

## SENATE AMENDMENTS TO SENATE BILL 177

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

April 8

1 On page 1 of the printed bill, line 2, delete “40.460 and”.

2 Delete lines 4 through 29 and delete pages 2 through 7 and insert:

3 “**SECTION 1.** ORS 40.465 is amended to read:

4 “40.465. (1) ‘Unavailability as a witness’ includes situations in which the declarant:

5 “(a) Is exempted by ruling of the court on the ground of privilege from testifying concerning the

6 subject matter of a statement;

7 “(b) Persists in refusing to testify concerning the subject matter of a statement despite an order

8 of the court to do so;

9 “(c) Testifies to a lack of memory of the subject matter of a statement;

10 “(d) Is unable to be present or to testify at the hearing because of death or then existing phys-

11 ical or mental illness or infirmity; or

12 “(e) Is absent from the hearing and the proponent of the declarant’s statement has been unable

13 to procure the declarant’s attendance (or in the case of an exception under subsection (3)(b), (c) or

14 (d) of this section, the declarant’s attendance or testimony) by process or other reasonable means.

15 “(2) A declarant is not unavailable as a witness if the declarant’s exemption, refusal, claim of

16 lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of

17 the declarant’s statement for the purpose of preventing the witness from attending or testifying.

18 “(3) The following are not excluded by ORS 40.455 if the declarant is unavailable as a witness:

19 “(a) Testimony given as a witness at another hearing of the same or a different proceeding, or

20 in a deposition taken in compliance with law in the course of the same or another proceeding, if the

21 party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor

22 in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or re-

23 direct examination.

24 “(b) A statement made by a declarant while believing that death was imminent, concerning the

25 cause or circumstances of what the declarant believed to be impending death.

26 “(c) A statement which was at the time of its making so far contrary to the declarant’s

27 pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal li-

28 ability, or to render invalid a claim by the declarant against another, that a reasonable person in

29 the declarant’s position would not have made the statement unless the person believed it to be true.

30 A statement tending to expose the declarant to criminal liability and offered to exculpate the ac-

31 cused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of

32 the statement.

33 “(d)(A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legiti-

34 macy, relationship by blood or adoption or marriage, ancestry, or other similar fact of personal or

35 family history, even though the declarant had no means of acquiring personal knowledge of the

1 matter stated; or

2 “(B) A statement concerning the foregoing matters, and death also, of another person, if the  
3 declarant was related to the other by blood, adoption, or marriage or was so intimately associated  
4 with the other’s family as to be likely to have accurate information concerning the matter declared.

5 “(e) A statement made at or near the time of the transaction by a person in a position to know  
6 the facts stated therein, acting in the person’s professional capacity and in the ordinary course of  
7 professional conduct.

8 “(f) A statement offered against a party who intentionally or knowingly engaged in criminal  
9 conduct that directly caused the death of the declarant, or directly caused the declarant to become  
10 unavailable as a witness because of incapacity or incompetence.

11 “(g) A statement offered against a party who engaged in, directed or otherwise participated in  
12 wrongful conduct that was intended to cause the declarant to be unavailable as a witness, and did  
13 cause the declarant to be unavailable.

14 “(h) A statement not specifically covered by any of the foregoing exceptions but having equiv-  
15 alent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement  
16 is offered as evidence of a material fact; (B) the statement is more probative on the point for which  
17 it is offered than any other evidence which the proponent can procure through reasonable efforts;  
18 and (C) the general purposes of the Oregon Evidence Code and the interests of justice will best be  
19 served by admission of the statement into evidence. However, a statement may not be admitted un-  
20 der this paragraph unless the proponent of it makes known to the adverse party the intention to  
21 offer the statement and the particulars of it, including the name and address of the declarant, suf-  
22 ficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that  
23 the statement is probative of the issues at hand, to provide the adverse party with a fair opportunity  
24 to prepare to meet it.

25 “(4) **For purposes of subsection (3)(f) and (g) of this section, the proponent of a statement**  
26 **is not required to issue a material witness order, as defined in ORS 136.608, or seek sanctions**  
27 **for contempt in order to show the unavailability of the declarant under subsection (1)(e) of**  
28 **this section.**

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

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