Regina Wilson, LPRO Analyst
Meeting Dates: 2/4, 2/23, 3/16

WHAT THE MEASURE DOES:

Authorizes Chief Justice and presiding judges in circuit courts to manage court proceedings during periods of statewide emergency, defined to include 60 days following declaration. Allows Chief Justice to manage time frames and deadlines applicable to specified proceedings upon a finding of good cause, with some exceptions. Allows Chief Justice to permit remote court appearances and provides for presiding judges to order in-person appearance instead, upon determination of particular need or constitutional right at the request of a party. Allows Chief Justice to permit remote interviews conducted by court appointed visitors in protective proceedings. Prohibits such extension if pretrial custody exceeds 180 days, unless defendant is charged with a violent felony or person crime: the required findings must be made that are applicable to release determinations for persons charged with violent felonies; and for those charged with person crimes, pretrial custody may be extended up to 240 days based on good cause and circumstances of the emergency along with a finding of specified danger, by clear and convincing evidence, not capable of mitigation otherwise. Allows appearances more than 30 days from issuance of criminal citation. Extends the sunset date on certain provisions of Senate or House Bill 4212 (2020, first special session) authorizing management of court proceedings, from December 31, 2021 to December 31, 2022. Allows presiding judge in circuit court to postpone all proceedings on criminal citations. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Existing authority of Chief Justice during emergencies
- Timelines and deadlines applicable to court proceedings
- House Bill 4212 (2020, first special session)
- Future emergencies

EFFECT OF AMENDMENT:

Removes language allowing presiding judge in circuit court to postpone criminal trial and extend custody of defendant beyond applicable limits. Extends the sunset date on some provisions of House Bill 4212 (2020, first special session) authorizing management of court proceedings, from December 31, 2021 to December 31, 2022.

BACKGROUND:

Beginning in the spring of 2020, across the country, judicial branches of governments faced significant challenges to the continuity of their operations and to the health and well being of their personnel due to the COVID-19 pandemic. Courts acted to protect the rights and expectations of participants and other stakeholders in all manner court proceedings, both civil and criminal, pending and initiated during the pandemic, in conformity with public health dictates and guidelines. The Oregon Judicial Department (OJD) convened a work group and sought explicit statutory authority during the emergency, to suspend or extend timelines and deadlines applicable to jury

SB 296 A STAFF MEASURE SUMMARY

trials, pretrial custody of criminal defendants, and statutes of limitation in civil matters, as well as the authority to provide for remote court appearances. The Legislative Assembly enacted an omnibus bill during the first special session of 2020, House Bill 4212, that included provisions to address a number of OJD's concerns; these provisions are currently scheduled to sunset December 31, 2021.

Senate Bill 296 A continues the authority of the Chief Justice during emergencies with respect to managing timelines and deadlines applicable to certain proceedings and providing for remote court appearances, until December 31, 2022.

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled Senate Bill 813

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

CHAPTER

AN ACT

Relating to civil proceedings; amending section 7, chapter 12, Oregon Laws 2020 (first special session); and declaring an emergency.

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

SECTION 1. Section 7, chapter 12, Oregon Laws 2020 (first special session), is amended to read:

Sec. 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect.

(2) Subsection (1) of this section applies to:

- (a) Time periods for commencing an action established in ORS chapter 12;
- (b) The time period for commencing an action for wrongful death established in ORS 30.020;
- (c) The time period for commencing an action or giving a notice of claim under ORS 30.275; and
- (d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute.

(3) Subsection (1) of this section does not apply to:

- (a) Time limitations for the commencement of criminal actions;
- (b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
- (c) The initiation of an appeal or judicial review proceeding in the Court of Appeals; or
- (d) The initiation of any type of case or proceeding in the Supreme Court.

(4) Subsection (1) of this section applies to expirations of the time to commence an action or give notice of a claim occurring:

(a) On or after March 8, 2020, and on or before the date 90 days after the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect; or

(b) During the time in which any other declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect.

