

A-Engrossed House Bill 2502

Ordered by the House April 29
Including House Amendments dated April 29

Sponsored by Representative OLSON, Senator PROZANSKI; Representatives BARKER, BARTON, BERGER, BOONE, BRUUN, BUCKLEY, CLEM, ESQUIVEL, FREEMAN, GARRARD, HUFFMAN, JENSON, KOMP, MATTHEWS, SCHAUFLER, SPRENGER, WHISNANT, WINGARD, Senators ATKINSON, BOQUIST, DEVLIN, FERRIOLI, GEORGE, METSGER, WALKER, WINTERS

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.

[Expands authority of court to reduce fines for violations.]

[Provides that search warrant that authorizes seizure of items from corporation or limited partnership may be executed in manner provided by Oregon Rules of Civil Procedure for service of summons.]

Authorizes issuance of criminal process that authorizes or commands seizure or production of papers, documents, records or other things to recipient outside State of Oregon. Creates procedures for issuance of criminal process to recipient. Makes recipient immune from civil and criminal liability for complying with process.

A BILL FOR AN ACT

1
2 Relating to criminal procedure; creating new provisions; amending ORS 131.588, 133.575 and 136.595;
3 and declaring an emergency.

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

5 **SECTION 1. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and subject to**
6 **ORS 136.580 (2), criminal process authorizing or commanding the seizure or production of**
7 **papers, documents, records or other things may be issued to a recipient outside the State**
8 **of Oregon, regardless of the location where the recipient receives service or where the re-**
9 **ords are physically located, if the court has jurisdiction over the criminal matter under ORS**
10 **131.205 to 131.235.**

11 **(2) Criminal process that authorizes or commands the seizure or production of papers,**
12 **documents, records or other things from a recipient may be served by delivering a copy to**
13 **the recipient personally or by sending a copy by mail, facsimile or electronic transmission**
14 **if the copy is sent in a manner that allows for proof of delivery.**

15 **(3) When criminal process is served under subsection (2) of this section, the recipient**
16 **shall provide the applicant, or if the process is described in ORS 136.447 or 136.580 (2), the**
17 **court, with all of the papers, documents, records or other things described in the criminal**
18 **process within 20 business days from the date the criminal process is received, unless:**

19 **(a) The court, for good cause shown, includes in the process a requirement for production**
20 **within a period of time that is less than 20 business days;**

21 **(b) The court, for good cause shown, extends the time for production to a period of time**
22 **that is more than 20 business days; or**

23 **(c) The applicant consents to a request from the recipient for additional time to comply**

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 with the process.

2 (4) Criminal process issued under this section must contain a notice on the first page of
3 the document that indicates the date before which the recipient must respond to the process
4 and that states that the process was issued under this section.

5 (5) A recipient who seeks to quash or otherwise challenge the criminal process must seek
6 relief from the court that issued the process within the time required for production. The
7 court shall hear and decide the issue as soon as practicable. The consent of the applicant to
8 additional time to comply with the process under subsection (3)(c) of this section does not
9 extend the date by which a recipient must seek relief under this subsection.

10 (6) Upon order of the court or the written request of the applicant, the recipient of the
11 process shall verify the authenticity of the papers, documents, records or other things that
12 the recipient produces in response to the criminal process by providing an affidavit or dec-
13 laration that includes contact information for the custodian or other qualified person com-
14 pleting the document and attests to the nature of the papers, documents, records or other
15 things. An affidavit or declaration that complies with this subsection satisfies the require-
16 ments of ORS 40.460 (6), 40.505 and 132.320.

17 (7) A party that intends to offer a paper, document, record or other thing into evidence
18 under this section must file written notice of that intention with the court and must disclose
19 the affidavit or declaration sufficiently in advance of offering the paper, document, record
20 or other thing into evidence to provide the adverse party with an opportunity to challenge
21 the affidavit or declaration. A motion opposing admission of the paper, document, record or
22 other thing into evidence must be filed and determined by the court before trial and with
23 sufficient time to allow the party offering the paper, document, record or other thing, if the
24 motion is granted, to produce the custodian of the record or other qualified person at trial,
25 without creating a hardship on the party or the custodian or other qualified person.

