

# House Bill 2747

Sponsored by Representative NOBLE (at the request of Diana Gutman) (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies start date for calculating one-year duration of certain protective orders if court continues or modifies order more than 30 days after original order date.

## A BILL FOR AN ACT

1  
2 Relating to protective orders; creating new provisions; and amending ORS 107.716, 107.725, 107.730,  
3 124.015, 124.020 and 419B.845.

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

## FAMILY ABUSE PREVENTION ACT

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8 **SECTION 1.** ORS 107.716 is amended to read:

9 107.716. (1) If the respondent requests a hearing pursuant to ORS 107.718 (10), the court shall  
10 hold the hearing within 21 days after the request. However, if the respondent contests the order  
11 granting temporary child custody to the petitioner, the court shall hold the hearing within five days  
12 after the request.

13 (2)(a) If the court determines under ORS 107.718 (2) that exceptional circumstances exist that  
14 affect the custody of a child, the court shall hold a hearing within 14 days after issuance of the  
15 restraining order. The clerk of the court shall provide a notice of the hearing along with the petition  
16 and order to the petitioner and, in accordance with ORS 107.718 (8), to the county sheriff for service  
17 on the respondent.

18 (b) The respondent may request an earlier hearing, to be held within five days after the request.  
19 The hearing request form shall be available from the clerk of the court in the form prescribed by  
20 the State Court Administrator under ORS 107.718 (7). If the respondent requests an earlier hearing,  
21 the clerk of the court shall notify the parties of the scheduled hearing date by mailing a notice of  
22 the time and place of hearing to the addresses provided in the petition or, for the respondent, to the  
23 address provided in the request for hearing, or as otherwise designated by a party.

24 (c) When the court schedules a hearing under this subsection, the respondent may not request  
25 a hearing under ORS 107.718 (10).

26 (3) In a hearing held pursuant to subsection (1) or (2) of this section:

27 (a) The court may continue any order issued under ORS 107.718 if the court finds that:

28 (A) Abuse has occurred within the period specified in ORS 107.710 (1);

29 (B) The petitioner reasonably fears for the petitioner's physical safety; and

30 (C) The respondent represents a credible threat to the physical safety of the petitioner or the  
31 petitioner's child.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

(b) The court may cancel or change any order issued under ORS 107.718 and may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

**(4) If the court continues or changes the order pursuant to subsection (3) of this section more than 30 days after the date the order was issued under ORS 107.718, the order shall continue in effect for a period of one year from the date of the court’s decision to continue or change the order or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner.**

[(4)] (5)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days so that the party may seek representation.

(b) If one party is represented by an attorney at a hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days at the other party’s request so that the other party may seek representation.

[(5)] (6) If the court continues the order, with or without changes, at a hearing about which the respondent received actual notice and the opportunity to participate, the court shall include in the order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

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CERTIFICATE OF COMPLIANCE  
WITH THE VIOLENCE  
AGAINST WOMEN ACT

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994). This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice and timely opportunity to be heard as provided by the law of this jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

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[(6)] (7) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 107.710. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date *[of the order issued under ORS 107.718]* **the consent agreement is approved**, or until superseded as provided in ORS 107.722.

[(7)] (8) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any manner affect title to any real property.

[(8)] (9) No undertaking shall be required in any proceeding under ORS 107.700 to 107.735.

[(9)] (10) Any proceeding under ORS 107.700 to 107.735 shall be in addition to any other available civil or criminal remedies.

**SECTION 2.** ORS 107.725 is amended to read:

107.725. (1) The court may renew an order entered under ORS 107.716 or 107.718 upon a finding that:

(a) A person in the petitioner’s situation would reasonably fear further acts of abuse by the respondent if the order is not renewed; or

1 (b) A person in the situation of a child who was in the petitioner’s custody during the time the  
 2 order existed, who was also included as a protected person in the order and who has reached 18  
 3 years of age since the date the order was entered would reasonably fear further acts of abuse by  
 4 the respondent if the order is not renewed.

5 (2) A finding that there has been a further act of abuse is not required to renew an order under  
 6 subsection (1) of this section.

7 (3) The court may renew an order under subsection (1)(b) of this section regardless of whether  
 8 the original petitioner agrees to or seeks renewal of the order. If the petitioner does not agree to  
 9 or seek renewal of the order concurrently with the request of the child who has reached 18 years  
 10 of age, the court may modify the order upon renewal to exclude the petitioner as a protected person  
 11 in the order. A child who has reached 18 years of age may seek renewal under this section without  
 12 having to file a petition under ORS 107.710.

