

HOUSE AMENDMENTS TO HOUSE BILL 2833

By COMMITTEE ON JUDICIARY

April 15

1 On page 1 of the printed bill, line 2, after “ORS” insert “18.887, 45.010, 45.130, 111.205, 116.083,
2 116.253, 125.325, 136.583,”.

3 In line 3, after “162.075” insert “and ORCP 1 E”.

4 On page 2, after line 43, insert:

5 “**SECTION 9.** ORCP 1 E is amended to read:

6 “E Use of declaration under penalty of perjury in lieu of affidavit; ‘declaration’ defined. A dec-
7 laration under penalty of perjury, **or an unsworn declaration under sections 1 to 8 of this 2013**
8 **Act, if the declarant is physically outside the boundaries of the United States**, may be used in
9 lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may
10 be made without notice to adverse parties, must be signed by the declarant, and must include the
11 following sentence in prominent letters immediately above the signature of the declarant: ‘I hereby
12 declare that the above statement is true to the best of my knowledge and belief, and that I under-
13 stand it is made for use as evidence in court and is subject to penalty for perjury.’ As used in these
14 rules, ‘declaration’ means a declaration under penalty of perjury.

15 “**SECTION 10.** ORS 18.887 is amended to read:

16 “18.887. (1) A sheriff may forcibly enter a structure or other enclosure for the purpose of levying
17 on personal property only pursuant to an order issued by the court under this section.

18 “(2) A judgment creditor may at any time file an ex parte motion requesting a court order di-
19 rected to a sheriff that authorizes the sheriff to use force to enter a structure or other enclosure
20 for the purpose of levying on personal property pursuant to a writ of execution. Except as provided
21 in ORS 18.255, the motion must be filed with the court in which the judgment was entered. The
22 motion must identify the specific structure or other enclosure to be entered and must contain a
23 declaration under penalty of perjury made in the manner described by ORCP 1 E, **or an unsworn**
24 **declaration made in the manner described in sections 1 to 8 of this 2013 Act, if the declarant**
25 **is physically outside the boundaries of the United States**, that reflects facts supporting the
26 judgment creditor’s good faith belief that personal property subject to a writ of execution is located
27 within the structure or other enclosure.

28 “(3) An order issued under this section shall direct the sheriff to use all force reasonably nec-
29 essary to enter the structure or other enclosure and levy on personal property pursuant to a writ
30 of execution.

31 “(4) A judgment creditor may deliver a copy of an order issued under this section to a sheriff
32 with a writ of execution, or at any time after a writ of execution is delivered to a sheriff. A sheriff
33 may rely on the copy of the order in entering a structure or other enclosure for the purpose of
34 levying on personal property pursuant to a writ of execution.

35 “**SECTION 11.** ORS 45.010 is amended to read:

1 “45.010. The testimony of a witness is taken by six modes:

2 “(1) Affidavit.

3 “(2) Deposition.

4 “(3) Oral examination.

5 “(4) Telephone examination under ORS 45.400.

6 “(5) Examination before a grand jury by means of simultaneous television transmission under
7 ORS 132.320.

8 “(6) Declaration under penalty of perjury, as described in ORCP 1 E, **or unsworn declaration**
9 **under sections 1 to 8 of this 2013 Act, if the declarant is physically outside the boundaries**
10 **of the United States.**

11 “**SECTION 12.** ORS 45.130 is amended to read:

12 “45.130. Whenever a provisional remedy has been allowed upon affidavit [or], a declaration un-
13 der penalty of perjury as described in ORCP 1 E **or an unsworn declaration under sections 1 to**
14 **8 of this 2013 Act, if the declarant is physically outside the boundaries of the United States,**
15 the party against whom it is allowed may serve upon the party by whom it was obtained a notice,
16 requiring the affiant or declarant to be produced for cross-examination before a named officer au-
17 thorized to administer oaths. Thereupon the party to whom the remedy was allowed shall lose the
18 benefit of the affidavit or declaration and all proceedings founded thereon, unless within eight days,
19 or such other time as the court or judge may direct, upon a previous notice to the adversary of at
20 least three days, the party produces the affiant or declarant for examination before the officer
21 mentioned in the notice, or some other of like authority, provided for in the order of the court or
22 judge. Upon production, the affiant or declarant may be examined by either party, but a party is not
23 obliged to make this production of an affiant or a declarant except within the county where the
24 provisional remedy was allowed.