SECTION 2. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate May 4, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 9, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

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2021 Regular Session

[SB 813 Enrolled](#)

Overview

Text ▾

Analysis

Amendments

Testimony

Register to Testify











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At the request of:

Chief Sponsors:

Regular Sponsors:

Bill Title: Relating to civil proceedings; and declaring an emergency.**Catchline/Summary:** Clarifies applicability of provisions extending time to commence action or give notice of claim when expiration of time falls within state of emergency related to COVID-19. ☐**Chapter Number:** Chapter 499**Fiscal Impact:** No Fiscal Impact**Revenue Impact:** No Revenue Impact**Measure Analysis:** [Staff Measure Summary / Impact Statements](#)**Current Location:** Chapter Number Assigned**Current Committee:****Current Subcommittee:****Subsequent Referral(s):****Potential Conflicts of Interest/Vote Explanations:** [Potential Conflicts of Interest/Vote Explanation Documents](#)Measure History ☐Scheduled Events ☐

Measure History ▾	
3-3 (S)	Introduction and first reading. Referred to President's desk.
3-3 (S)	Referred to Judiciary and Ballot Measure 110 Implementation.
4-7 (S)	Public Hearing held. 
4-12 (S)	Public Hearing held. 
4-13 (S)	Work Session held.  
4-29 (S)	Recommendation: Do pass with amendments. (Printed A-Eng.)
5-3 (S)	Second reading.
5-4 (S)	Third reading. Carried by Dembrow. Passed. Ayes, 19; Nays, 8--Boquist, Findley, Girod, Hansell, Linthicum, Robinson, Thatcher, Thomsen; Excused, 3--Heard, Johnson, President Courtney. 
5-5 (H)	First reading. Referred to Speaker's desk.
5-11 (H)	Referred to Judiciary.
5-17 (H)	Public Hearing held. 
5-19 (H)	Work Session held. 
5-27 (H)	Work Session held.  
6-1 (H)	Recommendation: Do pass.
6-2 (H)	Second reading.
6-3 (H)	Rules suspended. Carried over to June 7, 2021 Calendar.
6-7 (H)	Rules suspended. Carried over to June 8, 2021 Calendar.
6-8 (H)	Rules suspended. Carried over to June 9, 2021 Calendar.
6-9 (H)	Third reading. Carried by Noble. Passed. Ayes, 55; Nays, 1--Cate; Excused, 2--Nearman, Williams; Excused for Business of the House, 2--Fahey, Speaker Kotek. 
6-15 (S)	President signed.
6-21 (H)	Speaker signed.
7-14 (S)	Governor signed.
8-18 (S)	Chapter 499, 2021 Laws.
8-18 (S)	Effective date, July 14, 2021.

SB 813 A STAFF MEASURE SUMMARY**Carrier:** Sen. Dembrow**Senate Committee On Judiciary and Ballot Measure 110
Implementation**

Action Date: 04/13/21
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 4-2-1-0
Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski
Nays: 2 - Linthicum, Thatcher
Exc: 1 - Heard
Fiscal: No fiscal impact
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel
Meeting Dates: 4/7, 4/12, 4/13

WHAT THE MEASURE DOES:

Modifies statute of limitation provisions of Section 7 of House Bill 4212 (First Special Session, 2020) to clarify that extensions of time to commence an action or give notice of a claim due to COVID-19 emergency applies to time periods expiring on or after March 8, 2020, on or before the date 90 days after the declaration of the state of emergency issued on March 8, 2020 is no longer in effect, or during the time in which any other COVID-19 declaration of a state of emergency is in effect. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Provisions of House Bill 4212 (First Special Session, 2020)
- Conflicting interpretations in state and federal court over when time period is extended due to COVID-19 emergency
- Goal to clarify legislature's intention to include claims that would have expired during Governor's declared state of emergency beginning March 8, 2020

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

On March 8, 2020, the Governor declared an emergency due to the COVID-19 pandemic. The Chief Justice of the Oregon Supreme Court ordered most court proceedings and jury trials be postponed. During the First Special Session of 2020, House Bill 4212 made several changes and additions to Oregon laws in response to the COVID-19 pandemic, among them, a postponement of the statute of limitations for claims that would have expired during the time of the COVID-19 emergency order. In recent weeks, conflicting opinions on the applicable date at which the extension of the time period for expiration begin have emerged from the federal and state courts.

