

Enrolled
House Bill 2205

Sponsored by Representatives GILLIAM, HOYLE, Senator JOHNSON (Presession filed.)

CHAPTER

AN ACT

Relating to abuse of vulnerable persons; creating new provisions; amending ORS 9.114, 124.050, 124.060, 192.586, 192.600 and 192.602 and section 8, chapter 837, Oregon Laws 2009, and sections 10, 23 and 24, chapter 70, Oregon Laws 2012; repealing section 43, chapter 837, Oregon Laws 2009, and sections 25 and 29, chapter 70, Oregon Laws 2012; and declaring an emergency.

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

SECTION 1. (1) Sections 25 and 29, chapter 70, Oregon Laws 2012, are repealed.

(2) Section 43, chapter 837, Oregon Laws 2009, is repealed.

SECTION 2. ORS 192.586, as amended by sections 10a and 26, chapter 70, Oregon Laws 2012, is amended to read:

192.586. (1) Except as provided in ORS 192.588, 192.591, 192.593, 192.596, 192.598 and 192.603 **and section 10, chapter 70, Oregon Laws 2012**, or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

(a) A financial institution may not provide financial records of a customer to a state or local agency.

(b) A state or local agency may not request or receive from a financial institution financial records of customers.

(2) Subsection (1) of this section does not preclude a financial institution, in the discretion of the financial institution, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning a suspected violation of the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office must remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) Information showing that a directly held loan is in default.

(c) An appropriate state or local agency in connection with any business relationship or transaction between the financial institution and the customer, if the disclosure is made in the ordinary course of business of the financial institution and will further the legitimate business interests of the customer or the financial institution.

(3) ORS 192.583 to 192.607 do not prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, the Department of Consumer and Business Services of financial records that relate solely to the exercise of the department's supervisory function. The scope of the department's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(d) Compliance with the provisions of ORS 708A.655 or 723.844.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insufficient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.685.

SECTION 3. ORS 192.600, as amended by sections 10b and 27, chapter 70, Oregon Laws 2012, is amended to read:

192.600. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire or determine that those seeking disclosure have duly complied with the requirements set forth in ORS 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596 or 192.598 **or section 10, chapter 70, Oregon Laws 2012**, shows compliance on its face.

(2) A financial institution which in good faith reliance refuses to disclose financial records of a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by such refusal.

(3) Financial institutions shall not be required to notify their customers concerning the receipt by them of requests from state or local agencies for disclosures of financial records of such customers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may order a financial institution to withhold notification to a customer of the receipt of a summons, subpoena or search warrant when the court finds that notice to the customer would impede the investigation being conducted by the state or local agency.

(4) Financial institutions that participate in a trust account overdraft notification program established under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole or in part by that participation or arising in any way out of that participation.

(5) A financial institution shall not be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a).

SECTION 4. ORS 192.602, as amended by sections 10c and 28, chapter 70, Oregon Laws 2012, is amended to read:

192.602. (1)(a) A financial institution shall have a reasonable period of time in which to comply with any proper customer authorization, summons, subpoena or search warrant permitting or seeking disclosure of financial records. *[For the purposes of this section,]* **Except as provided in paragraphs (b) and (c) of this subsection**, a "reasonable period of time" shall in no case be less than 10 days from the date upon which the financial institution receives or is served with a customer authorization, summons, subpoena or search warrant.

(b) *[However, in all cases in which]* **When** disclosure is sought under ORS 192.596, the reasonable period of time shall be not less than 20 days.

(c) When disclosure is sought under section 10, chapter 70, Oregon Laws 2012, the reasonable period of time shall be that period of time required by the circumstances but in no case more than 10 days from the date upon which the financial institution receives or is served with a subpoena under section 10, chapter 70, Oregon Laws 2012.

(2) Before making disclosures, a financial institution may require that the requesting state or local agency reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs include, but are not limited to, personnel costs, reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

(a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(b) Reproduction costs, \$1 per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual costs.

(c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination.

(3) The provisions of subsection (2) of this section do not apply in the case of records subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700.