25 “**SECTION 13.** ORS 111.205 is amended to read:

26 “111.205. No particular pleadings or forms thereof are required in the exercise of jurisdiction
27 of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action
28 not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in
29 writing and upon the petition of a party in interest or the order of the court. All petitions, reports
30 and accounts in proceedings before a probate court must include a declaration under penalty of
31 perjury in the form required by ORCP 1 E, **or an unsworn declaration under sections 1 to 8 of**
32 **this 2013 Act, if the declarant is physically outside the boundaries of the United States,** made
33 by at least one of the persons making the petitions, reports and accounts or by the attorney for the
34 person, or in case of a corporation by its agent. The court exercises its powers by means of:

35 “(1) A petition of a party in interest.

36 “(2) A notice to a party.

37 “(3) A subpoena to a witness.

38 “(4) Orders and judgments.

39 “(5) An execution or warrant to enforce its orders and judgments.

40 “**SECTION 14.** ORS 116.083 is amended to read:

41 “116.083. (1) A personal representative shall make and file in the estate proceeding an account
42 of the personal representative’s administration:

43 “(a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the
44 personal representative’s appointment.

45 “(b) Within 30 days after the date of the personal representative’s removal or resignation or the

1 revocation of the personal representative's letters.

2 "(c) When the estate is ready for final settlement and distribution.

3 "(d) At such other times as the court may order.

4 "(2) Each account must include the following information:

5 "(a) The period of time covered by the account.

6 "(b) The total value of the property with which the personal representative is chargeable ac-
7 cording to the inventory, or, if there was a prior account, the amount of the balance of the prior
8 account.

9 "(c) All money and property received during the period covered by the account.

10 "(d) All disbursements made during the period covered by the account. Vouchers for disburse-
11 ments must accompany the account, unless otherwise provided by order or rule of the court, or un-
12 less the personal representative is a trust company that has complied with ORS 709.030, but that
13 personal representative shall:

14 "(A) Maintain the vouchers for a period of not less than one year following the date on which
15 the order approving the final account is entered;

16 "(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own
17 expense at the place of business of the personal representative during the personal representative's
18 normal business hours at any time prior to the end of the one-year period following the date on
19 which the order approving the final account is entered; and

20 "(C) Include in each annual account and in the final account a statement that the vouchers are
21 not filed with the account but are maintained by the personal representative and may be inspected
22 and copied as provided in subparagraph (B) of this paragraph.

23 "(e) The money and property of the estate on hand.

24 "(f) Such other information as the personal representative considers necessary to show the
25 condition of the affairs of the estate or as the court may require.

26 "(g) A declaration under penalty of perjury in the form required by ORCP 1 E, **or an unsworn**
27 **declaration under sections 1 to 8 of this 2013 Act, if the declarant is physically outside the**
28 **boundaries of the United States.**

29 "(3) When the estate is ready for final settlement and distribution, the account must also in-
30 clude:

31 "(a) A statement that all Oregon income taxes, inheritance or estate taxes and personal property
32 taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by
33 bond, deposit or otherwise, and that all required tax returns have been filed.

34 "(b) A petition for a judgment authorizing the personal representative to distribute the estate
35 to the persons and in the portions specified therein.

36 "(4) If the distributees consent thereto in writing and all creditors of the estate have been paid
37 in full other than creditors owed administrative expenses that require court approval, the personal
38 representative, in lieu of the final account otherwise required by this section, may file a statement
39 that includes the following:

40 "(a) The period of time covered by the statement.

41 "(b) A statement that all creditors have been paid in full other than creditors owed administra-
42 tive expenses that require court approval.

43 "(c) The statement and petition referred to in subsection (3) of this section.

44 "(d) A declaration under penalty of perjury in the form required by ORCP 1 E, **or an unsworn**
45 **declaration under sections 1 to 8 of this 2013 Act, if the declarant is physically outside the**

1 **boundaries of the United States.**

2 “(5) Notice of time for filing objections to the statement described in subsection (4) of this sec-
3 tion is not required.

4 “(6) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
5 counts that must be filed by a personal representative.

6 “**SECTION 15.** ORS 116.253 is amended to read:

7 “116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or
8 in part to the state, or within eight years after the entry of a judgment or order escheating property
9 of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof,
10 by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a
11 person who at the time of the escheat was unable to prove entitlement to the escheated property.

