

2020  
OREGON  
LEGISLATION  
HIGHLIGHTS



PUBLISHED BY  
OREGON STATE BAR  
PUBLIC AFFAIRS DEPARTMENT

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This handbook may be cited as: 2020 Oregon Legislation Highlights

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Published in the United States of America

## FORWARD TO 2020 EDITION

The *Oregon Legislation Highlights* is published annually to provide both attorneys and the public with a high-level overview of major legislation passed by the Oregon Legislature each session. This special 2020 edition exists to address bills passed during the first two 2020 Special Sessions.

2020 was a unique year with regard to the passage of legislation in Oregon. The 2020 Regular Session convened for the final time on March 5<sup>th</sup>, having passed almost no legislation. If not for the pandemic, there likely would have been no 2020 edition of this publication. However, the session was followed 3 days later by Governor Brown's Declaration of Emergency Due To Coronavirus. That emergency declaration, and the various executive and judicial orders that followed set the stage for two, soon to be three, special sessions during 2020.

The first special session convened June 24<sup>th</sup> through 26<sup>th</sup>, and addressed issues related to the pandemic, unfinished business from the 2020 regular session, and several bills broadly related to policing. A second special session convened for a single day on August 10<sup>th</sup>, and addressed primarily budget matters relating to the pandemic, as well as one additional bill relating to the policing. As of this writing, a third special session is expected before the end of the year.

Several bills passed during the special sessions, in particular HB 4212, could be referred to as "omnibus bills" in that they covered a wider variety of subjects than would normally be found in a single bill. While these bills are covered in this publication, it does not cover all subjects addressed by these bills.

The legislature's website offers additional information on the bills contained in this report that the reader may find useful. Individual bills are hyperlinked to that bill's page in the Oregon Legislative Information System, which contains additional information on that bill. This includes measure summaries written by legislative staff, and in some cases supporting documentation submitted during committee hearings. See [www.oregonlegislature.gov](http://www.oregonlegislature.gov) for more information.

We are grateful to all who were involved in preparing this book, especially given the condensed timeframe under which they were asked to work. We are especially appreciative of the efforts of our volunteer authors, who take time away from their practices to contribute to this publication and without whom this book would not be possible.

We would also like thank the staff of the Oregon Office of Legislative Counsel, who have for years assisted with this publication as well as supporting the ongoing work of the Oregon State Bar.

# 2020 Oregon Legislation Highlights

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Note: Most legislation of the passed during the second special session were modifications to Oregon’s budget. This legislation is not addressed in this publication. The most significant of these bills may have been SB 5723 which appropriated money to numerous departments and agencies include the Oregon Health Authority, the Oregon State Hospital, the Oregon Department of Justice, Oregon Business Development Department, and the Oregon Judicial Branch

# 1

## First Special Session

### 1. [SB 1604](#) Police Arbitration

SB 1604 modifies the law regarding arbitration between police officer unions and the public entities (e.g. State of Oregon, cities and counties) that employ such officers.

Under ORS 243.706(1), police officer unions (as well as other public employee unions) and their employer may enter into written contracts with dispute resolution procedures that culminate in binding arbitration for disputes regarding the terms and conditions of employment. In such cases, an arbitration award re-instating a terminated employee or modifying the discipline imposed by the employer shall comply with clearly defined public policy and judicial decisions.

This bill adds a new section to ORS 243.706 that applies only to police officers. For officers, any arbitration award where the employer alleges misconduct by the officer, if the arbitrator finds that misconduct did occur as alleged by the employer; then the arbitrator may not change the discipline imposed. However, this limitation only applies if the union and the employer develop a disciplinary guide or matrix regarding misconduct through the collective bargaining process and such guide or matrix is part of the employer's disciplinary policies and procedures.

SB 1604 took effect on July 7, 2020.

### 2. [SB 1606](#) Prohibition on Conditioning Hospital Admission on Advance Directive

SB 1606 has two important effects both of which are aimed at protecting individuals who may be unable to communicate when hospitalized.

