

SENATE AMENDMENTS TO SENATE BILL 1553

By COMMITTEE ON JUDICIARY

February 17

1 On page 1 of the printed bill, line 2, delete “and 163.168” and insert “, 163.168 and 192.502”.

2 On page 3, delete lines 31 through 36 and insert:

3 “(B) A confession, made by the defendant, to the crime the victim reported.

4 “(C) An oral statement, made by the victim to another person in temporal proximity to the
5 commission of the crime, corroborating the victim’s report of the crime to a law enforcement agency.

6 “(D) A written statement, created by the victim in temporal proximity to the commission of the
7 crime and subsequently delivered to another person or to a law enforcement agency, corroborating
8 the victim’s report of the crime to a law enforcement agency.

9 “(E) A report made by a different victim to a law enforcement agency, made either before or
10 after the victim’s report, alleging that the defendant committed another crime of the same or similar
11 character such that the two crimes could be charged in the same charging instrument under ORS
12 132.560.”.

13 On page 4, line 5, after “another” insert “who is a vulnerable user of a public way, as defined
14 in ORS 801.608.”.

15 After line 43, insert:

16 “**SECTION 4.** ORS 192.502 is amended to read:

17 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

18 “(1) Communications within a public body or between public bodies of an advisory nature to the
19 extent that they cover other than purely factual materials and are preliminary to any final agency
20 determination of policy or action. This exemption shall not apply unless the public body shows that
21 in the particular instance the public interest in encouraging frank communication between officials
22 and employees of public bodies clearly outweighs the public interest in disclosure.

23 “(2)(a) Information of a personal nature such as but not limited to that kept in a personal,
24 medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy,
25 unless the public interest by clear and convincing evidence requires disclosure in the particular in-
26 stance. The party seeking disclosure shall have the burden of showing that public disclosure would
27 not constitute an unreasonable invasion of privacy.

28 “(b) **Images related to the death of a person that are part of a law enforcement agency**
29 **investigation, if public disclosure would create an unreasonable invasion of privacy of the**
30 **family of the deceased person, unless the public interest by clear and convincing evidence**
31 **requires disclosure in the particular instance. The party seeking disclosure shall have the**
32 **burden of showing that public disclosure would not constitute an unreasonable invasion of**
33 **privacy.**

34 “(3) Upon compliance with ORS 192.437, public body employee or volunteer residential ad-
35 dresses, residential telephone numbers, personal cellular telephone numbers, personal electronic

1 mail addresses, driver license numbers, employer-issued identification card numbers, emergency
2 contact information, Social Security numbers, dates of birth and other telephone numbers contained
3 in personnel records maintained by the public body that is the employer or the recipient of volunteer
4 services. This exemption:

5 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or
6 volunteers who are elected officials, except that a judge or district attorney subject to election may
7 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the
8 terms of ORS 192.445;

9 “(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
10 shows by clear and convincing evidence that the public interest requires disclosure in a particular
11 instance pursuant to ORS 192.437;

12 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a
13 professional education association of which the substitute teacher may be a member; and

14 “(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

15 “(4) Information submitted to a public body in confidence and not otherwise required by law to
16 be submitted, where such information should reasonably be considered confidential, the public body
17 has obliged itself in good faith not to disclose the information, and when the public interest would
18 suffer by the disclosure.

19 “(5) Information or records of the Department of Corrections, including the State Board of
20 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-
21 tation of a person in custody of the department or substantially prejudice or prevent the carrying
22 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
23 public interest in disclosure.

24 “(6) Records, reports and other information received or compiled by the Director of the De-
25 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
26 otherwise required by law to be made public, to the extent that the interests of lending institutions,
27 their officers, employees and customers in preserving the confidentiality of such information out-
28 weighs the public interest in disclosure.

29 “(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

30 “(8) Any public records or information the disclosure of which is prohibited by federal law or
31 regulations.

32 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-
33 erwise made confidential or privileged under Oregon law.

34 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-
35 tion compiled in a public record when:

36 “(A) The basis for the claim of exemption is ORS 40.225;

37 “(B) The factual information is not prohibited from disclosure under any applicable state or
38 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS
39 192.410 to 192.505;

40 “(C) The factual information was compiled by or at the direction of an attorney as part of an
41 investigation on behalf of the public body in response to information of possible wrongdoing by the
42 public body;

43 “(D) The factual information was not compiled in preparation for litigation, arbitration or an
44 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
45 or against the public body; and

1 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
2 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-
3 rection.

4 “(10) Public records or information described in this section, furnished by the public body ori-
5 ginally compiling, preparing or receiving them to any other public officer or public body in con-
6 nection with performance of the duties of the recipient, if the considerations originally giving rise
7 to the confidential or exempt nature of the public records or information remain applicable.

8 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-
9 rity programs pursuant to ORS 469.530.

10 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-
11 cords and employee financial records maintained by the Public Employees Retirement System pur-
12 suant to ORS chapters 238 and 238A.

