

**A-Engrossed**  
**Senate Bill 177**

Ordered by the Senate April 8  
Including Senate Amendments dated April 8

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Ellen F. Rosenblum)

**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.

*[Establishes exception to prohibition against hearsay evidence, regardless of availability of witness, for certain statements offered against party who engaged in conduct preventing declarant from testifying or causing declarant to refuse to appear or testify.]*

**Provides that proponent of certain hearsay statements is not required to issue material witness order or seek sanctions for contempt in order to show unavailability of declarant.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to hearsay; amending ORS 40.465; and declaring an emergency.

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

4 **SECTION 1.** ORS 40.465 is amended to read:

5 40.465. (1) "Unavailability as a witness" includes situations in which the declarant:

6 (a) Is exempted by ruling of the court on the ground of privilege from testifying concerning the  
7 subject matter of a statement;

8 (b) Persists in refusing to testify concerning the subject matter of a statement despite an order  
9 of the court to do so;

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

11 (d) Is unable to be present or to testify at the hearing because of death or then existing physical  
12 or mental illness or infirmity; or

13 (e) Is absent from the hearing and the proponent of the declarant's statement has been unable  
14 to procure the declarant's attendance (or in the case of an exception under subsection (3)(b), (c) or  
15 (d) of this section, the declarant's attendance or testimony) by process or other reasonable means.

16 (2) A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of  
17 lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of  
18 the declarant's statement for the purpose of preventing the witness from attending or testifying.

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

20 (a) Testimony given as a witness at another hearing of the same or a different proceeding, or  
21 in a deposition taken in compliance with law in the course of the same or another proceeding, if the  
22 party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor  
23 in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or re-  
24 direct examination.

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

**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.

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

2 (c) A statement which was at the time of its making so far contrary to the declarant's pecuniary  
3 or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to  
4 render invalid a claim by the declarant against another, that a reasonable person in the declarant's  
5 position would not have made the statement unless the person believed it to be true. A statement  
6 tending to expose the declarant to criminal liability and offered to exculpate the accused is not ad-  
7 missible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

8 (d)(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy,  
9 relationship by blood or adoption or marriage, ancestry, or other similar fact of personal or family  
10 history, even though the declarant had no means of acquiring personal knowledge of the matter  
11 stated; or

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

15 (e) A statement made at or near the time of the transaction by a person in a position to know  
16 the facts stated therein, acting in the person's professional capacity and in the ordinary course of  
17 professional conduct.

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

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

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

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

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