First, it forbids hospitals from requiring an Advance Directive, POLST, or similar document prior to treatment. Second, it ensures access for guardians, parents, children, and other supporters of such individuals to emergency rooms and hospitals to ensure that the individuals

are able to make and communicate decisions to the best of their ability and not be isolated in such settings.

The bill also allows hospitals to place reasonable restrictions on the access of support people, such as requiring they pass health screenings and use personal protective equipment provided by the hospital, to protect the safety of all parties. This bill does not include a sunset provision, allowing these new protections to continue indefinitely.

Effective date, July 7, 2020.

### 3. [HB 4201](#)      **Committee on Transparent Policing**

House Bill 4201 includes multiple legislative resolutions acknowledging the historical and current disparate treatment of black, indigenous, and people of color, both by law enforcement and within the criminal legal system. It establishes the Joint Committee on Transparent Policing and Use of Force Reform. It also establishes the committee's membership, rules, and subject matter. It directs the committee to report back to the House and Senate Judiciary Committees with policy recommendations by December 31, 2020.

HB 4201 took effect on June 30, 2020.

### 4. [HB 4202](#)      **Corporate Activities Tax**

Effective September 25, 2020, HB 4202 made several changes to the Oregon Corporate Activity Tax (Oregon CAT), which was enacted in 2019 and effective January 1, 2020. The most significant changes made by HB 4202 are as follows:

- For purposes of determining the Oregon CAT filing group, the bill allows a taxpayer to elect to exclude certain foreign (non-U.S.) entities with no commercial activity sourced to the state (either directly or indirectly). The Oregon Department of Revenue (DOR) was also provided rule making authority for purposes of determining the process by which a taxpayer may make this election.
- For purposes of determining the statutory subtraction pursuant to ORS 317A.119, HB 4202 clarifies that taxpayers marketing multistate sales (*i.e.*, selling both within and without Oregon) may use the apportionment provisions as provided in ORS 314.650 to 314.655 (Oregon's general UDITPA apportionment provisions), the alternative apportionment provisions (including special industry rules) provided in chapter 314, or

any other apportionment formula provided by the DOR by rule. Although the amendments in HB 4202 appear substantial, the main purpose was to clarify the original intent of the Oregon CAT legislation passed in 2019 and to provide some additional insight into the ordering of the various aspects of the statutory subtraction.

- Eliminates the annual registration requirement for taxpayers with more than \$750,000 in Oregon commercial activity.
- Provides returns and allowances as determined pursuant to IRC section 448 shall be allowed to offset a taxpayer's commercial activity during the calendar year in which the return or allowance is made.
- Updates penalty provisions.

HB 4202 also includes several special rules for farming operations:

- Excluded receipts from the sale of "fluid milk" sold by dairy farmers that are not members of an agricultural coop.
- For purposes of calculating "cost inputs," farming operations that do not report cost of goods sold for federal purposes may use their total operating expenses less labor costs.
- Provides the sourcing rules for taxpayers engaged in farming operations that sell agricultural commodities to brokers or at wholesale.

Finally, manufactured dwelling park nonprofit cooperatives organized under ORS chapter 62 were also added to the list of excluded persons in ORS 317A.100(4).

HB 4202 took effect on September 25, 2020.

## **5. [HB 4203](#) Prohibits Peace Officers' Use of Choke Holds**

House Bill 4203 creates a new provision that prohibits peace officers from using choke holds unless the circumstance is one in which the officer may use deadly physical force as provided in ORS 161.239. It defines choke hold as "physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person." The bill also requires the Board on Public Safety Standards and Training to adopt rules that prohibit training officers to use choke holds, except as a defensive maneuver.

Section 2 of HB 4203, the choke hold ban, was operational from June 30, 2020, to September 1, 2020. This section was superseded by provisions of HB 4301, which passed during the second special session.

## 6. [HB 4204](#) Foreclosure Moratorium

HB 4204 makes a number of temporary changes to Oregon law to address concerns that large numbers of borrowers could default as a result of loss of income due to the COVID-19 pandemic.

