

Enrolled Senate Bill 87

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CHAPTER

AN ACT

Relating to death investigations; creating new provisions; amending ORS 146.035, 146.100 and 192.501; and declaring an emergency.

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

SECTION 1. ORS 146.100 is amended to read:

146.100. (1) Death investigations shall be under the direction of the district medical examiner and the district attorney for the county where the death occurs.

(2) For purposes of ORS 146.003 to 146.189, if the county where death occurs is unknown, the death shall be deemed to have occurred in the county where the body is found, except that if in an emergency the deceased is moved by conveyance to another county and is dead on arrival, the death shall be deemed to have occurred in the county from which the body was originally removed.

(3) The district medical examiner or a designated assistant medical examiner for the county where death occurs shall be immediately notified of:

(a) All deaths requiring investigation; and

(b) All deaths of persons admitted to a hospital or institution for less than 24 hours, although the medical examiner need not investigate nor certify such deaths.

(4) No person having knowledge of a death requiring investigation shall intentionally or knowingly fail to make notification thereof as required by subsection (3) of this section.

(5) The district medical examiner or deputy medical examiner shall immediately notify the district attorney for the county where death occurs of all deaths requiring investigation except for those specified by ORS 146.090 (1)(d) to (g).

[(6) All peace officers, physicians, embalmers, supervisors of penal institutions and supervisors of hospitals or institutions caring for the ill or helpless shall cooperate with the medical examiner by providing requested medical records, tissue samples and other materials necessary to conduct the death investigation and shall make notification of deaths as required by subsection (3) of this section.]

(6) All peace officers, health care providers as defined in ORS 192.519, supervisors of penal institutions and supervisors of hospitals or institutions caring for the ill or helpless shall cooperate with the medical examiner by providing a decedent's medical records and tissue samples and any other material necessary to conduct the death investigation of the decedent and shall make notification of deaths as required by subsection (3) of this section. A person who cooperates with the medical examiner in accordance with this subsection does not:

(a) Waive any claim of privilege applicable to, or the confidentiality of, the materials and records provided.

(b) Waive any claim that the materials and records are subject to an exemption from disclosure under ORS 192.410 to 192.505.

(7) Records or materials described in subsection (6) of this section may be released by the medical examiner only pursuant to a valid court order.

SECTION 2. ORS 192.501, as amended by section 1, chapter 48, Oregon Laws 2008, is amended to read:

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Information relating to the appraisal of real estate prior to its acquisition.

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections.

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732.

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

(12) A personnel discipline action, or materials or documents supporting that action.

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(16) Data and information provided by participants to mediation under ORS 36.256.

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721.

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967.

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

- (a) Personal and corporate financial statements and information, including tax returns;
- (b) Credit reports;
- (c) Project appraisals;
- (d) Market studies and analyses;
- (e) Articles of incorporation, partnership agreements and operating agreements;
- (f) Commitment letters;
- (g) Project pro forma statements;
- (h) Project cost certifications and cost data;
- (i) Audits;
- (j) Project tenant correspondence requested to be confidential;
- (k) Tenant files relating to certification; and
- (L) Housing assistance payment requests.

(22) Records or information that, if disclosed, would allow a person to:

- (a) Gain unauthorized access to buildings or other property;
- (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or
- (c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body.

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

- (a) An individual;
- (b) Buildings or other property;
- (c) Information processing, communication or telecommunication systems, including the information contained in the systems; or
- (d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6).

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System.

(26) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

(27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.

(28) Social Security numbers as provided in ORS 107.840.

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

(30) The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents. This subsection does not apply to Oregon Health

and Science University press releases, websites or other publications circulated to the general public.

(31)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by a deputy district attorney or by an assistant attorney general designated by the Attorney General, the home address and home telephone number of the public safety officer or attorney contained in the voter registration records for the public safety officer or attorney.

(b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home telephone number of the public safety officer contained in records of the Department of Public Safety Standards and Training.

