

Enrolled
House Bill 4167

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

CHAPTER

AN ACT

Relating to offenses; creating new provisions; amending ORS 133.379, 137.017, 137.300, 153.020, 153.021, 153.030, 153.061, 153.090, 153.099, 153.633, 153.800 and 818.430 and section 61a, chapter 597, Oregon Laws 2011; and declaring an emergency.

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

**AMOUNTS PAYABLE BY MUNICIPAL OR JUSTICE COURT
FOR DEPOSIT IN CRIMINAL FINE ACCOUNT**

SECTION 1. (1) **ORS 153.633 applies only to offenses that are committed on or after January 1, 2012.**

(2) **The repeal of ORS 137.290 by section 118, chapter 597, Oregon Laws 2011, applies only to offenses committed on or after January 1, 2012. Except as provided in this section, any offense committed before January 1, 2012, shall continue to be governed by ORS 137.290 as in effect immediately before January 1, 2012, and all amounts collected as a unitary assessment for offenses committed before January 1, 2012, shall be deposited in the Criminal Fine Account.**

SECTION 2. ORS 137.017 is amended to read:

137.017. Except as otherwise specifically provided by law, all fines, costs, security deposits and other amounts ordered or required to be paid in criminal actions **in circuit courts** are monetary obligations payable to the state and shall be deposited in the Criminal Fine Account.

SECTION 3. ORS 153.030 is amended to read:

153.030. (1) The procedures provided for in this chapter apply to violations described in ORS 153.008. Except as specifically provided in this chapter, the criminal procedure laws of this state applicable to crimes also apply to violations.

(2) Notwithstanding subsection (1) of this section, **[the] ORS 153.633 and all other** provisions of this chapter and of the criminal procedure laws of this state do not apply to violations that govern the parking of vehicles and that are created by ordinance or by agency rule.

(3) The statute of limitations for proceedings under this chapter is as provided in ORS 131.125.

(4) This chapter does not affect the ability of a city described in ORS 3.136 (1) to engage in the activities described in ORS 3.136 (3). Nothing in this chapter affects the ability of any other political subdivision of this state to provide for the administrative enforcement of the charter, ordinances, rules and regulations of the political subdivision, including enforcement through imposition of monetary penalties. Except for ordinances governing the parking of vehicles, administrative enforcement as described in this subsection may not be used for any prohibition designated as an offense.

(5) Nothing in this chapter affects the ability of any political subdivision of this state to establish rules relating to administrative enforcement as described in subsection (4) of this section, including rules providing for the use of citations or other procedures for initiating administrative enforcement proceedings.

(6) Nothing in this chapter affects the ability of any political subdivision of this state to conduct hearings for administrative enforcement as described in subsection (4) of this section, either before a hearing officer or before the governing body of the political subdivision.

(7) Nothing in this chapter affects the ability of any political subdivision to bring a civil action to enforce the charter, ordinances, rules and regulations of the political subdivision, or to bring a civil action to enforce any order for administrative enforcement as described in subsection (4) of this section.

(8) Nothing in ORS 153.042 affects the authority of any political subdivision of this state to provide for issuance of citations for violation of offenses created by ordinance on the same basis as the political subdivision could under the law in effect immediately before January 1, 2000.

CORPORATE DEFENDANTS

SECTION 4. ORS 153.061 is amended to read:

153.061. (1) Except as provided in [subsections (2) and (3)] **subsection (2)** of this section, a defendant who has been issued a violation citation must either:

(a) Make a first appearance by personally appearing in court at the time indicated in the summons; or

(b) Make a first appearance in the manner provided in subsection [(4)] **(3)** of this section before the time indicated in the summons.

(2) If a defendant is issued a violation citation for careless driving under ORS 811.135 on which a police officer noted that the offense contributed to an accident and that the cited offense appears to have contributed to the serious physical injury or death of a vulnerable user of a public way, the officer may not enter the amount of the presumptive fine on the summons and the defendant must make a first appearance by personally appearing in court at the time indicated in the summons.