The major effect of the bill is that it prohibits a lender, during the emergency period, from declaring a borrower to be in default on a loan secured by real property (or personal property intended as a dwelling) if the borrower informs the lender that they will be unable to make payments due to the COVID-19 pandemic. Instead, the borrower may request forbearance throughout the duration of the emergency period and the missed payments become due at the end of the loan period. The lender is also generally prohibited from applying late charges, default interest, or charges for inspections unless such default provisions were already in place prior to the emergency period.

For most residential properties, all the borrower must do is attest that the failure to pay is a result of a loss of income due to the COVID-19 pandemic. No specific process for notification is required, and notification must only be given once during the emergency period. In the case of commercial property or of residential properties with more than 4 units, the notice must include financial statements or other evidence demonstrating the loss of income.

Additionally, the bill generally prohibits conducting a foreclosure sale or entry of a foreclosure judgment during the emergency period.

These prohibitions currently run from March 8, 2020 December 31, 2020. HB 4204 took effect immediately upon being signed by the Governor and is automatically repealed 90 days after the state of emergency ends.

Practice Note: Practitioners should be aware that other levels of government, including the Federal Government and the City of Portland, have put in place their own COVID-related restrictions on foreclosures.

## 7. [HB 4205](#) Police Officer Duty to Intervene

House Bill 4205 begins with multiple legislative resolutions, including a declaration that Black Lives Matter, and acknowledges the historical and current experiences of people of color with law enforcement.

HB 4205 creates a new provision requiring police officers or reserve officers to prevent or stop another officer from engaging in misconduct, unless the officer cannot intervene safely.

The bill requires police officers or reserve officers who witness another officer engaged in misconduct to report the misconduct within 72 hours. It also provides that failure to intervene or report is grounds for disciplinary action against the police officer or reserve officer. The bill provides an extensive definition of misconduct, which includes among other things the use of unjustified or excessive force.

HB 4205 also prohibits an employer from retaliating or discriminating against an officer who intervenes or reports, as required.

HB 4205 took effect on June 30, 2020.

## **8. [HB 4208](#)      Use of Tear Gas by Police**

House Bill 4208 prohibits law enforcement from using tear gas for purposes of crowd control except in “circumstances constituting a riot, as described in ORS 166.015”. That statute creates the crime of riot in Oregon, but does not include a definition of “circumstances constituting a riot”. The bill does not require that a person be accused of the crime of riot in for circumstances constituting a riot to exist.

House Bill 4208 also requires law enforcement agencies to announce their intent to use tear gas and to provide individuals sufficient time to evacuate an area before tear gas is deployed.

HB 4208 took effect on June 30, 2020.

## **9. [HB 4210](#)      Suspension of Driving Privileges**

House Bill 4210 amends multiple statutes and eliminates the court ordered suspension of a person’s driving privileges for failure to pay fines. It repeals ORS 809.210, which authorized the court to take certain actions if a person convicted of a traffic offense (violation or crime) failed to pay a fine or comply with a condition in lieu of a fine. Specifically, ORS 809.210 authorized courts to issue a notice of suspension to the Department of Transportation, directing it to suspend a person’s driving privileges. It also authorized courts to restrict a person’s driving privileges. HB 4210 repeals both provisions.

HB 4210 took effect on June 30, 2020. The bill prohibits new suspensions from being imposed on or after October 1, 2020.

## 10. [HB 4212](#) Remote Online Notarization

As the restrictions and safety concerns related to COVID-19 have made face-to-face interactions much less common, Sections 19 through 32 of HB 4212 have provided a temporary solution for notarizing documents. The bill authorizes remote online notarization (RON), which is an expansion of the existing electronic notarization rules to allow notaries who meet certain requirements to perform notarial acts for parties in different physical locations.

