

HOUSE AMENDMENTS TO HOUSE BILL 2502

By COMMITTEE ON JUDICIARY

April 29

1 On page 1 of the printed bill, line 2, after the second semicolon delete the rest of the line and
2 insert “amending ORS 131.588, 133.575 and 136.595; and declaring an emergency.”.

3 Delete lines 4 through 28 and delete page 2 and insert:

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

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

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

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

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

22 **“(c) The applicant consents to a request from the recipient for additional time to comply**
23 **with the process.**

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

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

32 **“(6) Upon order of the court or the written request of the applicant, the recipient of the**
33 **process shall verify the authenticity of the papers, documents, records or other things that**
34 **the recipient produces in response to the criminal process by providing an affidavit or dec-**
35 **laration that includes contact information for the custodian or other qualified person com-**

1 pleting the document and attests to the nature of the papers, documents, records or other
2 things. An affidavit or declaration that complies with this subsection satisfies the require-
3 ments of ORS 40.460 (6), 40.505 and 132.320.

4 “(7) A party that intends to offer a paper, document, record or other thing into evidence
5 under this section must file written notice of that intention with the court and must disclose
6 the affidavit or declaration sufficiently in advance of offering the paper, document, record
7 or other thing into evidence to provide the adverse party with an opportunity to challenge
8 the affidavit or declaration. A motion opposing admission of the paper, document, record or
9 other thing into evidence must be filed and determined by the court before trial and with
10 sufficient time to allow the party offering the paper, document, record or other thing, if the
11 motion is granted, to produce the custodian of the record or other qualified person at trial,
12 without creating a hardship on the party or the custodian or other qualified person.

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

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

23 “(10) Nothing in this section limits the authority of a court to issue criminal process
24 under any other provision of law or prohibits a party from calling the custodian of the evi-
25 dence or other qualified person to testify regarding the evidence.

26 “(11) As used in this section:

27 “(a) ‘Applicant’ means:

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

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

32 “(b) ‘Criminal process’ means a subpoena, search warrant or other court order.

33 “(c) ‘Declaration’ has the meaning given that term in ORCP 1 E.

34 “(d) ‘Defense attorney’ means an attorney of record for a person charged with a crime
35 who is seeking the issuance of criminal process for the defense of the criminal case.

36 “(e) ‘Recipient’ means a business entity or nonprofit entity that has conducted business
37 or engaged in transactions occurring at least in part in this state upon whom criminal pro-
38 cess issued under this section is properly served.

39 “**SECTION 2.** ORS 133.575 is amended to read:

40 “133.575. (1) **Except as provided in section 1 of this 2009 Act**, a search warrant may be exe-
41 cuted only within the period and at the times authorized by the warrant and only by a police officer.
42 A police officer charged with its execution may be accompanied by such other persons as may be
43 reasonably necessary for the successful execution of the warrant with all practicable safety.

44 “(2) The executing officer shall, before entering the premises, give appropriate notice of the
45 identity, authority and purpose of the officer to the person to be searched, or to the person in ap-

1 parent control of the premises to be searched, as the case may be.

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

7 “**SECTION 3.** ORS 136.595 is amended to read:

8 “136.595. (1) Except as provided in ORS 136.447 **and section 1 of this 2009 Act** and [subsections
9 (2) and (3)] **subsection (2)** of this section, a subpoena is served by delivering a copy to the witness
10 personally. Proof of the service is made in the same manner as in the service of a summons.

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

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

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

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

28 “[3] *A subpoena for the production of papers, documents, records and other tangible things may*
29 *be served on a corporation or limited partnership in the manner provided by ORCP 7 D(3) for the*
30 *service of a summons.]*

31 “[4] **(3)** When a subpoena has been served as provided in **section 1 of this 2009 Act** or sub-
32 section (1)[,] **or (2) [or (3)]** of this section and, subsequent to service, the date on, or the time at,
33 which the person subpoenaed is to appear has changed, a new subpoena is not required to be served
34 if:

35 “(a) The subpoena is continued orally in open court in the presence of the person subpoenaed;
36 or

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

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

40 “(B) Express mail.

41 “**SECTION 4.** ORS 131.588 is amended to read:

42 “131.588. (1) If no financial institution has filed the affidavit described in ORS 131.579 (1), and
43 if the court has failed to uphold the claim or affidavit of any other person claiming an interest in
44 the property, the effect of the judgment is that:

45 “(a) Title to the property passes to the seizing agency free of any interest or encumbrance

1 thereon in favor of any person who has been given notice;

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

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

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

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

15 “(b) All other interests applicable to the property that are not foreclosed or otherwise elimi-
16 nated through a judgment of foreclosure, if and to the extent that they are valid and subsisting,
17 remain in effect and the property remains subject to them upon completion of the criminal forfeiture
18 proceeding.

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

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

30 “(b) If the court has determined that the property should not be forfeited and has foreclosed one
31 or more interests covering the property, including security interests or liens covering the property
32 or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs
33 and expenses relating to towing and storage of the property and shall cause to be discharged any
34 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to
35 the property since the seizure, and the court shall order the property sold pursuant to a sheriff’s
36 sale or other sale authorized by the court within such time as may be prescribed by the court fol-
37 lowing entry of the judgment. If any interests covering the property have not been foreclosed, in-
38 cluding any liens or security interests of a claimant whose claim has been upheld, or of a financial
39 institution that has filed the affidavit described in ORS 131.579, the property must be sold subject
40 to those interests. The judgment shall order the proceeds of the sale applied in the following order:

41 “(A) To the payment of the costs of the sale;

42 “(B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their
43 priority; and

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

45 “(c) If the court has determined that the property should be forfeited and has foreclosed one or

1 more security interests, liens, contracts or other interests covering the property, the seizing agency
2 shall pay all costs and expenses relating to towing and storage of the property and shall cause to
3 be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that
4 have attached to the property since the seizure, and the court shall order the property sold pursuant
5 to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed
6 by a financial institution or other claimant and the interest was upheld but not foreclosed, the
7 property must be sold subject to the interest. The sale of the property must be held within such time
8 as may be prescribed by the court following entry of the judgment. The judgment shall also order
9 the proceeds of such sale applied in the following order:

10 “(A) To the payment of the costs of the sale;

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

13 “(C) The excess, if any, to the seizing agency to be disposed of as provided in ORS 131.594 or
14 131.597.

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

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

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

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

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

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

33 “(7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under ORS
34 131.550 to 131.600, unless the court has foreclosed one or more security interests, liens or other in-
35 terests covering the property, the property or interest in property must be returned or conveyed
36 immediately to the claimant designated by the court.

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

43 “(8) Nothing in this section prevents a claimant or financial institution from obtaining any de-
44 ficiency to which the claimant or financial institution would otherwise be entitled.

45 “(9) Nothing in this section or in ORS 131.564 prevents a seizing agency from entering into an

1 agreement with a claimant or other person for the reimbursement of the seizing agency for the costs
2 and expenses relating to towing and storage of property or the cost of discharging any possessory
3 chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property in the
4 period between the seizure of the property and the release or criminal forfeiture of the property.

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

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