[(3) *If a corporation is issued a violation citation, the police officer may not enter the amount of the presumptive fine on the summons and the defendant must make a first appearance by appearing in court at the time indicated in the summons.*]

[(4)] **(3)** Except as provided in this section, a defendant who has been issued a violation citation may make a first appearance in the matter before the time indicated in the summons by one of the following means:

(a) The defendant may submit to the court a written or oral request for a trial.

(b) The defendant may enter a plea of no contest by delivering to the court the summons and a check or money order in the amount of the presumptive fine set forth in the summons. The entry of a plea under the provisions of this paragraph constitutes a waiver of trial and consent to the entry of a judgment forfeiting the presumptive fine. A no contest plea under this section is not subject to the requirements of ORS chapter 135 relating to the entry of pleas and, upon receipt of the plea, the court may enter judgment against the defendant without taking further evidence.

[(5)] **(4)** The court may require that a defendant requesting a trial under subsection [(4)] **(3)** of this section deposit an amount equal to the presumptive fine established under ORS 153.019 and 153.020 or such other amount as the court determines appropriate if the defendant has failed to appear in any court on one or more other charges in the past. If the defendant does not deposit the amount specified by the court, the defendant must personally appear in court at the time indicated in the summons. The amount deposited by the defendant may be applied against any fine imposed by the court, and any amount not so applied shall be refunded to the defendant at the conclusion of the proceedings.

[(6)] **(5)** The court may require a defendant to appear personally in any case, or may require that all defendants appear in specified categories of cases.

[(7)] (6) If a defendant has entered a no contest plea in the manner provided in subsection [(4)] (3) of this section, and the court determines that the presumptive fine is not adequate by reason of previous convictions of the defendant, the nature of the offense charged or other circumstances, the court may require that a trial be held unless an additional fine amount is paid by the defendant before a specified date. Notice of an additional fine amount under this subsection may be given to the defendant by mail. In no event may the court require a total fine amount in excess of the maximum fine established for the violation by statute.

[(8)] (7) If a defendant fails to make a first appearance on a citation for a traffic violation, as defined by ORS 801.557, fails to make a first appearance on a citation for a violation of ORS 471.430, or fails to appear at any other subsequent time set for trial or other appearance, the driving privileges of the defendant are subject to suspension under ORS 809.220.

SECTION 5. ORS 153.090 is amended to read:

153.090. (1) Judgments entered under this chapter may include:

- (a) Imposition of a sentence to pay a fine;
- (b) Costs and restitution authorized by law;
- (c) A requirement that the fine, costs and restitution, if any, be paid out of the presumptive fine;
- (d) Remission of any balance of a presumptive fine to the defendant; and
- (e) Any other provision authorized by law.

(2) Notwithstanding ORS 137.106, if the court orders restitution in a default judgment entered under ORS 153.102, a defendant may allege an inability to pay the full amount of monetary sanctions imposed, including restitution, and request a hearing to determine whether the defendant is unable to pay or to establish a payment schedule by filing a written request with the court within one year after the entry of the judgment. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the district attorney. The district attorney shall give notice to the victim of the date, time and place of the hearing. The court may determine a payment schedule for monetary sanctions imposed, including restitution ordered under this subsection, if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full.

(3) If a trial is held in a violation proceeding, or a default judgment is entered against the defendant under ORS 153.102, the court may impose any fine within the statutory limits for the violation. If a defendant pleads no contest under ORS 153.061 [(4)] (3) and the court accepts the plea and enters judgment against the defendant, the amount of the fine imposed against the defendant by the court may not exceed the presumptive fine established for the violation under ORS 153.019 and 153.020.

(4) A judge may suspend operation of any part of a judgment entered under this chapter upon condition that the defendant pay the nonsuspended portion of a fine within a specified period of time. If the defendant fails to pay the nonsuspended portion of the fine within the specified period of time, the suspended portion of the judgment becomes operative without further proceedings by the court and the suspended portion of the fine becomes immediately due and payable.