Senate Bill 813 A clarifies that the extension of time to commence an action applies to claims or notices that would have expired on or after March 8, 2020, and through the duration of the COVID-19 pandemic and any subsequent states of emergency due to COVID-19.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
1200 SW First Avenue Portland Oregon 97204

Case No: 22CV11032

Brandon Flanders

Plaintiff

**OPINION and ORDER on Defendant's
Motion to Dismiss**

v.

WinCo Foods LLC

Defendant

This case came on for hearing September 9, 2022, on Defendant's Motion to Dismiss based on the statute of limitations. Having considered the argument of the parties and the memoranda submitted by the parties, the Court hereby makes the following order.

Factual Summary

Parties agree that Plaintiff's claim of common law negligence and violation of Employer Liability Law (ORS 645.305-645.335) against Defendant, WinCo Foods LLC, is governed by ORS 12.110, which sets out a two-year limitation on the commencement of action. Pursuant to ORS 12.110, Plaintiff's claims must be brought within two years of the loss or injury claimed by Plaintiff. ORS 12.110(1).

Parties similarly agree that the incident and injury that is the subject of Plaintiff's complaint is alleged to have occurred on April 30, 2019. The complaint in the case was filed March 31, 2022, a date well beyond the limitations set out in ORS 12.110. Parties agree that absent the provisions of Oregon State House Bill 4212 (hereinafter referred to as HB 4212), the statute of limitations on Plaintiff's claim would normally have run on April 30th, 2021.

On June 26, 2020, HB 4212 was passed into law, and contained a provision in Section 7 that states:

"SECTION 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect. (2) Subsection (1) of this section applies to: (a) Time periods for commencing an action established in ORS chapter 12; (b) The time period for commencing an action for wrongful death established in ORS 30.020; (c) The time period for commencing an action or giving a notice of claim under ORS 30.275; and (d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute. (3) Subsection (1) of this section does not apply to: (a) Time limitations for the commencement of criminal actions; (b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division; (c) The initiation of an appeal or judicial review

proceeding in the Court of Appeals; or (d) The initiation of any type of case or proceeding in the Supreme Court.” (emphasis added).

Section 8 (1) of HB 4212 set out a repeal date for certain sections, to include Section 7 above, of December 31, 2021. “SECTION 8. (1) Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.” Oregon State House Bill 4212§8(1) (2020).

A later Oregon State Senate Bill 813 (hereinafter referred to as SB 813) was subsequently passed to clarify that the declaration of the state of emergency began on March 8, 2020, and thus the “start” date for claims falling within the commencement timeline extensions set out in HB 4212 were claims for which the statute of limitations would have run on or after March 8, 2020. “[T]his section applies to expirations of the time to commence an action or give notice of a claim occurring: (a) On or after March 8, 2020, and on or before the date 90 days after the declaration a state of emergency issued by the Governor on March 8, 2020.” Oregon State Senate Bill 813 §1(4)(1) (2021).

Ultimately, the Governor’s initial emergency declaration was extended several times, and finally expired on April 1, 2022. See Executive Order 22-03, signed March 17, 2022.

There is no dispute that Plaintiff’s claim initially fell within the extended filing parameters of HB 4212 Sect. 7 by virtue of having a natural commencement expiration (or statute of limitations expiration) date of April 30, 2021. The dispute amongst the parties is whether Plaintiff’s ultimate filing date of March 31, 2022, is beyond the extensions granted by HB 4212, and thus beyond the statute of limitations.