12 “(2) The claim shall be made by a petition filed with the Director of the Department of State
13 Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right
14 of judicial review as provided in ORS 183.480. The petition must include a declaration under penalty
15 of perjury in the form required by ORCP 1 E, **or an unsworn declaration under sections 1 to 8**
16 **of this 2013 Act, if the declarant is physically outside the boundaries of the United States,**
17 and shall state:

18 “(a) The age and place of residence of the claimant by whom or on whose behalf the petition is
19 filed;

20 “(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the
21 property or proceeds;

22 “(c) That at the time the property escheated to the state the claimant had no knowledge or
23 notice thereof or was unable to prove entitlement to the escheated property and has subsequently
24 acquired new evidence of that entitlement;

25 “(d) That the claimant claims the property or proceeds as an heir or devisee or as the personal
26 representative of the estate of an heir or devisee, setting forth the relationship, if any, of the
27 claimant to the decedent who at the time of death was the owner;

28 “(e) That 10 years have not elapsed since the death of the decedent, or that eight years have
29 not elapsed since the entry of the judgment or order escheating the property to the state; and

30 “(f) If the petition is not filed by the claimant, the status of the petitioner.

31 “(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the
32 Director of the Department of State Lands shall deliver the property to the petitioner, subject to
33 and charged with any tax on the property and the costs and expenses of the state in connection
34 therewith.

35 “(4) If the person whose property escheated or reverted to the state was at any time an inmate
36 of a state institution in Oregon for persons with mental illness or mental retardation, the reasonable
37 unpaid cost of the care and maintenance of the person while a ward of the institution, regardless
38 of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the
39 amount of the escheated property. The reasonable unpaid cost of care and maintenance shall be
40 determined by:

41 “(a) The Department of Human Services for patients of the Eastern Oregon Training Center; and

42 “(b) The Oregon Health Authority for patients of the Blue Mountain Recovery Center and the
43 Oregon State Hospital.

44 “(5) For the purposes of this section, the death of the decedent is presumed to have occurred
45 on the date shown in the decedent’s death certificate or in any other similar document issued by the

1 jurisdiction in which the death occurred or issued by an agency of the federal government.

2 “SECTION 16. ORS 125.325 is amended to read:

3 “125.325. Within 30 days after each anniversary of appointment, a guardian for an adult pro-
4 tected person shall file with the court a written report. The report must include a declaration under
5 penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under sections
6 1 to 8 of this 2013 Act, if the declarant is physically outside the boundaries of the United
7 States. Copies of the guardian’s report must be given to those persons specified in ORS 125.060 (3).
8 The report shall be in substantially the following form:

9 “ _____

10
11 IN THE _____ COURT _____ COUNTY,
12 STATE OF OREGON
13 DEPARTMENT OF PROBATE

14 In the Matter of the) No. _____
15 Guardianship of)
16 _____,)
17 (Name of protected)
18 person))
19 A Protected)
20 Person.)

21 GUARDIAN’S REPORT

22 I am the guardian for the person named above, and I make the following report to the court as
23 required by law:

24 1. My name is _____.

25 2. My address and telephone number are:

26 _____

27 _____

28 Phone _____

29 3. The name, if applicable, and address of the place where the person now resides are:

30 _____

31 _____

32 4. The person is currently residing at the following type of facility or residence:

33 _____

34 5. The person is currently engaged in the following programs and activities and receiving the
35 following services (brief description):

36 _____

37 6. I was paid for providing the following items of lodging, food or other services to the person:

38 _____

39 _____

40 7. The name of the person primarily responsible for the care of the person at the person’s place
41 of residence is:

42 _____

43 8. The name and address of any hospital or other institution where the person is now admitted
44 on a temporary or permanent basis are:

45 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

9. The person’s physical condition is as follows (brief description):

10. The person’s mental condition is as follows (brief description):

11. I made the following contacts with the person during the past year (brief description):

12. I made the following major decisions on behalf of the person during the past year (brief description):

13. I believe the guardianship should or should not continue because:

14. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

15. A true copy of this report will be given to the person, any conservator for the person and any other person who has requested notice.

16. Since my last report:

(a) I have been convicted of the following crimes (not including traffic violations):

(b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

17. Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this ____ day of _____, 2_____.