(5) The court may not issue notice to the Department of Transportation to suspend the defendant's driving privileges unless a trial has been required. The failure of the defendant to appear at the trial does not prevent the court from issuing notice to the department to suspend the defendant's driving privileges.

(6) Entry of a default judgment under ORS 153.102 does not preclude the arrest and prosecution of the defendant for the crime of failure to appear in a violation proceeding under ORS 153.992.

(7) If a person holds a commercial driver license, a court may not defer entry of a judgment or allow an individual to enter into a diversion program that would prevent a conviction for a traffic offense from appearing on the driving record of the holder. This subsection applies to all traffic offenses, whether committed while driving a motor vehicle or a commercial motor vehicle, but does not apply to parking violations. For purposes of this subsection, a person holds a commercial driver license if on the date of the commission of the offense the person holds a commercial driver license issued by the department or the licensing agency of another jurisdiction that is:

- (a) Not expired or if expired, expired less than one year; or
- (b) Suspended, but not canceled or revoked.

SECTION 6. ORS 153.099 is amended to read:

153.099. (1) If a trial is held in a violation proceeding, the court shall enter a judgment based on the evidence presented at the trial.

(2) If the defendant appears and enters a plea of no contest in the manner described in ORS 153.061 [(4)] **(3)** and a trial is not otherwise required by the court or by law, the court shall make a decision based on the citation. The court may consider any statement of explanation submitted with the plea.

LOCAL COURT FACILITY SECURITY ACCOUNTS

SECTION 7. Section 61a, chapter 597, Oregon Laws 2011, is amended to read:

Sec. 61a. (1) During the biennium beginning July 1, 2011, the State Court Administrator may expend not more than \$2,862,376 from the State Court Facilities and Security Account for the purposes of:

(a) Developing or implementing a plan for state court security improvement, emergency preparedness and business continuity under ORS 1.177.

(b) Statewide training on state court security.

(2) During the biennium beginning July 1, 2011, the State Court Administrator may distribute not more than \$4,701,919 from the State Court Facilities and Security Account to court facilities security accounts maintained under ORS 1.182. The distribution to each county shall be based on amounts deposited in the [*Criminal Fine and Assessment Account*] **local court facilities security account** by the circuit court for the county, **and by municipal and justice courts located in the county**, in the 2009-2011 biennium.

(3) Notwithstanding ORS 1.178 (2)(d), during the biennium beginning July 1, 2011, the State Court Administrator may not expend any funds from the State Court Facilities and Security Account for the purpose of capital improvements for courthouses and other state court facilities.

VIOLATION BUREAUS

SECTION 8. ORS 153.800 is amended to read:

153.800. (1) Any court of this state may establish a Violations Bureau and designate the clerk or deputy clerk of the court or any other appropriate person to act as a violations clerk for the Violations Bureau. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(2) A violations clerk may exercise authority over any violation. A **justice or municipal** court establishing a Violations Bureau shall by order specify the violations that are subject to the authority of the violations clerk.

(3) Except as provided in subsection (6) of this section, the violations clerk shall accept:

(a) Written appearance, waiver of trial, plea of [*guilty*] **no contest** and payment of fine, costs and assessments for violations that are subject to the authority of the violations clerk; or

(b) Payment of presumptive fine amounts for violations that are subject to the authority of the violations clerk.

(4)(a) Courts other than circuit courts shall establish schedules, within the limits prescribed by law, of the amounts of penalties to be imposed for first, second and subsequent violations, designating each violation specifically or by class. The order of the court establishing the schedules shall be prominently posted in the place where penalties established under the schedule are paid.

(b) The Chief Justice of the Supreme Court shall establish a uniform fine schedule for violations prosecuted in circuit courts. **The schedule must specify the violations that are subject to the authority of the violations clerk.**

(c) All amounts must be paid to, received by and accounted for by the violations clerk in the same manner as other payments on money judgments are received by the court.