Plaintiff filed his complaint on March 31, 2022, exactly 90 days after the repeal date of December 31, 2021, set out in HB 4212 Sect. 8, but before the April 1, 2022, repeal date of the Governor’s declaration of state of emergency. Plaintiff asserts that the complaint has not been filed in violation of the statute of limitations, and thus that dismissal is not appropriate, because HB 4212 Sect. 7 worked to extend the deadline to file certain causes of action until “90 days after the declaration” of a state of emergency was no longer in effect¹. This matter would easily be resolved in Plaintiff’s favor if the analysis were to end at the plain language of Sect. 7 of HB 4212.

However, Defendant points out that the repeal provision of Section 8 of HB 4212 specifically repealed Section 7 of HB 4212 on December 31, 2021, and that there is no language in Section 8 indicating that the repeal date was to be tied to or affected by the ultimate end date of the Governor’s declaration of a state of emergency. Defendant also points out that while the subsequent SB 813 added language to clarify the beginning date for cases allowed extended filing deadlines under HB 4212 Sect. 7, the legislature in no way modified the repeal date for Sect. 7 seen in Section 8 of HB 4212.

The question ultimately then is whether the extension of the time to commence an action set out in HB 4212 Sect. 7 extends to 90-days after the expiration of the state of emergency, or whether all commencement extensions allowed for under Section 7 were extinguished on December 31, 2021, by the repeal provision in Section 8.

Summary of Argument

Plaintiff cites ORS 174.010 and 174.030 in support of his position, arguing that the statute is ambiguous and that Sections 7 and 8 of HB 4212 are inherently in conflict with one another. ORS 174.030 states that “[w]here a statute is equally susceptible of two interpretations, one in favor of natural

¹ See Oregon State House Bill 4212§7(1)

right and the other against it, the former is to prevail.” ORS § 174.030. Plaintiff argues that “[w]hile there is no “natural” right to receive compensation, there is a strong legislative policy in favor of it,” and that notwithstanding the language of Sect. 8, that ORS 147.030 dictates this court should interpret the extension provisions of HB 4212 Sect. 7 as meaning the time to commence an action for cases falling within the parameters HB 4212 Sect. 7 is “90 days after the declaration [of emergency] and any extension is no longer in effect.” Or put another way, that the deadline to commence Plaintiff’s action is 90 days after April 1, 2022.

Defendant responsively argues that Sections 7 and 8 of HB 4212 are not ambiguous, that the legislative action of SB 813 clearly indicates that the legislature revisited this statutory framework and chose not to modify the repeal provisions of Sect. 8, and that the maxims of statutory construction and interpretation dictate that the extensions of HB 4212 were repealed on December 31, 2021. Thus Defendant’s motion to dismiss must be granted.

Statutory Interpretation

The process for statutory interpretation is set out in *State v. Gaines*, 346 Ore. 160, 171-172, 206 P.3d 1042, 1050-1051, 2009 Ore. LEXIS 18, *23:

“We therefore conclude that, in light of the 2001 amendments to ORS 174.020, the appropriate methodology for interpreting a statute is as follows. The first step remains an examination of text and context. *PGE*, 317 Ore. at 610-11. But, contrary to this court’s pronouncement in *PGE*, we no longer will require an ambiguity in the text of a statute as a necessary predicate to the second step -- consideration of pertinent legislative history that a party may proffer. Instead, a party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute’s text, where that legislative history appears useful to the court’s analysis. However, the extent of the court’s consideration of that history, and the evaluative weight that the court gives it, is for the court to determine. The third, and final step, of the interpretative methodology is unchanged. If the legislature’s intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.”