26 (8) Failure by a party to timely file a motion opposing admission of the paper, document,
27 record or other thing constitutes a waiver of objection to the admission of the evidence,
28 unless the court finds good cause to grant relief from the waiver. If the court grants relief
29 from the waiver, the court shall order the trial continued upon the request of the proponent
30 of the evidence and allow the proponent sufficient time to arrange for the necessary witness
31 to appear.

32 (9) A recipient of criminal process under this section or any individual that responds to
33 the process is immune from civil and criminal liability for complying with the process and
34 for any failure to provide notice of any disclosure to a person who is the subject of, or
35 identified in, the disclosure.

36 (10) Nothing in this section limits the authority of a court to issue criminal process un-
37 der any other provision of law or prohibits a party from calling the custodian of the evidence
38 or other qualified person to testify regarding the evidence.

39 (11) As used in this section:

40 (a) "Applicant" means:

41 (A) A police officer or district attorney who applies for a search warrant or other court
42 order or seeks to issue a subpoena under this section; or

43 (B) A defense attorney who applies for a court order or seeks to issue a subpoena under
44 this section.

45 (b) "Criminal process" means a subpoena, search warrant or other court order.

1 (c) **“Declaration” has the meaning given that term in ORCP 1 E.**

2 (d) **“Defense attorney” means an attorney of record for a person charged with a crime**
3 **who is seeking the issuance of criminal process for the defense of the criminal case.**

4 (e) **“Recipient” means a business entity or nonprofit entity that has conducted business**
5 **or engaged in transactions occurring at least in part in this state upon whom criminal pro-**
6 **cess issued under this section is properly served.**

7 **SECTION 2.** ORS 133.575 is amended to read:

8 133.575. (1) **Except as provided in section 1 of this 2009 Act**, a search warrant may be exe-
9 cuted only within the period and at the times authorized by the warrant and only by a police officer.
10 A police officer charged with its execution may be accompanied by such other persons as may be
11 reasonably necessary for the successful execution of the warrant with all practicable safety.

12 (2) The executing officer shall, before entering the premises, give appropriate notice of the
13 identity, authority and purpose of the officer to the person to be searched, or to the person in ap-
14 parent control of the premises to be searched, as the case may be.

15 (3) Except as provided in ORS 133.619, before undertaking any search or seizure pursuant to the
16 warrant, the executing officer shall read and give a copy of the warrant to the person to be
17 searched, or to the person in apparent control of the premises to be searched. If the premises are
18 unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant
19 suitably affixed to the premises.

20 **SECTION 3.** ORS 136.595 is amended to read:

21 136.595. (1) Except as provided in ORS 136.447 **and section 1 of this 2009 Act** and [*subsections*
22 *(2) and (3)*] **subsection (2)** of this section, a subpoena is served by delivering a copy to the witness
23 personally. Proof of the service is made in the same manner as in the service of a summons.

24 (2)(a) Every law enforcement agency shall designate an individual or individuals upon whom
25 service of subpoena may be made. At least one of the designated individuals shall be available dur-
26 ing normal business hours. In the absence of the designated individuals, service of subpoena pursu-
27 ant to paragraph (b) of this subsection may be made upon the officer in charge of the law
28 enforcement agency.

29 (b) If a peace officer’s attendance at trial is required as a result of employment as a peace of-
30 ficer, a subpoena may be served on the peace officer by delivering a copy personally to the officer
31 or to one of the individuals designated by the agency that employs the officer not later than 10 days
32 prior to the date attendance is sought. A subpoena may be served in this manner only if the officer
33 is currently employed as a peace officer and is present within the state at the time of service.

