

**PROPOSED AMENDMENTS TO
HOUSE BILL 2833**

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

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

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

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

19 “18.887. (1) A sheriff may forcibly enter a structure or other enclosure for
20 the purpose of levying on personal property only pursuant to an order issued
21 by the court under this section.

22 “(2) A judgment creditor may at any time file an ex parte motion re-

1 questing a court order directed to a sheriff that authorizes the sheriff to use
2 force to enter a structure or other enclosure for the purpose of levying on
3 personal property pursuant to a writ of execution. Except as provided in ORS
4 18.255, the motion must be filed with the court in which the judgment was
5 entered. The motion must identify the specific structure or other enclosure
6 to be entered and must contain a declaration under penalty of perjury made
7 in the manner described by ORCP 1 E, **or an unsworn declaration made**
8 **in the manner described in sections 1 to 8 of this 2013 Act, if the**
9 **declarant is physically outside the boundaries of the United States,**
10 that reflects facts supporting the judgment creditor's good faith belief that
11 personal property subject to a writ of execution is located within the struc-
12 ture or other enclosure.

13 “(3) An order issued under this section shall direct the sheriff to use all
14 force reasonably necessary to enter the structure or other enclosure and levy
15 on personal property pursuant to a writ of execution.

16 “(4) A judgment creditor may deliver a copy of an order issued under this
17 section to a sheriff with a writ of execution, or at any time after a writ of
18 execution is delivered to a sheriff. A sheriff may rely on the copy of the or-
19 der in entering a structure or other enclosure for the purpose of levying on
20 personal property pursuant to a writ of execution.”.

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

22 “45.010. The testimony of a witness is taken by six modes:

23 “(1) Affidavit.

24 “(2) Deposition.

25 “(3) Oral examination.

26 “(4) Telephone examination under ORS 45.400.

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

29 “(6) Declaration under penalty of perjury, as described in ORCP 1 E, **or**
30 **unsworn declaration under sections 1 to 8 of this 2013 Act, if the**

1 **declarant is physically outside the boundaries of the United States.**

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

3 “45.130. Whenever a provisional remedy has been allowed upon affidavit
4 [or], **a declaration under penalty of perjury as described in ORCP 1 E or**
5 **an unsworn declaration under sections 1 to 8 of this 2013 Act, if the**
6 **declarant is physically outside the boundaries of the United States,** the
7 party against whom it is allowed may serve upon the party by whom it was
8 obtained a notice, requiring the affiant or declarant to be produced for
9 cross-examination before a named officer authorized to administer oaths.
10 Thereupon the party to whom the remedy was allowed shall lose the benefit
11 of the affidavit or declaration and all proceedings founded thereon, unless
12 within eight days, or such other time as the court or judge may direct, upon
13 a previous notice to the adversary of at least three days, the party produces
14 the affiant or declarant for examination before the officer mentioned in the
15 notice, or some other of like authority, provided for in the order of the court
16 or judge. Upon production, the affiant or declarant may be examined by ei-
17 ther party, but a party is not obliged to make this production of an affiant
18 or a declarant except within the county where the provisional remedy was
19 allowed.

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

21 “111.205. No particular pleadings or forms thereof are required in the ex-
22 ercise of jurisdiction of probate courts. The mode of procedure in the exer-
23 cise of jurisdiction is in the nature of an action not triable by right to a jury
24 except as otherwise provided by statute. The proceedings shall be in writing
25 and upon the petition of a party in interest or the order of the court. All
26 petitions, reports and accounts in proceedings before a probate court must
27 include a declaration under penalty of perjury in the form required by ORCP
28 **1 E, or an unsworn declaration under sections 1 to 8 of this 2013 Act,**
29 **if the declarant is physically outside the boundaries of the United**
30 **States,** made by at least one of the persons making the petitions, reports and

1 accounts or by the attorney for the person, or in case of a corporation by its
2 agent. The court exercises its powers by means of:

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

4 “(2) A notice to a party.

5 “(3) A subpoena to a witness.