13 “(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
14 agents of the treasurer or the council relating to active or proposed publicly traded investments
15 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
16 liquidation of the investments. For the purposes of this subsection:

17 “(a) The exemption does not apply to:

18 “(A) Information in investment records solely related to the amount paid directly into an in-
19 vestment by, or returned from the investment directly to, the treasurer or council; or

20 “(B) The identity of the entity to which the amount was paid directly or from which the amount
21 was received directly.

22 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-
23 change or liquidation of the investment has been concluded.

24 “(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
25 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed
26 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset
27 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or
28 liquidation of the investments including but not limited to:

29 “(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
30 or to their respective investment vehicles.

31 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-
32 ment vehicles.

33 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment
34 vehicles.

35 “(D) Records containing information regarding the portfolio positions in which an investment
36 fund, an asset ownership or their respective investment vehicles invest.

37 “(E) Capital call and distribution notices of an investment fund, an asset ownership or their
38 respective investment vehicles.

39 “(F) Investment agreements and related documents.

40 “(b) The exemption under this subsection does not apply to:

41 “(A) The name, address and vintage year of each privately placed investment fund.

42 “(B) The dollar amount of the commitment made to each privately placed investment fund since
43 inception of the fund.

44 “(C) The dollar amount of cash contributions made to each privately placed investment fund
45 since inception of the fund.

1 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
2 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,
3 council or board from each privately placed investment fund.

4 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
5 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
6 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

7 “(F) The net internal rate of return of each privately placed investment fund since inception of
8 the fund.

9 “(G) The investment multiple of each privately placed investment fund since inception of the
10 fund.

11 “(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
12 basis to each privately placed investment fund.

13 “(I) The dollar amount of cash profit received from each privately placed investment fund on a
14 fiscal year-end basis.

15 “(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning
16 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated
17 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

18 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted
19 by ORS 98.352.

20 “(17)(a) The following records, communications and information submitted to the Oregon Busi-
21 ness Development Commission, the Oregon Business Development Department, the State Department
22 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS
23 777.005, or a county or city governing body and any board, department, commission, council or
24 agency thereof, by applicants for investment funds, grants, loans, services or economic development
25 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

26 “(A) Personal financial statements.

27 “(B) Financial statements of applicants.

28 “(C) Customer lists.

29 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
30 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
31 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
32 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
33 ery or deposition statutes to a party to litigation or potential litigation.

34 “(E) Production, sales and cost data.

35 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
36 and applicant’s strategy regarding specific competitors.

37 “(b) The following records, communications and information submitted to the State Department
38 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

39 “(A) Personal financial statements.

40 “(B) Financial statements of applicants.

41 “(C) Customer lists.

42 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
43 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
44 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
45 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-

1 ery or deposition statutes to a party to litigation or potential litigation.

2 “(E) Production, sales and cost data.

3 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
4 and applicant’s strategy regarding specific competitors.

5 “(18) Records, reports or returns submitted by private concerns or enterprises required by law
6 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
7 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
8 information is in a form which would permit identification of the individual concern or enterprise.
9 Nothing in this subsection shall limit the use which can be made of such information for regulatory
10 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
11 payer of the delinquency immediately by certified mail. However, in the event that the payment or
12 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
13 public body shall disclose, upon the request of any person, the following information:

14 “(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
15 payment or delivery of the taxes.

16 “(b) The period for which the taxes are delinquent.

17 “(c) The actual, or estimated, amount of the delinquency.

18 “(19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
19 pointed counsel, and all information supplied to the court from whatever source for the purpose of
20 verifying the financial eligibility of a person pursuant to ORS 151.485.

21 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-
22 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
23 Business Services, in any of the following circumstances:

24 “(a) When necessary for insurers, self-insured employers and third party claim administrators to
25 process workers’ compensation claims.

26 “(b) When necessary for the director, other governmental agencies of this state or the United
27 States to carry out their duties, functions or powers.

28 “(c) When the disclosure is made in such a manner that the disclosed information cannot be used
29 to identify any worker who is the subject of a claim.

30 “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

31 “(21) Sensitive business records or financial or commercial information of the Oregon Health
32 and Science University that is not customarily provided to business competitors.

33 “(22) Records of Oregon Health and Science University regarding candidates for the position of
34 president of the university.

35 “(23) The records of a library, including:

36 “(a) Circulation records, showing use of specific library material by a named person;

37 “(b) The name of a library patron together with the address or telephone number of the patron;
38 and

39 “(c) The electronic mail address of a patron.

40 “(24) The following records, communications and information obtained by the Housing and
41 Community Services Department in connection with the department’s monitoring or administration
42 of financial assistance or of housing or other developments:

43 “(a) Personal and corporate financial statements and information, including tax returns.

44 “(b) Credit reports.

45 “(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an

1 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed
2 of as part of the project, but only after the transactions have closed and are concluded.

3 “(d) Market studies and analyses.

4 “(e) Articles of incorporation, partnership agreements and operating agreements.

5 “(f) Commitment letters.

6 “(g) Project pro forma statements.

7 “(h) Project cost certifications and cost data.

8 “(i) Audits.

9 “(j) Project tenant correspondence.

10 “(k) Personal information about a tenant.

11 “(L) Housing assistance payments.