34 (c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law
35 enforcement agency shall make a good faith effort to actually notify the officer whose attendance
36 is sought of the date, time and location of the court appearance. If the officer cannot be notified,
37 the law enforcement agency shall contact the court and a continuance may be granted to allow the
38 officer to be personally served.

39 (d) As used in this subsection, “law enforcement agency” means the Oregon State Police, a
40 county sheriff’s department or a municipal police department.

41 [*(3) A subpoena for the production of papers, documents, records and other tangible things may*
42 *be served on a corporation or limited partnership in the manner provided by ORCP 7 D(3) for the*
43 *service of a summons.*]

44 [(4)] (3) When a subpoena has been served as provided in **section 1 of this 2009 Act** or sub-
45 section (1)[,] **or (2) [or (3)]** of this section and, subsequent to service, the date on, or the time at,

1 which the person subpoenaed is to appear has changed, a new subpoena is not required to be served
2 if:

3 (a) The subpoena is continued orally in open court in the presence of the person subpoenaed;
4 or

5 (b) The party who issued the original subpoena notifies the person subpoenaed of the change
6 by first class mail and by:

7 (A) Certified or registered mail, return receipt requested; or

8 (B) Express mail.

9 **SECTION 4.** ORS 131.588 is amended to read:

10 131.588. (1) If no financial institution has filed the affidavit described in ORS 131.579 (1), and if
11 the court has failed to uphold the claim or affidavit of any other person claiming an interest in the
12 property, the effect of the judgment is that:

13 (a) Title to the property passes to the seizing agency free of any interest or encumbrance
14 thereon in favor of any person who has been given notice;

15 (b) The seizing agency may transfer good and sufficient title to any subsequent purchaser or
16 transferee, and all courts, the state and the departments and agencies of this state, and any political
17 subdivision shall recognize the title. In the case of real property, the seizing agency shall warrant
18 the title against constitutional defect. A warranty under this paragraph is limited to the purchase
19 price of the real property; and

20 (c) Any department, agency or officer of this state or any political subdivision whose official
21 functions include the issuance of certificates or other evidence of title is immune from civil or
22 criminal liability when such issuance is pursuant to a judgment of criminal forfeiture.

23 (2) If an affidavit is filed by a financial institution under ORS 131.579 (1), or if a person files an
24 affidavit under ORS 131.579 (2):

25 (a) The court shall foreclose all security interests, liens and vendor's interests of financial in-
26 stitutions and claimants as to which the court determines that there is a legal or equitable basis for
27 foreclosure; and

28 (b) All other interests applicable to the property that are not foreclosed or otherwise eliminated
29 through a judgment of foreclosure, if and to the extent that they are valid and subsisting, remain
30 in effect and the property remains subject to them upon completion of the criminal forfeiture pro-
31 ceeding.

32 (3) Notwithstanding any other provision of law, if a financial institution or other person has
33 filed an affidavit described in ORS 131.579, or if the court has upheld the claim of any claimant, then
34 as to each item of property seized:

35 (a) If the court has determined that the property should not be forfeited and has not foreclosed
36 the security interests, liens or other interests covering the property, the court shall render judgment
37 in favor of the owner of the property, the property must be returned to the owner and all security
38 interests, liens and other interests applicable to the property remain in effect as though the property
39 had never been seized. Upon the return of the property to the owner, the seizing agency shall pay
40 all costs and expenses relating to towing and storage of the property and shall cause to be dis-
41 charged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have
42 attached to the property since the seizure.

