

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2663

By COMMITTEE ON JUDICIARY

June 13

1 On page 1 of the printed A-engrossed bill, line 2, delete “and 147.515” and insert “, 147.515 and
2 147.537; and declaring an emergency”.

3 In line 7, before the comma insert “and the case involves a defendant charged with a violent
4 felony”.

5 On page 2, after line 42, insert:

6 “**SECTION 4.** ORS 147.537 is amended to read:

7 “147.537. (1) Appellate review of an order described in ORS 147.535 (4)(a) must be initiated by
8 filing a notice of interlocutory appeal with the Supreme Court substantially in the form prescribed
9 by rule of the Supreme Court. Review of the order is a matter of right.

10 “(2) The person filing the notice of interlocutory appeal shall be identified as the appellant and
11 the defendant shall be identified as the respondent. Any other person described in subsection (6)(a)
12 to (f) of this section who is a party to the appeal shall be identified as a respondent.

13 “(3) The notice of interlocutory appeal must contain:

14 “(a) A designation of those portions of the trial court record, including oral proceedings, to be
15 included in the record on appeal; and

16 “(b) A statement of why the notice is timely.

17 “(4) The appellant shall include with the notice of interlocutory appeal the following materials:

18 “(a) A copy of the order for which appellate review is sought, which must be attached to the
19 notice.

20 “(b) Excerpts of the record necessary to determine the question presented and the relief sought.
21 An excerpt of record must include a copy of the form described in ORS 147.515 (2)(a), if the form
22 was completed and provided to the trial court.

23 “(c) A memorandum of law containing:

24 “(A) A concise but complete statement of facts material to a determination of the question pre-
25 sented and the relief sought; and

26 “(B) Supporting arguments and citations of authority.

27 “(5) The Supreme Court may:

28 “(a) Direct a party to the appeal to supplement the record with a copy of additional parts of the
29 record or a transcript of the parts of the oral proceedings in the trial court necessary to determine
30 the question presented and the relief sought; or

31 “(b) Direct the trial court administrator to forward all or part of the trial court record.

32 “(6) The appellant shall serve a copy of the notice of interlocutory appeal and the accompanying
33 materials described in subsection (4) of this section on the following other persons:

34 “(a) The victim who asserted the claim that resulted in the order being appealed and any victim
35 who asserted a related claim;

1 “(b) Any person who filed a response under ORS 147.517 (4) to the claim that resulted in the
2 order being appealed or a related claim;

3 “(c) Any person who filed the motion that resulted in the order being appealed or a related
4 motion under ORS 147.522;

5 “(d) Any person against whom relief was sought in the hearing that resulted in the order being
6 appealed or a related hearing under ORS 147.530;

7 “(e) The prosecuting attorney;

8 “(f) The Attorney General;

9 “(g) The defendant; and

10 “(h) The office of public defense services established under ORS 151.216, if the defendant is re-
11 presented by appointed counsel.

12 “(7) The appellant shall serve a copy of the notice of interlocutory appeal on:

13 “(a) The trial court administrator; and

14 “(b) The trial court transcript coordinator, if the notice of interlocutory appeal contains a des-
15 ignation of the oral proceedings before the trial court as part of the record on appeal.

16 “(8)(a) Except as otherwise provided in this subsection, the appellant shall serve and file the
17 notice of interlocutory appeal and, if applicable, the accompanying materials described in subsection
18 (4) of this section within seven days after the date the trial court issued the order being appealed.

19 “(b) The appellant shall serve the prosecuting attorney and the Attorney General so that the
20 copy of the notice of interlocutory appeal and accompanying materials are received on the same day
21 the notice is filed with the Supreme Court.

22 “(c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all persons
23 described in subsections (6) and (7) of this section so that the copy of the notice of interlocutory
24 appeal and, if applicable, accompanying materials are received no later than one judicial day after
25 the notice is filed.

26 “(9) Within three days after receipt of a notice of interlocutory appeal that contains a desig-
27 nation of record under subsection (3) of this section, the trial court administrator shall forward to
28 the Supreme Court an audio record of the designated oral proceedings.