SECTION 5. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.383.

(7) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or

(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, physician assistant or podiatric physician and surgeon, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

(i) Senior center employee.

(j) Information and referral or outreach worker.

(k) Licensed professional counselor or licensed marriage and family therapist.

(L) *[Any public official who comes in contact with elderly persons in the performance of the official's official duties]* **Member of the Legislative Assembly.**

(m) Firefighter or emergency medical services provider.

(n) Psychologist.

(o) Provider of adult foster care or an employee of the provider.

(p) Audiologist.

(q) Speech-language pathologist.

(r) Attorney.

(s) Dentist.

(t) Optometrist.

(u) Chiropractor.

(10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;

(D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 6. ORS 124.060 is amended to read:

124.060. Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact[, *while acting in an official capacity,*] has suffered abuse, or that any person with whom the official comes in contact [*while acting in an official capacity*] has abused a person 65 years of age or older shall report or cause a report to be made in the manner required in ORS 124.065. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, [*or*] psychologist, **member of the clergy or attorney** is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. **An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.**

SECTION 7. ORS 9.114 is amended to read:

9.114. The Oregon State Bar shall [*require that attorneys complete one hour of training every three years designed to provide education on the duties of attorneys under ORS 419B.010. All training under this section shall be applied by the bar against the hours of continuing legal education required of attorneys as a condition of membership in the bar or as a condition to the practice of law in this state. Credit acquired under this section shall be applied first against any requirement of continuing legal education relating to ethics.*] **adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010. Rules adopted under this section are subject to review and approval by the Supreme Court.**

SECTION 8. Section 23, chapter 70, Oregon Laws 2012, is amended to read:

Sec. 23. (1) It is the intent of the Legislative Assembly to recreate the Oregon Elder Abuse Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws 2011, and repealed on February 29, 2012, so that the work group may complete its work as set forth in **this section and** section 1, chapter 444, Oregon Laws 2011.

(2) The Oregon Elder Abuse Work Group shall consist of [17] **22** members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(c) The Governor shall appoint [10] **12** members as follows:

(A) The Long Term Care Ombudsman appointed under ORS 441.103;

(B) Three members representing long term care providers for elderly persons;

(C) Two members representing law enforcement agencies, one of whom shall be a representative from the Oregon District Attorneys Association and one of whom shall be a representative from a local law enforcement agency with expertise in investigating elder abuse;

(D) Two members representing consumers who are elderly persons;

(E) An officer of a bank, as defined in ORS 706.008; [and]

(F) An officer of a credit union, as defined in ORS 723.008;

(G) A representative of unionized health care workers who is recommended by a local affiliate of the Service Employees International Union; and

(H) A member of the Oregon Patient Safety Commission established under ORS 442.820.

(d) The chairperson of the Governor's Commission on Senior Services created under ORS 410.320 shall appoint one member.

(e) The Director of Human Services shall appoint two members as follows:

(A) One member with expertise in elder abuse services and investigations; and

(B) One member representing the office or department within the Department of Human Services that performs criminal background checks of individuals providing services to elderly persons or conducting elder abuse investigations.

(f) The Attorney General shall appoint a deputy or assistant attorney general with expertise in the investigation of criminal offenses that have been committed against vulnerable persons.

(g) The Board of Governors of the Oregon State Bar shall appoint two members as follows:

(A) A lawyer whose practice is concentrated on elder law; and

(B) A criminal defense lawyer.

(3) The work group shall *[have its first meeting on or before the later of 30 days after adjournment sine die of the 2012 regular session of the Seventy-sixth Legislative Assembly or September 30, 2012]* **meet at times and places specified by the call of the chairperson or of a majority of the members of the work group.**

(4) The work group shall study and make recommendations on[:]

[(a)] the definition of elder abuse, including but not limited to:

(a) Aligning definitions of abuse of vulnerable persons across populations, agencies, service providers and law enforcement;

(b) Defining abuse of vulnerable persons for purposes of investigation and for purposes of making determinations that abuse of vulnerable persons has or has not occurred; and

(c) Defining abuse of vulnerable persons for purposes of abuse data reporting systems.