ORS 174.010 dictates that “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” ORS § 174.010

The plain language of HB 4212 Sect. 8 dictates that the entirety of Sections 6 and 7 of HB 4212 are to be repealed on December 31, 2021, and that the repeal date is not tied in any way to the current or future status of a declaration of a state of emergency. Further, the obvious interpretation of HB 4212 that gives “effect to all” of Sections 7 and 8 is that the law expanded the time to commence an action that otherwise would have expired during a time when there was a declaration of a state of emergency to a date 90 days after the declaration is no longer in effect, but not beyond December 31, 2021.

Plaintiff has submitted the staff measure summaries for SB 813, which do contain language reflecting a legislative intent to “reach all deadlines falling during any portion of COVID-19 emergency

declarations,”² but this language is couched in an overall legislative consideration of how far *back* the suspension of filing deadlines should reach, not how far into the future the suspension of filing deadlines should last. The Staff Measure Summary for HB 4212 itself, not supplied by either party, clearly states that the measure “[r]epeals provisions December 31, 2021,”³ for those provisions that extended timelines for judicial proceedings and filings.

The language seen in the other sections of HB 4212 also provides assistance in interpreting the legislature’s intent. Specifically, other HB 4212 repeal provisions in other sections do not have set repeal dates. Instead, they are tied to the end of the state of emergency, whenever that occurs in the future. For example, Sect. 2 states: “Section 1 of this 2020 special session Act is repealed 30 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.” Sect. 47 states: “Sections 45 and 46 of this 2020 special session Act are repealed on the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.” These provisions demonstrate that the legislature knew how to create a repeal date that was flexible and tied to the end of the state of emergency. In contrast, Sect. 7(1) had an inflexible repeal date of December 31, 2020, that notably was not modified by the subsequent SB 813.

Cited Cases

The two cases primarily relied upon by Plaintiff, *Buell v. State Industrial Acci. Com.*, 238 Ore. 492, 395 P.2d 442, 1964 Ore. LEXIS 460 (Or. September 23, 1964), and *Crooker v. City of Portland*, 2021 U.S. Dist. LEXIS 161755, 2021 WL 3823203 (D. Or. August 26, 2021), also do not support the interpretation Plaintiff puts forth. In *Buell* the court interpreted a statute to give a more expansive timeline for appeal, but in so holding the court pointed out that “the only construction of the statute that is consistent with the remainder of the Workmen’s Compensation Law is the construction the plaintiff seeks.” 238 Ore. 492, at 498. As pointed out above, Plaintiff’s suggested interpretation of HB 4212 Sect. 7 and Sect. 8 is not the only interpretation consistent with the remainder of the law, and is directly inconsistent with the plain language of Section 8.

The holding in *Crooker v. City of Portland*, also does not support Plaintiff’s position as that case addresses whether plaintiff’s complaint would have lapsed during the time period covered by the extensions of HB 4212, and thus qualified for the extensions set out in the bill. The case does not address the expiration or repeal of the timelines set out in HB 4212 Sect. 7. Of note, the *Crooker* case was decided in August of 2021, and at that time the court recognized that the extensions of 4212 might only extend through December 31, 2021, stating “HB 4212 remains in effect through at least December 31, 2021.” 2021 U.S. Dist. LEXIS 161755, at *14.

Conclusion

The repeal language seen in HB 4212 Sect. 8 may well reflect a legislative expectation at the time of the bill’s passage that the emergencies created by COVID-19 would be far shorter than they proved to be. However, “[i]t is not for us to read into those laws language that the legislature did not enact or to interpret language in those laws in an unreasonable fashion merely to accommodate what the state or any other party believes to be sound public policy or good logic.” *State v. Morton*, 137 Ore. App. 228, 236,

² SB 813 A STAFF MEASURE SUMMARY, House Committee on Judiciary, 5/27/21.