(5) Any person charged with a violation within the authority of the violations clerk may:

(a) Upon signing an appearance, plea of *[guilty]* **no contest** and waiver of trial, pay the clerk the penalty established for the violation charged, including any costs and assessments authorized by law.

(b) Pay the clerk the presumptive fine amount established for the violation. Payment of the presumptive fine amount under this paragraph constitutes consent to forfeiture of the presumptive fine amount and disposition of the violation by the clerk as provided by the rules of the court. Payment of **the** presumptive fine amount under this paragraph is not consent to forfeiture of the presumptive fine amount if the payment is accompanied by a plea of not guilty or a request for hearing.

(6) A person who has been found guilty of, or who has signed a plea of no contest to, one or more previous offenses in the preceding 12 months within the jurisdiction of the court *[shall]* **may** not *[be permitted to]* appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance.

DEDICATED FINES

SECTION 9. ORS 133.379 is amended to read:

133.379. *[(1)]* It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 for any violation which comes to the knowledge or notice of the officer.

[(2) All fines and forfeitures collected for violations of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428, except for forfeitures of the animal as provided under ORS 167.350 or 167.435, shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund.]

HIGHWAY WORK ZONES, SCHOOL ZONES AND SAFETY CORRIDOR ZONES

SECTION 10. ORS 153.020 is amended to read:

153.020. *[(1)]* If *[an individual]* **a person** is charged with a traffic violation, as defined in ORS 801.557, and the enforcement officer issuing the citation notes on the citation that the offense occurred in a highway work zone and is subject to the provisions of ORS 811.230, occurred in a posted school zone and is subject to the provisions of ORS 811.235, or occurred in a safety corridor and is subject to the provisions of ORS 811.483, the presumptive fine for the violation is:

[(a)] **(1)** \$870 for a Class A violation.

[(b)] **(2)** \$520 for a Class B violation.

[(c)] **(3)** \$320 for a Class C violation.

[(d)] **(4)** \$220 for a Class D violation.

[(2) The presumptive fine for a specific fine violation that is subject to this section is an amount equal to twice the presumptive fine determined for the violation under ORS 153.019 (2).]

SECTION 11. ORS 153.021 is amended to read:

153.021. (1) Except as otherwise provided by law, a court may not defer, waive, suspend or otherwise reduce the fine for a violation that is subject to the presumptive fines established by ORS 153.019 (1) or 153.020 *[(1)]* to an amount that is less than:

(a) \$220 for a Class A violation.

(b) \$130 for a Class B violation.

(c) \$80 for a Class C violation.

(d) \$60 for a Class D violation.

(2) Except as otherwise provided by law, a court may not defer, waive, suspend or otherwise reduce the fine for a specific fine violation to an amount that is less than 20 percent of the presumptive fine for the violation.

(3) This section does not affect the manner in which a court imposes or reduces monetary obligations other than fines.

(4) The Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of this section. In addition, the Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of ORS 137.289 to 137.297 and 153.640 to 153.680. The Department of Revenue or Secretary of State may file an action under ORS 34.105 to 34.240 to enforce the requirements of this section and of ORS 137.289 to 137.297 and 153.640 to 153.680.

OVERWEIGHT TRUCK VIOLATIONS

SECTION 12. ORS 818.430 is amended to read:

818.430. This section establishes schedules of presumptive fines for violations of maximum weight requirements under the vehicle code. The particular schedule applicable is the schedule designated in the section establishing the offense. Upon conviction, a person is punishable by a fine and other penalty established in the schedule. Fines are based upon the excess weight by which any loaded weight exceeds the applicable loaded weight authorized in the provision, permit, order or resolution the person violates. The schedules are as follows:

(1) The presumptive fines under Schedule I are as provided in this subsection. If the excess weight is:

- (a) One thousand pounds or less, the presumptive fine is \$100.
- (b) More than 1,000 pounds, but not in excess of 2,000 pounds, the presumptive fine is \$150.
- (c) More than 2,000 pounds, but not in excess of 3,000 pounds, the presumptive fine is \$200.
- (d) More than 3,000 pounds, but not in excess of 5,000 pounds, the presumptive fine is \$300.
- (e) More than 5,000 pounds, but not in excess of 7,500 pounds, the presumptive fine is an amount equal to 15 cents per pound for each pound of the excess weight.
- (f) More than 7,500 pounds, but not in excess of 10,000 pounds, the presumptive fine is an amount equal to 16 cents per pound for each pound of the excess weight.
- (g) More than 10,000 pounds, but not in excess of 12,500 pounds, the presumptive fine is an amount equal to 20 cents for each pound of the excess weight.
- (h) More than 12,500 pounds over the allowable weight, the presumptive fine is an amount equal to 24 cents per pound for each pound of excess weight.

(2) The presumptive fines under Schedule II are as provided in this subsection. If the excess weight is:

- (a) One hundred pounds, but not in excess of 5,000 pounds, the presumptive fine is an amount equal to \$200 plus 10 cents per pound of the excess weight.
- (b) More than 5,000 pounds, but not in excess of 10,000 pounds, the presumptive fine is an amount equal to \$350 plus 15 cents per pound of the excess weight.
- (c) More than 10,000 pounds, the presumptive fine is an amount equal to \$600 plus 30 cents per pound of the excess weight.

(3) Notwithstanding ORS 153.021, the fine imposed under subsection (2) of this section shall be not more than \$100 if a person charged with an offense punishable under Schedule II produces in court a second valid variance permit issued under ORS 818.200 authorizing a loaded weight equal to or greater than the actual loaded weight of the vehicle, combination of vehicles, axle, tandem axles or group of axles upon which the citation was based.

(4) The penalties under Schedule III are as provided in this subsection and are in addition to any suspension of operator's license under ORS 809.120 or any suspension of vehicle registration under ORS 809.120. If the excess weight is:

(a) One hundred pounds, but not in excess of 5,000 pounds, the presumptive fine [shall be] is \$200 plus 15 cents per pound for each pound of the excess weight.

(b) More than 5,000 pounds but not in excess of 10,000 pounds, the presumptive fine [shall be] is \$350 plus 20 cents per pound for each pound of excess weight.

(c) More than 10,000 pounds, [the operator commits a Class C misdemeanor] **the presumptive fine is \$500, plus 30 cents per pound for each pound of excess weight.**

SECTION 13. The amendments to ORS 818.430 by section 12 of this 2012 Act apply only to offenses that are committed on or after the effective date of this 2012 Act.

DISTRIBUTIONS FROM CRIMINAL FINE ACCOUNT

SECTION 14. ORS 137.300 is amended to read:

137.300. (1) The Criminal Fine Account is established in the General Fund. Except as otherwise provided by law, all amounts collected in state courts as monetary obligations in criminal actions shall be deposited by the courts in the account. All moneys in the account are continuously appropriated to the Department of Revenue to be distributed by the Department of Revenue as provided in this section. The Department of Revenue shall keep a record of moneys transferred into and out of the account.

(2) The Legislative Assembly shall first allocate moneys from the Criminal Fine Account for the following purposes, in the following order of priority:

(a) Allocations for public safety standards, training and facilities.

(b) Allocations for criminal injuries compensation and assistance to victims of crime and children reasonably suspected of being victims of crime.

(c) Allocations for the forensic services provided by the Oregon State Police, including, but not limited to, services of the State Medical Examiner.

(d) Allocations for the maintenance and operation of the Law Enforcement Data System.

(3) After making allocations under subsection (2) of this section, the Legislative Assembly shall allocate moneys from the Criminal Fine Account for the following purposes:

(a) Allocations to the Law Enforcement Medical Liability Account established under ORS 414.815.

(b) Allocations to the State Court Facilities and Security Account established under ORS 1.178.

(c) Allocations to the Department of Corrections for community corrections grants under ORS 423.520.