In practice, RON is accomplished through the notary's choice of a number of vendors but the process generally runs as follows:

1. Notary uploads and prepares documents by marking signature, initial, and notary fields.
2. Notary notifies signers that documents are ready and schedules a video call for signing.
3. Notary initiates video call through vendor.
4. The first signer uses a link in an email sent by vendor to sign in and, if not personally known to the notary or identified by oath or affirmation of credible witness who has been identified, verify identity through two different types of identity proofing such as knowledge-based authentication (i.e. questions based on credit history) and document verification (e.g. driver's license or passport).
5. Once identified the signer opens the document and shares their screen in the video call.
6. While screen sharing, the signer completes the signature and initial fields for that signer.
7. Once all fields are completed the signer closes the documents and the vendor emails a link to the next signer, with the process repeating for all signers, then finally the notary.
8. The vendor then compiles the document into an encrypted file with all of the signatures and the notary and tamper evident code that will indicate if anything is changed after the signatures and notary are affixed.
9. This file then constitutes the notarized document and can be recorded or otherwise used like a physically notarized document.

HB 4212 took effect on June 30, 2020 and sunsets on June 30, 2021.

For more information, review the Secretary of State's landing page and FAQ for RON.

<https://sos.oregon.gov/business/pages/remote-online-notarization.aspx>

<https://sos.oregon.gov/business/Pages/remote-online-notarization-faq.aspx>

## **11. [HB 4212](#) Public Meetings, Garnishment, Court Timelines**

In addition to the changes related to Remote Online Notarization described above, HB 4213 had several other important provisions worth noting.

Section 1 of the bill permits local government and special government bodies to hold most meetings by telephone or video conferencing technology during the COVID-19 state of emergency that Governor Brown declared on March 8, 2020. Among other requirements, this section requires that a government body make available some method by which the public can observe the meeting, and requires that the meeting be recorded in some circumstances.

These provisions took effect on June 30, 2020 and are automatically repealed 30 days after the Governor's declaration of emergency is no longer in effect.

Section 3 of the bill largely prohibits the garnishment of funds received under the federal CARES Act.

Sections 6 and 7 of the bill provide authority to the Chief Justice to provide extensions to deadlines for numerous court filings and appearances. Additionally, the bill permits that a criminal citation may be issued which requires a person to appear in court more than 30 days after the date on which the citation is issued. Previously, the court date on a citation was required to be within 30 days of issuance. Additionally, these sections provide limited authority for the court to permit a defendant to be held in custody for more than 180 days before trial, if the court makes certain findings.

These provisions took effect on June 20, 2020. Sections 6 and 7 of the bill are repealed on December 31, 2021.

## **12. [HB 4213](#) Moratorium on Evictions**

House Bill 4213 prohibits landlords, in most circumstances, from terminating a rental contract or evicting a tenant from a rental unit for nonpayment of rent during the emergency period. The "emergency period" is defined in the bill as running from April 1 to September 30, 2020. Additionally the landlord may not assess penalties or late fees for nonpayment during this period.

Tenants continue to owe any rent that accrues during the emergency period, but the amounts owed do not become due until September 30, 2020. Additionally, tenants are entitled to a six month grace period to repay the balance that ends on March 31, 2021. After the emergency period ends, and if the landlord complied with the notice provisions in the bill, a tenant is required to notify the landlord of their intention to repay the nonpayment balance by

the end of the grace period. Failure by a tenant to notify the landlord entitles a landlord to recover damages equal to 50% of one month's rent.

Practice Note: HB 4213 does not affect evictions for causes other than nonpayment. Additionally, the Chief Justice issued a number of orders during the Governor's declared state of emergency. Practitioners should check these orders to see if any are still in effect that effect an individual case. Additionally, practitioners should note that other levels of government, including the Federal Government and the City of Portland, have taken action related to evictions during the COVID-19 pandemic.

HB 4213 took effect June 30, 2020. Most provisions of the bill are repealed on March 31, 2021.

### **13. [HB 4214](#) Oregon Indian Child Welfare Act**

HB 4214, titled the Oregon Indian Child Welfare Act (ORICWA), incorporates the federal Indian Child Welfare Act (ICWA) and key federal regulations related to ICWA into the Oregon Juvenile Code. It also incorporates unique provisions into Oregon law that promote continued connection to culture, family, and tribe for Indian children under the jurisdiction of the Juvenile Court.