³ HB 4212 A STAFF MEASURE SUMMARY, Joint Committee on the First Special Session of 2020, 6/25/2020

904 P.2d 631, 635, 1995 Ore. App. LEXIS 1454, *14, citing *Faverty v. McDonald's Restaurants of Oregon*, 133 Ore. App. 514, 533, 892 P.2d 703, rev allowed 321 Ore. 512 (1995).

The plain language and context of HB 4212 suggest a legislative intent that with respect to the extended deadlines for judicial matters, such extensions were to end December 31, 2021. The legislature chose not to use a "floating" repeal date tied to the state of emergency as seen elsewhere in the bill and instead used a date-certain date of December 31, 2021. The legislature chose not to include savings language stating that the 90-day extension continued in effect after the repeal date (essentially vesting the 90-day extension), and when the legislature revisited these provisions in the later SB 813, it did not modify the repeal language.

Accordingly, the statute of limitations in this case ran two years from the date of injury. This case was filed after that date. The date of injury and date of filing cannot be remedied by amending the complaint. Therefore, Defendant's motion to dismiss with prejudice is GRANTED.

9/9/2022



Multnomah County Circuit Court Judge Jenna Plank

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
1200 SW First Avenue Portland Oregon 97204

Case No: 22CV06834

Conrad Mouton

Plaintiff

**OPINION and ORDER on
Defendant's Motion to Dismiss**

v.

Tri-County Metropolitan Transportation
District of Oregon

Defendant

This case came on for hearing May 26, 2022, on Defendant's Motion to Dismiss based on the statute of limitations. Having considered the argument of the parties and the memoranda submitted by the parties, the Court hereby makes the following order.

Plaintiff's claim of common law negligence against Tri-Met is governed by the Oregon Tort Claims Act, ORS 30.275(9). *Bell v. Tri-County Metropolitan Transportation District of Oregon*, 353 Or. 535 (2013). Pursuant to ORS 30.275(9), Plaintiff's claims must be brought within two years of the loss or injury.¹

The loss or injury in this case is alleged to have occurred on February 2, 2020. Complaint Paragraph 6. The Complaint was filed on February 25, 2022, a date that is beyond two years after the loss or injury. Thus, in ordinary circumstances, if the two-year statute of limitations applies, the case was filed late and the motion to dismiss should be granted.

However, these were not ordinary circumstances. The COVID 19 pandemic reared its head in Oregon in the early months of 2020. In response, the Governor declared a state of emergency. Or. Exec. Order No. 20-03 (March 8, 2020), https://www.oregon.gov/gov/eo/eo_20-03.pdf. A special session of the legislature was called and in June of 2020, emergency COVID response legislation was passed.

HB 4212 was an emergency legislative response to the COVID-19 pandemic and took several different actions relating to the courts and judicial proceedings. It was passed on June 26, 2020 and was immediately effective upon passage. Section 7 of HB 4212 is set forth below:

“SECTION 7. (1) If the expiration of the time to commence an action or give notice of a claim falls within the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect, the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration and any extension is no longer in effect. (2) Subsection (1) of this section applies to: (a) Time periods for commencing an action established in ORS chapter 12; (b) The

time period for commencing an action for wrongful death established in ORS 30.020; (c) *The time period for commencing an action or giving a notice of claim under ORS 30.275*; and (d) Any other time limitation for the commencement of a civil cause of action or the giving of notice of a civil claim established by statute. (3) Subsection (1) of this section does not apply to: (a) Time limitations for the commencement of criminal actions; (b) The initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division; (c) The initiation of an appeal or judicial review proceeding in the Court of Appeals; or (d) The initiation of any type of case or proceeding in the Supreme Court.” (emphasis added).

Section 7 essentially extended the statutes of limitations for claims that normally would have expired during the Governor-declared state of emergency to a date 90 days after the state of emergency had been lifted. The Governor’s state of emergency was extended multiple times and ultimately was rescinded by Executive Order 22-03 effective April 1, 2022.