43 (b) If the court has determined that the property should not be forfeited and has foreclosed one
44 or more interests covering the property, including security interests or liens covering the property
45 or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs

1 and expenses relating to towing and storage of the property and shall cause to be discharged any
2 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to
3 the property since the seizure, and the court shall order the property sold pursuant to a sheriff's
4 sale or other sale authorized by the court within such time as may be prescribed by the court fol-
5 lowing entry of the judgment. If any interests covering the property have not been foreclosed, in-
6 cluding any liens or security interests of a claimant whose claim has been upheld, or of a financial
7 institution that has filed the affidavit described in ORS 131.579, the property must be sold subject
8 to those interests. The judgment shall order the proceeds of the sale applied in the following order:

9 (A) To the payment of the costs of the sale;

10 (B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their
11 priority; and

12 (C) The excess, if any, to the owner of the property.

13 (c) If the court has determined that the property should be forfeited and has foreclosed one or
14 more security interests, liens, contracts or other interests covering the property, the seizing agency
15 shall pay all costs and expenses relating to towing and storage of the property and shall cause to
16 be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that
17 have attached to the property since the seizure, and the court shall order the property sold pursuant
18 to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed
19 by a financial institution or other claimant and the interest was upheld but not foreclosed, the
20 property must be sold subject to the interest. The sale of the property must be held within such time
21 as may be prescribed by the court following entry of the judgment. The judgment shall also order
22 the proceeds of such sale applied in the following order:

23 (A) To the payment of the costs of the sale;

24 (B) To the satisfaction of the foreclosed liens, security interests and contracts in the order of
25 their priority; and

26 (C) The excess, if any, to the seizing agency to be disposed of as provided in ORS 131.594 or
27 131.597.

28 (d) If the court has determined that the property should be forfeited and has not foreclosed the
29 interests of any party in the property, the seizing agency shall pay all costs and expenses relating
30 to towing and storage of the property and shall cause to be discharged any possessory chattel liens
31 on the property arising under ORS 87.152 to 87.162 that have attached to the property since the
32 seizure. The court shall enter a judgment awarding the property to the seizing agency, subject to
33 the interests of any claimants whose claims or affidavits were upheld by the court, and subject to
34 the interests of any financial institutions that filed affidavits under ORS 131.579 (1), that remain in
35 full force and effect.

36 (4) **Upon motion of the state**, the court may include in the judgment of criminal forfeiture an
37 order that directs the seizing agency to distribute to the victim of the crime of conviction a portion
38 of any proceeds from property received by the seizing agency if[.]

39 [(a) *The crime of conviction was a person felony or person Class A misdemeanor as those terms*
40 *are defined by rule of the Oregon Criminal Justice Commission; and]*

41 [(b)] the court included an order of restitution in the criminal judgment.

42 (5) The seizing agency is not liable to any person as a consequence of obedience to a judgment
43 directing conveyance to a financial institution.

44 (6) The forfeiture counsel shall send a copy of the judgment to the Asset Forfeiture Oversight
45 Advisory Committee.

1 (7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under ORS
2 131.550 to 131.600, unless the court has foreclosed one or more security interests, liens or other in-
3 terests covering the property, the property or interest in property must be returned or conveyed
4 immediately to the claimant designated by the court.

5 (b) If it appears that there was reasonable suspicion that the property was subject to criminal
6 forfeiture, the court shall cause a finding to be entered and no claimant or financial institution is
7 entitled to damages nor is the person who made the seizure, the seizing agency or forfeiture counsel
8 liable to suit or judgment on account of the seizure or action. An order directing seizure issued
9 under ORS 131.561 constitutes a finding of reasonable suspicion that the property was subject to
10 criminal forfeiture.

11 (8) Nothing in this section prevents a claimant or financial institution from obtaining any defi-
12 ciency to which the claimant or financial institution would otherwise be entitled.

13 (9) Nothing in this section or in ORS 131.564 prevents a seizing agency from entering into an
14 agreement with a claimant or other person for the reimbursement of the seizing agency for the costs
15 and expenses relating to towing and storage of property or the cost of discharging any possessory
16 chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property in the
17 period between the seizure of the property and the release or criminal forfeiture of the property.

18 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
20 **on its passage.**