12 “(25) Raster geographic information system (GIS) digital databases, provided by private
13 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-
14 partment, that is not otherwise required by law to be submitted.

15 “(26) Sensitive business, commercial or financial information furnished to or developed by a
16 public body engaged in the business of providing electricity or electricity services, if the information
17 is directly related to a transaction described in ORS 261.348, or if the information is directly related
18 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
19 disclosure of the information would cause a competitive disadvantage for the public body or its re-
20 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
21 velopment or review of generally applicable rate schedules.

22 “(27) Sensitive business, commercial or financial information furnished to or developed by the
23 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
24 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
25 and disclosure of the information would cause a competitive disadvantage for the Klamath
26 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
27 ment or review of generally applicable rate schedules.

28 “(28) Personally identifiable information about customers of a municipal electric utility or a
29 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
30 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
31 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
32 lease personally identifiable information about a customer, and a public body providing water, sewer
33 or storm drain services may release the name, date of birth, driver license number, telephone num-
34 ber, electronic mail address or Social Security number of a customer, if the customer consents in
35 writing or electronically, if the disclosure is necessary for the utility, district or other public body
36 to render services to the customer, if the disclosure is required pursuant to a court order or if the
37 disclosure is otherwise required by federal or state law. The utility, district or other public body
38 may charge as appropriate for the costs of providing such information. The utility, district or other
39 public body may make customer records available to third party credit agencies on a regular basis
40 in connection with the establishment and management of customer accounts or in the event such
41 accounts are delinquent.

42 “(29) A record of the street and number of an employee’s address submitted to a special district
43 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

44 “(30) Sensitive business records, capital development plans or financial or commercial informa-
45 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

1 “(31) Documents, materials or other information submitted to the Director of the Department
2 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
3 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
4 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,
5 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the
6 Insurance Code when:

7 “(a) The document, material or other information is received upon notice or with an under-
8 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
9 the document, material or other information; and

10 “(b) The director has obligated the Department of Consumer and Business Services not to dis-
11 close the document, material or other information.

12 “(32) A county elections security plan developed and filed under ORS 254.074.

13 “(33) Information about review or approval of programs relating to the security of:

14 “(a) Generation, storage or conveyance of:

15 “(A) Electricity;

16 “(B) Gas in liquefied or gaseous form;

17 “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

18 “(D) Petroleum products;

19 “(E) Sewage; or

20 “(F) Water.

21 “(b) Telecommunication systems, including cellular, wireless or radio systems.

22 “(c) Data transmissions by whatever means provided.

23 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court
24 designates the information as confidential by rule under ORS 1.002.

25 “(35)(a) Employer account records of the State Accident Insurance Fund Corporation.

26 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any
27 form that are specifically related to the account of any employer insured, previously insured or un-
28 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
29 mation obtained or developed by the corporation in connection with providing, offering to provide
30 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but
31 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
32 employee names and identification information, experience modification factors, loss experience and
33 dividend payment history.

34 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
35 discovery documents in litigation pursuant to applicable rules of civil procedure.

36 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

37 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held
38 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
39 records pertaining to such a claim.

40 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
41 discovery documents in litigation pursuant to applicable rules of civil procedure.

42 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-
43 charge or other separation from military service.

44 “(38) Records of or submitted to a domestic violence service or resource center that relate to
45 the name or personal information of an individual who visits a center for service, including the date

1 of service, the type of service received, referrals or contact information or personal information of
2 a family member of the individual. As used in this subsection, ‘domestic violence service or resource
3 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or
4 sexual violence by providing referrals, resource information or other assistance specifically of ben-
5 efit to domestic or sexual violence victims.

6 “(39) Information reported to the Oregon Health Authority under ORS 431A.860, except as pro-
7 vided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any
8 information related to disclosures made by the authority under ORS 431A.865, including information
9 identifying the recipient of the information.

10 “(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of
11 the executive department, as defined in ORS 174.112, a local government or local service district,
12 as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

13 “(b) This subsection does not apply to electronic mail addresses assigned by a public body to
14 public employees for use by the employees in the ordinary course of their employment.

15 “(41) Residential addresses, residential telephone numbers, personal cellular telephone numbers,
16 personal electronic mail addresses, driver license numbers, emergency contact information, Social
17 Security numbers, dates of birth and other telephone numbers of individuals currently or previously
18 certified or licensed by the Department of Public Safety Standards and Training contained in the
19 records maintained by the department.

20 “(42) Personally identifiable information and contact information of veterans as defined in ORS
21 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the
22 United States, National Guard or other reserve component that was obtained by the Department of
23 Veterans’ Affairs in the course of performing its duties and functions, including but not limited to
24 names, residential and employment addresses, dates of birth, driver license numbers, telephone
25 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-
26 acter of discharge from military service, military rating or rank, that the person is a veteran or has
27 provided military service, information relating to an application for or receipt of federal or state
28 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-
29 formation relating to a home loan or grant application, including but not limited to financial infor-
30 mation provided in connection with the application.”.

31 In line 44, delete “4” and insert “5”.

32 On page 6, delete lines 23 and 24 and insert:

33 “(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
34 161.705.”.

35 On page 8, line 23, delete “5” and insert “6”.