Absent HB 4212, the statute of limitations on Plaintiff’s claim would run on February 2, 2022, two years after the date of injury. Plaintiff asserts that the HB 4212 tolled the limitations period for 90 days after the state of emergency ended. Since the state of emergency did not end until April 1, 2022, Plaintiff asserts that the statute of Limitations would not have run until 90 days after April 1, 2022, making Plaintiff’s filing date of February 25, 2022 well within the limitations period. Plaintiff’s Response to Defendant Trimet’s Motion to Dismiss at p. 2.

Indeed, this would be a straightforward analysis with a conclusion in Plaintiff’s favor if the analysis were to end there. The conclusion becomes cloudier when the repeal provision of HB 4212 is considered. Specifically, HB 4212 provided that “Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.”ⁱⁱ HB 4212 Section 8(1). Section 7(1) is the 90-day extension provision.

If the Governor’s state of emergency had ended at least 90 days prior to December 31, 2021, the ambiguity would not have been apparent. However, the state of emergency continued past that date, an outcome possibly not contemplated when HB 4212 was passed. Defendant asserts that, upon the repeal of HB 4212 on December 31, 2021, the 90-day extension disappeared as if it never existed. The effect of this interpretation would be that the statute of limitations would revert to the unextended two-year period. Because Plaintiff filed more than two years after the injury, according to Defendant, it was too late. So, the question is whether the 90-day extension attached to the state of emergency and could not be extinguished by the repeal (the “vesting” interpretation) or whether the repeal extinguished the 90-day extension on December 31, 2021, despite the continuation of the state of emergency (the “extinction” interpretation).

In the construction of a statute, a court shall pursue the intention of the legislature. ORS 174.020(1)(a).

The first step remains an examination of text and context. *State v. Gaines*, 346 Or. 160 171–72 (2009). The Court will consider legislative history offered by a party and may do so even

if no ambiguity is apparent and where that legislative history appears useful to the court's analysis. If the legislature's intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of construction. *Id.*

The parties presented no legislative history to the court. The court conducted limited investigation of the legislative history and found nothing on point. It is possible that legislative history exists and would be found on further investigation.

The Text.

The text consists of two different sections of HB 4212. These sections do not speak to each other on the question of the 90-day extension in relation to the repeal of the statute. Section 7(1) states in part “. . . the expiration of the time to commence the action or give notice of the claim is extended to a date 90 days after the declaration [of state of emergency] . . . is no longer in effect.”ⁱⁱⁱ Section 8(1) states that “Sections 6 and 7 of this 2020 special session Act are repealed on December 31, 2021.” The statute is ambiguous as to whether the 90-day extension “vests” and carries forward with a state of emergency that extends beyond the repeal date of December 31, 2021, or whether it extinguishes on the repeal date.

The Context.

The context provides some assistance in interpreting the legislature’s intent. Specifically, other HB 4212 repeal provisions do not have a set repeal dates. Instead, they are tied to the end of the state of emergency, whenever that occurs in the future. For example, Section 2 states:

“Section 1 of this 2020 special session Act is repealed 30 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.”

Section 47 states:

“Sections 45 and 46 of this 2020 special session Act are repealed on the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.”

These provisions demonstrate that the legislature knew how to create a repeal date that was flexible and tied to the end of the state of emergency. In contrast, section 7(1) had an inflexible repeal date of December 31, 2020.

The bill includes other provisions that address the continuing effect of the bill’s provisions after the repeal of that provision. Specifically, with respect to section 6, which deals with pretrial release of defendants in criminal actions, Section 8(2) provides:

“The repeal of section 6 of this 2020 special session Act by subsection (1) of this section does not affect the release status of a defendant determined under section 6 (3) of this 2020 special session Act.”^{iv}

Section 12a provides:

“The repeal of sections 10 and 11 of this 2020 special session Act by section 12 of this 2020 special session Act does not affect an application for the development of land for an emergency shelter that was completed and submitted before the date of the repeal.”