29 “(10) If the Supreme Court directs a party to provide a transcript of oral proceedings under
30 subsection (5) of this section, the party shall provide the transcript to the Supreme Court within
31 seven days after the date of the Supreme Court’s order.

32 “(11)(a) The following requirements are jurisdictional and may not be waived or extended:

33 “(A) The timely filing of the original notice of interlocutory appeal and accompanying materials
34 described in subsection (4) of this section with the Supreme Court; and

35 “(B) The service of the notice of interlocutory appeal within the time limits described in sub-
36 section (8) of this section on all persons identified in subsection (6) of this section.

37 “(b) Failure to timely serve a true and complete copy of the accompanying materials described
38 in subsection (4) of this section is not jurisdictional, provided that the appellant made a good faith
39 effort to do so and substantially complied with those requirements.

40 “(c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss the appeal
41 as to any respondent if the appellant, after receipt of a notice of noncompliance, does not promptly
42 cure a deficiency in the materials or if the failure to timely serve a true and complete copy of the
43 accompanying materials substantially prejudices the respondent’s ability to respond to the appeal.

44 “(12) A respondent may file a response, which must be filed within seven days after the date the
45 notice of interlocutory appeal is filed with the Supreme Court.

1 “(13)(a) Except as provided in paragraph (b) of this subsection, the appellant may not file a re-
2 ply.

3 “(b) If the Supreme Court determines that the case is unusually complex, due to the number of
4 persons involved or the existence of novel questions of law, and the court would benefit from addi-
5 tional briefing, the court may extend the briefing schedule described in this section and allow the
6 appellant to file a reply.

7 “(14) The appellant or respondent may request oral argument. The Supreme Court may grant
8 or deny a request for oral argument or order oral argument on its own motion.

9 “(15) At any time after submission of the appellant’s memorandum of law, the Supreme Court,
10 on its own motion or on the motion of the respondent, may summarily affirm the trial court’s order,
11 with or without the submission of a response or oral argument, if the Supreme Court determines that
12 the appeal does not present a substantial question of law. A motion for summary affirmance has no
13 effect on the timelines described in this section.

14 “(16)(a) Except as provided in paragraph (b) of this subsection, the Supreme Court shall issue
15 its decision on appeal under this section within 21 days after the date the notice of interlocutory
16 appeal is filed.

17 “(b) The Supreme Court may issue a final decision beyond the 21-day period if the court deter-
18 mines that the ends of justice served by issuing a final decision at a later date outweigh the best
19 interests of the victim, the prosecuting attorney, the defendant, any person against whom relief was
20 ordered and the public.

21 “(c) In making the determination under paragraph (b) of this subsection, the Supreme Court shall
22 consider:

23 “(A) Whether the case is unusually complex, due to the number of persons involved or the ex-
24 istence of novel questions of law, and whether 21 days is an unreasonable amount of time for the
25 court to issue a decision; and

26 “(B) Whether the failure to extend the 21-day period would be likely to result in a miscarriage
27 of justice.

28 “(17) Appellate review under this section is confined to the record. The Supreme Court may not
29 substitute its judgment for that of the trial court as to any issue of fact and shall review challenges
30 to a factual finding for evidence in the record to support the finding. The Supreme Court shall re-
31 view for errors of law and, when the law delegates discretion to the trial court, determine whether
32 the trial court’s exercise of discretion was outside the range of discretion delegated to the trial
33 court.

34 “(18) The Supreme Court may affirm, modify, reverse or remand the trial court’s order. The
35 court may reverse or remand the order only if it finds that the order is unlawful in substance or
36 procedure and that the substantial rights of the appellant were prejudiced as a result.

37 “(19) Notwithstanding any other provision of law, a notice of interlocutory appeal and the re-
38 sponse described in subsection (12) of this section are filed under this section when those documents
39 are physically received by the Supreme Court or, if the documents are filed electronically, as pro-
40 vided by rule of the Chief Justice of the Supreme Court.

41 “(20) **In addition to any other method authorized by law, service under this section may**
42 **be accomplished by electronic mail or facsimile transmission, in a manner consistent with**
43 **any applicable rules of appellate procedure.**

44 “**SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
45 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**

1 **on its passage.”**

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