6 “(4) Orders and judgments.

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

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

9 “116.083. (1) A personal representative shall make and file in the estate
10 proceeding an account of the personal representative’s administration:

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

13 “(b) Within 30 days after the date of the personal representative’s removal
14 or resignation or the revocation of the personal representative’s letters.

15 “(c) When the estate is ready for final settlement and distribution.

16 “(d) At such other times as the court may order.

17 “(2) Each account must include the following information:

18 “(a) The period of time covered by the account.

19 “(b) The total value of the property with which the personal represen-
20 tative is chargeable according to the inventory, or, if there was a prior ac-
21 count, the amount of the balance of the prior account.

22 “(c) All money and property received during the period covered by the
23 account.

24 “(d) All disbursements made during the period covered by the account.
25 Vouchers for disbursements must accompany the account, unless otherwise
26 provided by order or rule of the court, or unless the personal representative
27 is a trust company that has complied with ORS 709.030, but that personal
28 representative shall:

29 “(A) Maintain the vouchers for a period of not less than one year fol-
30 lowing the date on which the order approving the final account is entered;

1 “(B) Permit interested persons to inspect the vouchers and receive copies
2 thereof at their own expense at the place of business of the personal repre-
3 sentative during the personal representative’s normal business hours at any
4 time prior to the end of the one-year period following the date on which the
5 order approving the final account is entered; and

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

10 “(e) The money and property of the estate on hand.

11 “(f) Such other information as the personal representative considers nec-
12 essary to show the condition of the affairs of the estate or as the court may
13 require.

14 “(g) A declaration under penalty of perjury in the form required by ORCP
15 **1 E, or an unsworn declaration under sections 1 to 8 of this 2013 Act,**
16 **if the declarant is physically outside the boundaries of the United**
17 **States.**

18 “(3) When the estate is ready for final settlement and distribution, the
19 account must also include:

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

24 “(b) A petition for a judgment authorizing the personal representative to
25 distribute the estate to the persons and in the portions specified therein.

26 “(4) If the distributees consent thereto in writing and all creditors of the
27 estate have been paid in full other than creditors owed administrative ex-
28 penses that require court approval, the personal representative, in lieu of the
29 final account otherwise required by this section, may file a statement that
30 includes the following:

1 “(a) The period of time covered by the statement.

2 “(b) A statement that all creditors have been paid in full other than
3 creditors owed administrative expenses that require court approval.

4 “(c) The statement and petition referred to in subsection (3) of this sec-
5 tion.

6 “(d) A declaration under penalty of perjury in the form required by ORCP
7 **1 E, or an unsworn declaration under sections 1 to 8 of this 2013 Act,**
8 **if the declarant is physically outside the boundaries of the United**
9 **States.**

10 “(5) Notice of time for filing objections to the statement described in
11 subsection (4) of this section is not required.

12 “(6) The Chief Justice of the Supreme Court may by rule specify the form
13 and contents of accounts that must be filed by a personal representative.

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

15 “116.253. (1) Within 10 years after the death of a decedent whose estate
16 escheated in whole or in part to the state, or within eight years after the
17 entry of a judgment or order escheating property of an estate to the state,
18 a claim may be made for the property escheated, or the proceeds thereof, by
19 or on behalf of a person not having actual knowledge of the escheat or by
20 or on behalf of a person who at the time of the escheat was unable to prove
21 entitlement to the escheated property.

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

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

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

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

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

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

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

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

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

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

29 “(b) The Oregon Health Authority for patients of the Blue Mountain Re-
30 covery Center and the Oregon State Hospital.

1 “(5) For the purposes of this section, the death of the decedent is pre-
2 sumed to have occurred on the date shown in the decedent’s death certificate
3 or in any other similar document issued by the jurisdiction in which the
4 death occurred or issued by an agency of the federal government.

5 **“SECTION 16.** ORS 125.325 is amended to read:

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

14 “ _____

15 IN THE _____ COURT _____ COUNTY,
16 STATE OF OREGON
17 DEPARTMENT OF PROBATE

18 In the Matter of the) No. _____
19 Guardianship of)
20 _____,)
21 (Name of protected)
22 person))
23 A Protected)
24 Person.)