13 (4) A court may renew an order on the basis of an ex parte petition alleging facts supporting  
 14 the required finding. The petition must include allegations made under oath or affirmation or a  
 15 declaration under penalty of perjury. If the renewal order is granted, the provisions of ORS [107.716  
 16 (5)] **107.716 (6)** and 107.718 (8) to (10) apply except that the court may hear no issue other than the  
 17 basis for renewal unless requested in the hearing request form and thereafter agreed to by the  
 18 petitioner or the child who has reached 18 years of age. The court shall hold a hearing required  
 19 under this section within 21 days after the respondent’s request.

20 **SECTION 3.** ORS 107.730 is amended to read:

21 107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.735 and after  
 22 the time period set forth in ORS 107.718 (10)(a):

23 (a) A party may request that the court modify terms in the order that were entered under ORS  
 24 107.718 (1)(a), (b), (g) or (i) for good cause shown.

25 (b) A petitioner may request that the court modify by removing or making less restrictive terms  
 26 in the order that were entered under ORS 107.718 (1)(b), (g) or (i) for good cause shown. Application  
 27 to the court under this paragraph may be by ex parte motion.

28 (2) The clerk of the court shall provide without charge the number of certified true copies of  
 29 the request for modification of the order and notice of hearing necessary to effect service and, at  
 30 the election of the party requesting the modification, shall have a true copy of the request and no-  
 31 tice delivered to the county sheriff for service upon the other party.

32 (3) The county sheriff shall personally serve the other party with a request under subsection  
 33 (1)(a) of this section, unless the party requesting the modification under subsection (1)(a) of this  
 34 section elects to have the other party personally served by a private party or unless otherwise or-  
 35 dered by the court.

36 (4) The provisions of ORS [107.716 (5)] **107.716 (6)** apply to a modification of an order under this  
 37 section.

38 (5) The clerk of the court shall deliver a copy of an order of modification entered under sub-  
 39 section (1) of this section to the county sheriff for service and entry into the Law Enforcement Data  
 40 System as provided in ORS 107.723.

41 (6)(a) The county sheriff shall serve a copy of an order of modification:

42 (A) Entered under subsection (1)(a) of this section by personal service on the nonrequesting  
 43 party.

44 (B) Entered under subsection (1)(b) of this section by mailing a copy of the order to the  
 45 nonrequesting party by first class mail.

1 (b) If the order of modification recites that the respondent appeared in person before the court,  
2 the necessity for service of the order and proof of service is waived.

3 (7) The court may assess against either party a reasonable attorney fee and costs that may be  
4 incurred in the proceeding.

5  
6 **ELDERLY PERSONS AND PERSONS WITH DISABILITIES ABUSE PREVENTION ACT**

7  
8 **SECTION 4.** ORS 124.015 is amended to read:

9 124.015. (1) The court shall hold a hearing within 21 days following the request, and may cancel  
10 or change any order issued under ORS 124.020 if the respondent, elderly person or person with a  
11 disability requests a hearing pursuant to ORS 124.020 (9).

12 (2) In addition to the relief granted under ORS 124.020, the court, in a hearing held pursuant  
13 to subsection (1) of this section, may:

14 (a) Require either party to move from any residence whose title or right to occupy such prem-  
15 ises is held jointly by the parties; and

16 (b) Assess against any party reasonable attorney fees and such costs as may be incurred in the  
17 hearing.

18 (3)(a) If the respondent is represented by an attorney, time for the hearing may be extended for  
19 up to five days at the request of the petitioner or guardian petitioner so that the petitioner or  
20 guardian petitioner may seek representation.

21 (b) If the elderly person or person with a disability is represented by an attorney, time for the  
22 hearing may be extended for up to five days at the request of the respondent or guardian petitioner  
23 so that the respondent or guardian petitioner may seek representation.

24 (4) The court may approve any consent agreement to bring about a cessation of abuse of the  
25 parties. However, the court may not approve a term in a consent agreement that provides for re-  
26 straint of a party to the agreement unless the other party petitioned for and was granted an order  
27 under ORS 124.010. An order or consent agreement made under this section may be amended at any  
28 time and shall continue in effect for a period of one year from the date of the order issued under  
29 ORS 124.020 **or from the date the court approves the consent agreement, whichever is later.**

30 (5) An order or agreement made under ORS 124.005 to 124.040 or ORS 133.310 and 133.381 may  
31 not in any manner affect title to any real property.

32 (6) No undertaking shall be required in any proceeding under ORS 124.005 to 124.040.