(32) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by a deputy district attorney or by an assistant attorney general designated by the Attorney General, the name of the public safety officer or attorney contained in county real property assessment or taxation records. This exemption:

(a) Applies only to the name of the public safety officer or attorney and any other owner of the property in connection with a specific property identified by the officer or attorney in a request for exemption from disclosure;

(b) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(c) Applies until the public safety officer or attorney requests termination of the exemption;

(d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(e) May not result in liability for a county if the name of a public safety officer or attorney is disclosed after a request for exemption from disclosure is made under this subsection.

(33) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

(34) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

SECTION 3. ORS 146.035 is amended to read:

146.035. (1) There shall be established within the Department of State Police the State Medical Examiner's office for the purpose of directing and supporting the state death investigation program.

(2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's program.

(3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or discharge other personnel of the State Medical Examiner's office.

(4) The State Medical Examiner's office shall:

(a) File and maintain appropriate reports on all deaths requiring investigation.

(b) Maintain an accurate list of all active district medical examiners, assistant district medical examiners and designated pathologists.

(c) Transmit monthly to the Department of Transportation a report for the preceding calendar month of all information obtained under ORS 146.113.

(5) **Notwithstanding ORS 192.501 (34):**

(a) Any parent, spouse, **sibling**, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

(b) The system described in ORS 192.517 (1) shall have access to reports described in this subsection as provided in ORS 192.517.

SECTION 4. ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, section 7, chapter 608, Oregon Laws 2007, section 2, chapter 687, Oregon Laws 2007, and section 2, chapter 48, Oregon Laws 2008, is amended to read:

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Information relating to the appraisal of real estate prior to its acquisition.

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections.

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732.

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and

the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

(12) A personnel discipline action, or materials or documents supporting that action.

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(16) Data and information provided by participants to mediation under ORS 36.256.

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721.

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967.

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

- (i) Audits;
 - (j) Project tenant correspondence requested to be confidential;
 - (k) Tenant files relating to certification; and
 - (L) Housing assistance payment requests.
- (22) Records or information that, if disclosed, would allow a person to:
- (a) Gain unauthorized access to buildings or other property;
 - (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or
 - (c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body.
- (23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:
- (a) An individual;
 - (b) Buildings or other property;
 - (c) Information processing, communication or telecommunication systems, including the information contained in the systems; or
 - (d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6).
- (24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.
- (25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System.
- (26) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.
- (27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.
- (28) Social Security numbers as provided in ORS 107.840.
- (29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.
- (30)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by a deputy district attorney or by an assistant attorney general designated by the Attorney General, the home address and home telephone number of the public safety officer or attorney contained in the voter registration records for the public safety officer or attorney.
- (b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home telephone number of the public safety officer contained in records of the Department of Public Safety Standards and Training.
- (31) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by a deputy district attorney or by an assistant attorney general designated by the Attorney General, the name of the public safety officer or attorney contained in county real property assessment or taxation records. This exemption:
- (a) Applies only to the name of the public safety officer or attorney and any other owner of the property in connection with a specific property identified by the officer or attorney in a request for exemption from disclosure;

(b) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(c) Applies until the public safety officer or attorney requests termination of the exemption;

(d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(e) May not result in liability for a county if the name of a public safety officer or attorney is disclosed after a request for exemption from disclosure is made under this subsection.

(32) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

(33) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

SECTION 5. ORS 146.035, as amended by section 3 of this 2009 Act, is amended to read:

146.035. (1) There shall be established within the Department of State Police the State Medical Examiner's office for the purpose of directing and supporting the state death investigation program.

(2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's program.

(3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or discharge other personnel of the State Medical Examiner's office.

(4) The State Medical Examiner's office shall:

(a) File and maintain appropriate reports on all deaths requiring investigation.

(b) Maintain an accurate list of all active district medical examiners, assistant district medical examiners and designated pathologists.

(c) Transmit monthly to the Department of Transportation a report for the preceding calendar month of all information obtained under ORS 146.113.

(5) Notwithstanding ORS 192.501 [(34)] **(33)**:

(a) Any parent, spouse, sibling, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

(b) The system described in ORS 192.517 (1) shall have access to reports described in this subsection as provided in ORS 192.517.

SECTION 6. The amendments to ORS 146.035 by section 5 of this 2009 Act become operative January 2, 2010.

SECTION 7. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate April 16, 2009

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Secretary of Senate

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President of Senate

Passed by House May 21, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State