Guardian

“ _____

“**SECTION 17.** ORS 136.583 is amended to read:

“136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and subject to ORS 136.580 (2), criminal process authorizing or commanding the seizure or production of papers, documents, records or other things may be issued to a recipient, regardless of whether the recipient or the papers, documents, records or things are located within this state, if:

“(a) The criminal matter is triable in Oregon under ORS 131.205 to 131.235; and

“(b) The exercise of jurisdiction over the recipient is not inconsistent with the Constitution of

1 this state or the Constitution of the United States.

2 “(2) Criminal process that authorizes or commands the seizure or production of papers, docu-
3 ments, records or other things from a recipient may be served by:

4 “(a) Delivering a copy to the recipient personally; or

5 “(b) Sending a copy by:

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

7 “(B) Express mail; or

8 “(C) Facsimile or electronic transmission, if the copy is sent in a manner that provides proof
9 of delivery.

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

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

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

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

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

25 “(5) Criminal process issued under this section must contain a notice on the first page of the
26 document that indicates:

27 “(a) That the process was issued under this section;

28 “(b) The date before which the recipient must respond to the process; and

29 “(c) That the deadline for seeking relief is not altered by the applicant’s consent to additional
30 time to respond to the process.

31 “(6) Upon order of the court or the written request of the applicant, the recipient of the process
32 shall verify the authenticity of the papers, documents, records or other things that the recipient
33 produces in response to the criminal process by providing an affidavit or declaration that includes
34 contact information for the custodian or other qualified person completing the document and attests
35 to the nature of the papers, documents, records or other things. An affidavit or declaration that
36 complies with this subsection may fulfill the requirements of ORS 40.460 (6), 40.505 and 132.320.

37 “(7) A party that intends to offer a paper, document, record or other thing into evidence under
38 this section must file written notice of that intention with the court and must disclose the affidavit
39 or declaration sufficiently in advance of offering the paper, document, record or other thing into
40 evidence to provide the adverse party with an opportunity to challenge the affidavit or declaration
41 and to have that challenge determined without prejudice to the ability of the moving party to
42 produce the custodian or other qualified person at trial. A motion opposing admission of the paper,
43 document, record or other thing into evidence must be filed and determined by the court before trial
44 and with sufficient time to allow the party offering the paper, document, record or other thing, if
45 the motion is granted, to produce the custodian of the record or other qualified person at trial,

1 without creating a hardship on the party or the custodian or other qualified person.

2 “(8) Failure by a party that receives notice under subsection (7) of this section to timely file a
3 motion opposing admission of the paper, document, record or other thing constitutes a waiver of
4 objection to the admission of the evidence on the basis of the insufficiency of the affidavit or dec-
5 laration unless the court finds good cause to grant relief from the waiver. If the court grants relief
6 from the waiver, the court shall order the trial continued upon the request of the proponent of the
7 evidence and allow the proponent sufficient time to arrange for the necessary witness to appear.

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

11 “(10) Nothing in this section limits the authority of a court to issue criminal process under any
12 other provision of law or prohibits a party from calling the custodian of the evidence or other
13 qualified person to testify regarding the evidence.

14 “(11) As used in this section:

15 “(a) ‘Applicant’ means:

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

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

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

21 “(c) ‘Declaration’ [*has the meaning given that term in*] **means a declaration under penalty of**
22 **perjury under ORCP 1 E or an unsworn declaration under sections 1 to 8 of this 2013 Act, if**
23 **the declarant is physically outside the boundaries of the United States.**

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

26 “(e) ‘Recipient’ means a business entity or nonprofit entity that has conducted business or en-
27 gaged in transactions occurring at least in part in this state.”.

28 In line 44, delete “9” and insert “18”.

29 On page 3, line 13, delete “10” and insert “19”.

30 In line 17, delete “11” and insert “20”.

31 In line 21, delete “12” and insert “21”.

32 Delete lines 24 through 26 and insert:

33 **“SECTION 22. Sections 1 to 8 of this 2013 Act and the amendments to ORS 18.887, 45.010,**
34 **45.130, 111.205, 116.083, 116.253, 125.325, 136.583, 162.055, 162.065 and 162.075 and ORCP 1 E by**
35 **sections 9 to 20 of this 2013 Act apply to unsworn declarations made on or after the effective**
36 **date of this 2013 Act.”.**

37