33 (7) Any proceeding under ORS 124.005 to 124.040 shall be in addition to and not in lieu of any  
34 other available civil or criminal remedies.

35 (8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to  
36 105.168, a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 to  
37 124.040.

38 **SECTION 5.** ORS 124.020 is amended to read:

39 124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the  
40 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed  
41 or on the following judicial day. Upon a showing that the elderly person or person with a disability  
42 named in the petition has been the victim of abuse committed by the respondent within 180 days  
43 preceding the filing of the petition and that there is an immediate and present danger of further  
44 abuse to the person, the court shall, if requested by the petitioner or guardian petitioner, order, for  
45 a period of one year or until the order is withdrawn or amended, whichever is sooner:

1 (a) That the respondent be required to move from the residence of the elderly person or person  
 2 with a disability, if in the sole name of the person or if jointly owned or rented by the person and  
 3 the respondent, or if the parties are married to each other;

4 (b) That a peace officer accompany the party who is leaving or has left the parties' residence  
 5 to remove essential personal effects of the party;

6 (c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or  
 7 menacing the elderly person or person with a disability, or attempting to abuse, intimidate, molest,  
 8 interfere with or menace the person;

9 (d) That the respondent be restrained from entering, or attempting to enter, on any premises  
 10 when it appears to the court that such restraint is necessary to prevent the respondent from abus-  
 11 ing, intimidating, molesting, interfering with or menacing the elderly person or person with a disa-  
 12 bility;

13 (e) That the respondent be:

14 (A) Restrained, effective on a date not less than 150 days from the date of the order, from  
 15 mailing the elderly person or person with a disability any sweepstakes promotion;

16 (B) Required to remove the elderly person or person with a disability from the respondent's  
 17 sweepstakes promotion mailing list or place the person on a list of persons to whom sweepstakes  
 18 promotions may not be mailed; and

19 (C) Required to promptly refund any payment received in any form from the elderly person or  
 20 person with a disability after the date the order is entered by the court; or

21 (f) Except as provided in subsection (2) of this section, other relief that the court considers  
 22 necessary to provide for the safety and welfare of the elderly person or person with a disability.

23 (2)(a) If the court finds that the elderly person or person with a disability has been the victim  
 24 of abuse as defined in ORS 124.005 (1)(g), the court may order only relief that the court considers  
 25 necessary to prevent or remedy the wrongful taking or appropriation of the money or property of  
 26 the person, including but not limited to:

27 (A) Directing the respondent to refrain from exercising control over the money or property of  
 28 the person;

29 (B) Requiring the respondent to return custody or control of the money or property of the per-  
 30 son to the person;

31 (C) Requiring the respondent to follow the instructions of the guardian or conservator of the  
 32 person; or

33 (D) Prohibiting the respondent from transferring the money or property of the elderly person  
 34 or person with a disability to any person other than the elderly person or person with a disability.

35 (b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

36 (A) To allow any person other than the elderly person or person with a disability to assume  
 37 responsibility for managing any of the money or property of the elderly person or person with a  
 38 disability; or

39 (B) For relief that is more appropriately obtained in a protective proceeding filed under ORS  
 40 chapter 125 including, but not limited to, giving control and management of the financial accounts  
 41 or property of the elderly person or person with a disability for any purpose other than the relief  
 42 granted under paragraph (a) of this subsection.

43 (3) The showing required under subsection (1) of this section may be made by testimony of:

44 (a) The elderly person or person with a disability;

45 (b) The guardian or guardian ad litem of the elderly person or person with a disability;

1 (c) Witnesses to the abuse; or

2 (d) Adult protective services workers who have conducted an investigation.

3 (4) Immediate and present danger under this section includes but is not limited to situations in  
4 which the respondent has recently threatened the elderly person or person with a disability with  
5 additional abuse.

6 (5) When a guardian petitioner files a petition on behalf of an elderly person or a person with  
7 a disability, the guardian petitioner shall provide information about the person and not about the  
8 guardian petitioner where the petition, order or related forms prescribed under subsection (6) of this  
9 section require information about the petitioner.

10 (6) The State Court Administrator shall prescribe the content and form of the petition, order and  
11 related forms for use under ORS 124.005 to 124.040. The clerk of the court shall make available the  
12 forms and an instruction brochure.

13 (7) If the court orders relief:

14 (a) The clerk of the court shall provide without charge the number of certified true copies of  
15 the petition and order necessary to effect service and shall have a true copy of the petition and  
16 order delivered to the county sheriff for service upon the respondent, unless the court finds that  
17 further service is unnecessary because the respondent appeared in person before the court.