[(b) The criminal background check system and its role in prevention and investigation of elder abuse.]

[(c) The process involved in conducting elder abuse investigations.]

[(d) Elder abuse data reporting systems.]

[(e) Reports to the Legislative Assembly.]

[(f) Information that could be made available to the public regarding elder abuse and investigations of elder abuse.]

[(5) The work group shall prepare a detailed assessment of the costs to implement the work group's recommendations. The assessment must address both current and future needs in providing elder abuse prevention and investigation services. Each agency or organization with a member on the work group shall cooperate with the work group in assessing and identifying the costs of complying with the work group's recommendations.]

[(6)] (5) A majority of the members of the work group constitutes a quorum for the transaction of business.

[(7)] (6) Official action by the work group requires the approval of a majority of the members of the work group.

[(8)] (7) The work group shall elect [one] **two** of its members to serve as [chairperson] **cochairpersons**.

[(9)] (8) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

[(10)] (9) The work group shall meet at times and places specified by the call of the [chairperson] **cochairpersons** or of a majority of the members of the work group.

[(11)] (10) The work group may adopt rules necessary for the operation of the work group.

[(12)] (11) The work group shall make a report, and may include recommendations for legislation, to interim committees of the Legislative Assembly related to the provision of services to elderly persons and investigation of elder abuse no later than [January 15, 2013] **February 1, 2014**.

[(13)] (12) The work group may accept donations of staff support, office space and equipment from advocacy or service provider organizations to assist the work group in the performance of its functions.

[(14)] (13) Notwithstanding ORS 171.072, members of the work group who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the work group. Other members of the work group are not entitled to compensation or reimbursement for expenses and serve as volunteers on the work group.

[(15)] (14) All agencies of state government as defined in ORS 174.111 are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the work group consider necessary to perform their duties.

SECTION 9. Section 24, chapter 70, Oregon Laws 2012, is amended to read:

Sec. 24. Section 23 [of this 2012 Act], **chapter 70, Oregon Laws 2012**, is repealed on June 30, [2013] **2015**.

SECTION 10. Section 8, chapter 837, Oregon Laws 2009, as amended by section 83, chapter 828, Oregon Laws 2009, is amended to read:

Sec. 8. (1) The district attorney in each county shall be responsible for developing county multidisciplinary teams to consist of but not be limited to personnel from the community mental health program, the community developmental disabilities program, the Department of Human Services or a designee of the department, the Oregon Health Authority or a designee of the authority, the local area agency on aging, the district attorney's office, law enforcement and an agency that advocates on behalf of individuals with disabilities, as well as others specially trained in the abuse of adults. **A district attorney may delegate the responsibility to develop a county multidisciplinary team under this subsection to a designee or administrator who is or will be a member of the team pursuant to a written agreement.**

(2) The teams shall develop a written protocol for immediate investigation of and notification procedures for cases of abuse of adults and for interviewing the victims. Each team also shall develop written agreements signed by member agencies that are represented on the team that specify:

- (a) The role of each member agency;
- (b) Procedures to be followed to assess risks to the adult;
- (c) Guidelines for timely communication between member agencies; and
- (d) Guidelines for completion of responsibilities by member agencies.

(3) Each team member shall have access to training in risk assessment, dynamics of abuse of adults and legally sound interview and investigatory techniques.

(4) All investigations of abuse of adults by the department or its designee or the authority or its designee and by law enforcement shall be carried out in a manner consistent with the protocols and procedures called for in this section.

(5) All information obtained by the team members in the exercise of their duties is confidential.

(6) Each team shall develop and implement procedures for evaluating and reporting compliance of member agencies with the protocols and procedures required under this section.

(7) Each team shall [annually] report to the Department of Justice and the Oregon Criminal Justice Commission, **no later than July 1 of each year**, the number of:

(a) Substantiated allegations of abuse of adults in the county for the preceding [12 months] **calendar year**.

(b) Substantiated allegations of abuse referred to law enforcement because there was reasonable cause found that a crime had been committed.