These provisions indicate that the legislature knew how to preserve and continue the effects of HB 4212 beyond its repeal when appropriate. No comparable language exists continuing the 90-day extension after the repeal date of Section 7(1).

Conclusion

The fact that with respect to Section 7(1), the legislature (1) chose not to use a “floating” repeal date tied to the state of emergency and instead used a date-certain and (2) chose not to include savings language stating that the 90 day extension continued in effect after the repeal date (essentially vesting the 90 day extension) leads the court to conclude that the legislature intended the effect of the repeal to be immediate and to not continue the 90 day extension after December 31, 2020.

Accordingly, the statute of limitations in this case ran two years from the date of injury. This case was filed after that date. The date of injury and date of filing cannot be remedied by amending the complaint. Therefore, Tri-Met’s motion to dismiss with prejudice is GRANTED.

6/8/2022 10:24:28 AM


Circuit Court Judge Leslie G. Bottomly

DATE

ⁱ Plaintiff concedes that the applicable statute of limitations is two years but cites ORS Chapter 12, which is applicable to tort claims generally (not claims against public bodies, where as here the OTCA applies). Plaintiff’s Response to Defendant TriMet’s Motion to Dismiss at p.1.

ⁱⁱ HB 4212 was later amended by SB 296 to extend the repeal date of Section 6 (addressing criminal case deadlines) by one year:

“(1) Section 6, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2022. (2) Section 7, chapter 12, Oregon Laws 2020 (first special session), is repealed on December 31, 2021. (3) The repeal of section 6 Chapter 12, Oregon Laws 2020 (first special session), by subsection (1) of this section does not affect the release

status of a defendant determined under section 6(3) chapter 12, Oregon Laws 2020 (first special session)."

The SB 296 amendments do not change this court's analysis based on the original HB 4212 language.

ⁱⁱⁱ This Section of HB 4212 was later amended by SB 813 to add the following Section (4):

"Subsection (1) of this section applies to expirations of the time to commence an action or give notice of a claim occurring: (a) On or after March 8, 2020, and on or before the date 90 days after the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect; or (b) During the time in which any other declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect, or within 90 days after the declaration and any extension is no longer in effect."

The purpose of this amendment appears to be to clarify that the 90-day extension extends retroactively from the date HB 4212 passed in June of 2020 to the March 8, 2020 declaration of a state of emergency. The SB 813 amendments do not change this court's analysis based on the original HB 4212 language.

^{iv} See note 2.

NOTIFICATION OF RELATED CASES UNDER ORAP 8.47

Pursuant to ORAP 8.47, OADC reports that it is aware of the following cases that may raise the same legal issue, or raise closely related legal issues, as the one in this appeal:

- *Brandon Flanders v. WinCo Foods LLC*, Case No. A179835;
- *Conrad Mouton v. Tri-Met*, Case No. A179342; and
- *Flesey v. Columbia Memorial Hospital*, Case No. A179813.

DATED this 9th day of June, 2023.

By: /s/ Sara Kobak
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Of Attorneys for *Amicus Curiae*
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**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND
TYPE SIZE REQUIREMENTS UNDER ORAP 5.05(2)(d)**

I certify that: (1) this brief complies with the word-count limitation in ORAP 5.05(1)(b); the word-count of this brief as described in ORAP 5.05(2)(a) is 3,464. I further certify that the size of the type in this brief is not smaller than 14 point for the text of the brief and footnotes as required by ORAP 5.05(1)(d)(ii).

By: /s/ Sara Kobak
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CERTIFICATE OF FILING AND SERVICE

I certify that on June 9, 2023, I filed this **BRIEF OF *AMICUS CURIAE* OREGON ASSOCIATION OF DEFENSE COUNSEL** with the State Court Administrator by the eFiling system. I also certify that on June 9, 2023, I served the same on the following parties via the eFiling system and by email::

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