(d) Allocations to the Oregon Health Authority for the purpose of grants under ORS 430.345 for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services provided through a county.

(e) Allocations to the Oregon State Police for the purpose of the enforcement of the laws relating to driving under the influence of intoxicants.

(f) Allocations to the Arrest and Return Account established under ORS 133.865.

(g) Allocations to the Intoxicated Driver Program Fund established under ORS 813.270.

(4) It is the intent of the Legislative Assembly that allocations from the Criminal Fine Account under subsection (3) of this section be consistent with historical funding of the entities, programs and accounts listed in subsection (3) of this section from monetary obligations imposed in criminal proceedings.

(5) Moneys in the Criminal Fine Account may not be allocated for the payment of debt service obligations.

(6) The Department of Revenue shall deposit in the General Fund all moneys remaining in the Criminal Fine Account after the distributions listed in subsections (2) and (3) of this section have been made.

(7) The Department of Revenue shall establish by rule a process for distributing moneys in the Criminal Fine Account. **The department may not distribute more than one-eighth of the total biennial allocation to an entity during a calendar quarter.**

SMALL FINE OFFENSES

SECTION 15. ORS 153.633 is amended to read:

153.633. (1) In any criminal action in which a fine is imposed, the lesser of the following amounts is payable to the state before any other distribution of the fine is made:

- (a) \$60; or
- (b) The amount of the fine if the fine is less than \$60.

(2) A justice or municipal court shall forward the amount prescribed under subsection (1) of this section to the Department of Revenue for deposit in the Criminal Fine Account.

(3) The provisions of this section do not apply to fines imposed in justice and municipal courts under ORS 811.590, 814.485, 814.486, 814.534, 814.536, 814.600 or 830.990 (1).

SECTION 16. The amendments to ORS 153.633 by section 15 of this 2012 Act apply only to offenses committed on or after the effective date of this 2012 Act.

VIOLATION OF TRI-MET ORDINANCES

SECTION 17. Section 18 of this 2012 Act is added to and made a part of ORS chapter 153.

SECTION 18. (1) If a court enters a judgment of conviction for the violation of an ordinance enacted by the district board of a mass transit district under ORS 267.150, amounts collected under the judgment are payable as follows:

(a) The amount prescribed by ORS 153.633 (1) is payable to the state and must be deposited in the Criminal Fine Account;

(b) One-half of the amount remaining after any payment required by paragraph (a) of this subsection is payable to the district that enacted the ordinance; and

(c) One-half of the amount remaining after any payment required by paragraph (a) of this subsection is payable as provided in subsection (2) of this section.

(2)(a) If a judgment of conviction that is subject to subsection (1) of this section is entered in circuit court, the amount specified in subsection (1)(c) of this section shall be paid to the state.

(b) If a judgment of conviction that is subject to subsection (1) of this section is entered in justice court, the amount specified in subsection (1)(c) of this section shall be paid to the county that established the court.

(c) If a judgment of conviction that is subject to subsection (1) of this section is entered in municipal court, the amount specified in subsection (1)(c) of this section shall be paid to the city that established the court.

SECTION 19. (1) Section 18 of this 2012 Act becomes operative on April 1, 2012.

(2) Section 18 of this 2012 Act applies to all violations of ordinances enacted by the district board of a mass transit district that occur on or after January 1, 2012.

(3) Notwithstanding ORS 137.300, there is allocated \$77,860 to the Judicial Department from the Criminal Fine Account, for the purpose of reimbursing the Tri-County Metropolitan Transportation District of Oregon for amounts that were collected in circuit courts between January 1, 2012, and April 1, 2012, for violations of ordinances and that were not distributed as provided under section 18 of this 2012 Act. The department shall transfer the amounts to the district as soon as possible after the effective date of this 2012 Act.

CAPTIONS

SECTION 20. The unit captions used in this 2012 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 2012 Act.

EMERGENCY CLAUSE

SECTION 21. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by House February 24, 2012

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate February 29, 2012

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State