Specifically, HB 4214 provides essential definitions, clarifies when and how ORICWA applies during each dependency or termination of parental rights hearing, and describes in detail the various protections ORICWA provides at various hearings, including: inquiry, notice, active efforts, placement preferences, qualified expert witnesses, and best interest of the Indian child.

HB 4214 takes effect on January 1, 2021.

# 2

## Second Special Session

### 1. [HB 4301](#) Use of Force By Police Officer

House Bill 4301 amends section 2 of House Bill 4203, which passed during the first 2020 special session. Sections 1 through 5 of House Bill 4301 became operative on September 1, 2020 and remain operative until January 1, 2021.

Section 2 prohibits peace officers or corrections officers from using choke holds except in circumstances in which physical force is justified under ORS 161.209 and 161.215. It defines corrections officer as a “guard, peace officer or other official employed in a jail, prison or correctional facility, including a youth correction facility, who primarily performs the duty of custody, control or supervision of individuals charged with or convicted of a crime or otherwise confined under a court order.” In sections 3 through 5, the bill makes conforming amendments to ORS 161.205, ORS 161.239, ORS 161.265, and ORS 161.267.

Sections 6 through 17 of the bill become operative on January 1, 2021. Section 6 provides that sections 7 and 8 are added to ORS 161.195 and ORS 161.275.

Section 7 provides that a peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of the circumstances, for the peace officer to believe that the person:

1. Poses an imminent threat of physical injury to the peace officer or to a third person, or
2. The use of physical force is necessary to (a) make a lawful arrest based on probable cause that the person has committed a crime, or (b) prevent the person’s escape from custody, when the officer has probable cause to believe that the person has committed a crime.

Section 7 also provides that a peace officer may use physical force upon another person only to the degree that the officer reasonably believes necessary to (1) prevent physical injury

or (2) make a lawful arrest or prevent a person's escape from custody. Before using physical force on a person, the section requires a peace officer to (1) consider alternatives such as verbal de-escalation, waiting, or using other available techniques if reasonable, safe, and feasible; and (2) give a verbal warning to the person upon whom physical force may be used and provide the person with a reasonable opportunity to comply.

Section 8 provides that a peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of the circumstances, for the peace officer to believe that the person poses an imminent threat of death or serious physical injury to the officer or a third person, and the use of deadly force is necessary to:

1. Make a lawful arrest based on probable cause that the person has committed a violent felony,
2. Defend the officer or a third person from the imminent threat of death or serious physical injury, or
3. Prevent the person's escape from custody when the officer has probable cause to believe that the person has committed a violent felony.

Before using deadly physical force on a person, if the officer has reasonable time to do so, the section requires the officer to:

1. Consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe, and feasible, or use a lesser degree of force; and
2. Give a verbal warning to the person upon whom deadly physical force may be used and provide the person with a reasonable opportunity to comply.

Nothing in section 8 justifies an officer's reckless or criminally negligent conduct constituting an offense against or with respect to innocent persons whom the officer is not seeking to arrest or retain in custody. Lastly, for purposes of Section 8, "violent felony" has the meaning given to the term in ORS 419A.004.

Section 9 amends ORS 161.245 and defines for Section 7 and 8, a reasonable belief that a person has committed an offense as "a reasonable belief in facts or circumstances which, if true, would constitute an offense."

Section 10 further amends HB 4203, which passed during the first 2020 special session. The changes prohibit under all circumstances a peace officer or corrections officer's knowing use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the person except in circumstances in which physical force is justified under ORS 161.209 and ORS 161.215.

Section 11 of the bill amends ORS 161.265 to permit a guard or other peace officer working in a correctional facility to use physical force, including deadly physical force on a person, if that person poses an imminent threat of physical injury, or if the guard or peace officer reasonably

believes that it is necessary in order to prevent a prisoner from escaping from a correctional facility. The guard or peace officer may use physical force under this section only to the degree that they reasonably believe necessary to prevent the physical injury or escape.

HB 4301 took effect on September 1, 2020. Different parts of the bill have different operative dates, including those described above. Lawyers who are interested in when specific provisions take effect should always check the bill.