

House Bill 2631

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

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 rules of evidence relating to hearsay. Provides that statement made before trial or hearing is not hearsay if declarant testifies at trial or hearing, prior statement is inconsistent with testimony of declarant, and declarant either is given opportunity to explain or deny prior statement during testimony or has not been excused from giving further testimony at time prior inconsistent statement is offered as evidence.

A BILL FOR AN ACT

1
2 Relating to hearsay; creating new provisions; and amending ORS 40.450.

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

4 **SECTION 1.** ORS 40.450 is amended to read:

5 40.450. As used in ORS 40.450 to 40.475, unless the context requires otherwise:

6 (1) A "statement" is:

7 (a) An oral or written assertion; or

8 (b) Nonverbal conduct of a person, if intended as an assertion.

9 (2) A "declarant" is a person who makes a statement.

10 (3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial
11 or hearing, offered in evidence to prove the truth of the matter asserted.

12 (4) A statement is not hearsay if:

13 (a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning
14 the statement, and the statement is:

15 (A) Inconsistent with the testimony of the witness and was given under oath subject to the
16 penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

17 (B) Consistent with the testimony of the witness and is offered to rebut an inconsistent state-
18 ment or an express or implied charge against the witness of recent fabrication or improper influence
19 or motive; [*or*]

20 (C) One of identification of a person made after perceiving the person;

21 **(D) Inconsistent with the testimony of the witness, and while the witness is testifying**
22 **the witness is examined in a manner that gives the witness an opportunity to explain or deny**
23 **the prior statement; or**

24 **(E) Inconsistent with the testimony of the witness at the trial or hearing, and the wit-**
25 **ness has not been excused from giving further testimony in the trial or hearing at the time**
26 **the prior inconsistent statement is offered in evidence.**

27 (b) The statement is offered against a party and is:

28 (A) That party's own statement, in either an individual or a representative capacity;

29 (B) A statement of which the party has manifested the party's adoption or belief in its truth;

30 (C) A statement by a person authorized by the party to make a statement concerning the sub-

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 ject;

2 (D) A statement by the party's agent or servant concerning a matter within the scope of the
3 agency or employment, made during the existence of the relationship; or

4 (E) A statement by a coconspirator of a party during the course and in furtherance of the con-
5 spiracy.

6 (c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39
7 I.

8 **SECTION 2. The amendments to ORS 40.450 by section 1 of this 2005 Act apply only to**
9 **trials or hearings commenced on or after the effective date of this 2005 Act.**

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