18 (b) The county sheriff shall serve the respondent personally unless the petitioner or guardian  
19 petitioner elects to have the respondent served personally by a private party or by a peace officer  
20 who is called to the scene of a domestic disturbance at which the respondent is present, and who  
21 is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be  
22 made in accordance with ORS 124.030.

23 (c) A respondent accused of committing abuse by means of a sweepstakes promotion may be  
24 served:

25 (A) Personally;

26 (B) By mailing certified true copies of the petition and order by certified mail to the address to  
27 which the elderly person or person with a disability would have sent the payment for goods or ser-  
28 vices promoted in the sweepstakes promotion had the elderly person or person with a disability been  
29 ordering the goods or services; or

30 (C) In the manner directed by the court.

31 (d) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the  
32 relief provided under ORS 124.005 to 124.040.

33 (8) If the county sheriff:

34 (a) Determines that the order and petition are incomplete, the order and petition shall be re-  
35 turned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian  
36 petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

37 (b) After accepting the order and petition, cannot complete service within 10 days, the sheriff  
38 shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or  
39 guardian petitioner, that the documents have not been served. If the petitioner or guardian  
40 petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for  
41 future service and file a return to the clerk of the court showing that service was not completed.

42 (9)(a) Within 30 days after a restraining order is served on the respondent under this section  
43 or within 30 days after notice is served on the elderly person or person with a disability under ORS  
44 124.024, the respondent, elderly person or person with a disability may request a court hearing upon  
45 any relief granted. The hearing request form shall be available from the clerk of the court in the

1 form prescribed by the State Court Administrator.

2 (b) If the respondent, elderly person or person with a disability requests a hearing under para-  
 3 graph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner  
 4 of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a  
 5 copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the  
 6 court information sufficient to allow such notification.

7 (c) The hearing is not limited to the issues raised in the request for hearing form and may in-  
 8 clude testimony from witnesses to the abuse and adult protective services workers. The hearing may  
 9 be held in person or by telephone. If the respondent, elderly person or person with a disability seeks  
 10 to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner  
 11 or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a re-  
 12 sponse to the issue.

13 (d) The court shall exercise its discretion in a manner that protects the elderly person or person  
 14 with a disability from traumatic confrontation with the respondent.

15 **(e) If the respondent requests a hearing under paragraph (a) of this subsection and the**  
 16 **court continues or changes the order at the hearing more than 30 days after the date the**  
 17 **order was entered under ORS 124.015 or this section, the order shall continue in effect for**  
 18 **a period of one year from the date of the court's decision to continue or change the order**  
 19 **or until the order is withdrawn or amended, whichever is sooner.**

20  
 21 **CHILD ABUSE RESTRAINING ORDER**

22  
 23 **SECTION 6.** ORS 419B.845 is amended to read:

24 419B.845. (1)(a) When a petition has been filed alleging that the child has been physically or  
 25 sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from  
 26 having contact with the child or attempting to contact the child and requiring the alleged  
 27 perpetrator to move from the household in which the child resides. The court may issue a restrain-  
 28 ing order only if the court finds that:

29 (A) There is probable cause to believe the abuse occurred and that the person to be restrained  
 30 committed the abuse; and

31 (B) The order is in the best interest of the child.

32 (b) Upon finding that to do so would aid in protecting the victim of the alleged abuse, the court  
 33 may enter, in addition to a restraining order described in paragraph (a) of this subsection, other  
 34 appropriate orders including, but not limited to, orders that control contact between the alleged  
 35 abuser and other children in the household.

36 (c) The court shall include in an order entered under this subsection the following information  
 37 about the person to be restrained:

38 (A) Name;

39 (B) Address;

40 (C) Age and birth date;

41 (D) Race;

42 (E) Sex;

43 (F) Height and weight; and

44 (G) Color of hair and eyes.

45 (d) The court may include in the order a provision that a peace officer accompany the restrained

1 person to the household when it is necessary for the person to remove the person's essential per-  
 2 sonal effects including, but not limited to, clothing, toiletries, medications, Social Security cards,  
 3 certified copies of records of live birth, identification and tools of the trade. The restrained person  
 4 is entitled to remove the person's essential personal effects under this paragraph on one occasion  
 5 only and is required to be accompanied by a peace officer. The restrained person and the peace of-  
 6 ficer shall remain for no longer than 20 minutes and the peace officer may temporarily interrupt the  
 7 removal of essential personal effects at any time. Nothing in this paragraph affects a peace officer's  
 8 duty to arrest under ORS 133.055 and 133.310. A peace officer who accompanies a restrained person  
 9 under this paragraph has immunity from any liability, civil or criminal, for any actions the person  
 10 commits during the removal of the person's essential personal effects.