(c) Allegations of abuse that were not investigated by law enforcement.

(d) Allegations of abuse that led to criminal charges.

(e) Allegations of abuse that led to prosecution.

(f) Allegations of abuse that led to conviction.

SECTION 11. Section 10, chapter 70, Oregon Laws 2012, is amended to read:

Sec. 10. (1) Notwithstanding ORS 192.596, a financial institution shall disclose and provide copies of the financial records of a person who is the alleged victim in an investigation under ORS 124.070 or 441.650 in accordance with a subpoena issued by a court or on behalf of a grand jury under ORS 136.563.

(2) A subpoena issued under this section shall specify:

(a) The name and Social Security number of the person about whom financial records are sought; and

(b) That the person about whom financial records are sought is the alleged victim in an abuse investigation under ORS 124.070 or 441.650.

(3) Disclosure and provision of copies under this section shall be made:

(a) Without the consent of the person who is the alleged victim in the abuse investigation, or of the person's caretaker, fiduciary or other legal representative; and

(b) When made under subsection (7)(b) of this section, without the consent of the person who is not the alleged victim in the abuse investigation.

(4) A copy of the subpoena issued under this section may be served upon the person or the person's caretaker, fiduciary or other legal representative, in the discretion of the court or the district attorney that issued the subpoena.

(5) Except when specifically directed by the court or district attorney issuing the subpoena not to, a financial institution that discloses and provides copies of financial records under this section may, but is not required to:

(a) Inform the person about whom financial records have been sought about the disclosure; or

(b) Inform the person's caretaker, fiduciary or other legal representative, about the disclosure.

(6) A financial institution that provides copies of financial records under this section may be reimbursed for costs incurred as provided in ORS 192.602.

(7)(a) Financial records may be subpoenaed under this section only with respect to a person who is the alleged victim of abuse in an investigation under ORS 124.070 or 441.650.

(b) Notwithstanding paragraph (a) of this subsection, financial records may be subpoenaed under this section when the financial records pertain to an account, loan or other financial relationship owned, held or maintained by a person who is the alleged victim in an abuse investigation under ORS 124.070 or 441.650 together with one or more other persons who are not alleged victims in the abuse investigation.

(8) A financial institution that discloses and provides copies of financial records under this section is not liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure and provision of the copies.

(9)(a) Copies provided by a financial institution under this section must be accompanied by an affidavit or declaration of a custodian of records for the financial institution that states the following:

(A) That the affiant or declarant is a duly authorized custodian of the financial records and has authority to certify the financial records;

(B) That the copies are true copies of all of the financial records responsive to the subpoena; and

(C) That the financial records were prepared by the personnel of the financial institution acting under the control of the financial institution in the ordinary course of the financial institution's business.

(b) If the financial institution has none of the financial records described in the subpoena, or only part of the financial records described in the subpoena, the affiant or declarant shall state in the affidavit or declaration that none or only a part of the financial records described in the subpoena are in the financial institution's possession and control and shall disclose and provide only those financial records of which the affiant or declarant has custody.

(c) When more than one person has knowledge of the facts required to be stated in the affidavit or declaration under this subsection, more than one affidavit or declaration may be used.

(d) Copies provided under this subsection are admissible in evidence in a proceeding before a court in which testimony may be compelled to the same extent as though the original financial records were offered and a custodian of the financial records had been present and testified to the matters stated in the affidavit or declaration. The affidavit or declaration is admissible as evidence of the matters stated in the affidavit or declaration. The matters stated in the affidavit or declaration are presumed to be true. The presumption established by this paragraph is a presumption affecting the burden of producing evidence.

SECTION 12. The amendments to ORS 9.114, 124.050 and 124.060 by sections 5 to 7 of this 2013 Act become operative on January 1, 2015.

SECTION 13. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House April 16, 2013

Received by Governor:

Repassed by House June 3, 2013

.....M.,....., 2013

Approved:

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Ramona J. Line, Chief Clerk of House

.....M.,....., 2013

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate May 29, 2013

Filed in Office of Secretary of State:

.....M.,....., 2013

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State