11 (2) If the court enters an order under this section:

12 (a) The clerk of the court shall provide without charge the number of certified copies of the  
 13 petition and order necessary to effect service and shall have a copy of the petition and order de-  
 14 livered to the sheriff or other person qualified to serve the order for service upon the person to be  
 15 restrained; and

16 (b) The sheriff or other person qualified to serve the order shall serve the person to be re-  
 17 strained personally unless that person is present at the hearing. After accepting the order, if the  
 18 sheriff or other person cannot complete service within 10 days, the sheriff or other person shall hold  
 19 the order for future service and file a return to the clerk of the court showing that service was not  
 20 completed.

21 (3)(a) Within 30 days after an order is served under this section, the restrained person may file  
 22 a written request with the court and receive a court hearing on any portion of the order. If the  
 23 restrained person requests a hearing under this subsection:

24 [(a)] (A) The clerk of the court shall notify the parties and, if the restrained person is not a  
 25 party, the restrained person of the date and time of the hearing; and

26 [(b)] (B) The court shall hold the hearing within 21 days after the request and may cancel or  
 27 modify the order.

28 **(b) If the respondent requests a hearing under this subsection and the court continues**  
 29 **or changes the order at the hearing more than 30 days after the date the order was entered**  
 30 **under ORS 124.015 or this section, the order shall continue in effect for a period of one year**  
 31 **from the date of the court's decision to continue or change the order or until the order is**  
 32 **withdrawn or amended, whichever is sooner.**

33 (4) Upon receipt of a copy of the order and notice of completion of any required service by a  
 34 member of a law enforcement agency, the sheriff shall immediately enter the order into the Law  
 35 Enforcement Data System maintained by the Department of State Police. If the order was served  
 36 on the person to be restrained by a person other than a member of a law enforcement agency, the  
 37 county sheriff shall enter the order into the Law Enforcement Data System upon receipt of a true  
 38 copy of the affidavit of proof of service. Entry into the Law Enforcement Data System constitutes  
 39 notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall  
 40 establish procedures adequate to ensure that an officer at the scene of an alleged violation of the  
 41 order may be informed of the existence and terms of the order. The order is fully enforceable in any  
 42 county in this state.

43 (5) A restraining order issued pursuant to this section remains in effect for a period of one year  
 44 or until the order is modified, amended or terminated by court order.

45 (6) A court that issued a restraining order under this section may renew the order for a period

1 of up to one year if the court finds that there is probable cause to believe the renewal is in the best  
2 interest of the child. The court may renew the order on motion alleging facts supporting the re-  
3 quired finding. If the renewal order is granted, subsections (2) and (3) of this section apply.

4 (7) If a restraining order issued pursuant to this section is terminated before its expiration date,  
5 the clerk of the court shall immediately deliver a copy of the termination order to the sheriff. The  
6 sheriff shall promptly remove the original order from the Law Enforcement Data System.

7 (8) Pending a contempt hearing for alleged violation of a restraining order issued under this  
8 section, a person arrested and taken into custody pursuant to ORS 133.310 may be released as pro-  
9 vided in ORS 135.230 to 135.290. Unless the order provides otherwise, the security amount for re-  
10 lease shall be \$5,000.

11 (9) When a restraining order entered under this section prohibits the restrained person from  
12 contacting the protected person in writing, the restrained person does not violate the restraining  
13 order by serving on the protected person a copy of a notice of appeal of the restraining order or  
14 any other document required by law to be served on the adverse party to an appeal if:

- 15 (a) Neither the restrained person nor the protected person is represented by counsel;
- 16 (b) The restrained person serves the document by mail; and
- 17 (c) The contents of the document are not intended to harass or intimidate the protected person.

18  
19 **APPLICABILITY**

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21 **SECTION 7. The amendments to ORS 107.716, 107.725, 107.730, 124.015, 124.020 and**  
22 **419B.845 by sections 1 to 6 of this 2021 Act apply to petitions for restraining orders filed on**  
23 **or after the effective date of this 2021 Act.**

24  
25 **UNIT CAPTIONS**

26  
27 **SECTION 8. The unit captions used in this 2021 Act are provided only for the convenience**  
28 **of the reader and do not become part of the statutory law of this state or express any leg-**  
29 **islative intent in the enactment of this 2021 Act.**