25 GUARDIAN’S REPORT

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

28 1. My name is _____.

29 2. My address and telephone number are:

30 _____

1 _____

2 Phone _____

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

5 _____

6 _____

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

9 _____

10 5. The person is currently engaged in the following programs and activ-
11 ities and receiving the following services (brief description):

12 _____

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

15 _____

16 _____

17 7. The name of the person primarily responsible for the care of the person
18 at the person's place of residence is:

19 _____

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

22 _____

23 _____

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

25 _____

26 _____

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

28 _____

29 _____

30 11. I made the following contacts with the person during the past year

1 (brief description):

2 _____

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

5 _____

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

7 _____

8 14. At the time of my last report, I held the following amount of money
9 on behalf of the person: \$_____. Since my last report, I received the fol-
10 lowing amount of money on behalf of the person: \$_____. I spent the fol-
11 lowing amount of money on behalf of the person: \$_____. I now hold the
12 following amount of money on behalf of the person: \$_____.

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

15 16. Since my last report:

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

18 _____

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

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

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

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

28 _____

29 I hereby declare that the above statement is true to the best of my
30 knowledge and belief, and that I understand it is made for use as evidence

1 in court and is subject to penalty for perjury.

2 Dated this ____ day of _____, 2____.

3

4

Guardian

5 “

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

7 “136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and
8 subject to ORS 136.580 (2), criminal process authorizing or commanding the
9 seizure or production of papers, documents, records or other things may be
10 issued to a recipient, regardless of whether the recipient or the papers, doc-
11 uments, records or things are located within this state, if:

12 “(a) The criminal matter is triable in Oregon under ORS 131.205 to
13 131.235; and

14 “(b) The exercise of jurisdiction over the recipient is not inconsistent
15 with the Constitution of this state or the Constitution of the United States.

16 “(2) Criminal process that authorizes or commands the seizure or pro-
17 duction of papers, documents, records or other things from a recipient may
18 be served by:

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

20 “(b) Sending a copy by:

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

22 “(B) Express mail; or

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

25 “(3) When criminal process is served under subsection (2) of this section,
26 the recipient shall provide the applicant, or if the process is described in
27 ORS 136.447 or 136.580 (2), the court, with all of the papers, documents, re-
28 cords or other things described in the criminal process within 20 business
29 days from the date the criminal process is received, unless:

30 “(a) The court, for good cause shown, includes in the process a require-

1 ment for production within a period of time that is less than 20 business
2 days;

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

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

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

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

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

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

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

19 “(6) Upon order of the court or the written request of the applicant, the
20 recipient of the process shall verify the authenticity of the papers, docu-
21 ments, records or other things that the recipient produces in response to the
22 criminal process by providing an affidavit or declaration that includes con-
23 tact information for the custodian or other qualified person completing the
24 document and attests to the nature of the papers, documents, records or
25 other things. An affidavit or declaration that complies with this subsection
26 may fulfill the requirements of ORS 40.460 (6), 40.505 and 132.320.

27 “(7) A party that intends to offer a paper, document, record or other thing
28 into evidence under this section must file written notice of that intention
29 with the court and must disclose the affidavit or declaration sufficiently in
30 advance of offering the paper, document, record or other thing into evidence

1 to provide the adverse party with an opportunity to challenge the affidavit
2 or declaration and to have that challenge determined without prejudice to
3 the ability of the moving party to produce the custodian or other qualified
4 person at trial. A motion opposing admission of the paper, document, record
5 or other thing into evidence must be filed and determined by the court before
6 trial and with sufficient time to allow the party offering the paper, docu-
7 ment, record or other thing, if the motion is granted, to produce the custo-
8 dian of the record or other qualified person at trial, without creating a
9 hardship on the party or the custodian or other qualified person.

10 “(8) Failure by a party that receives notice under subsection (7) of this
11 section to timely file a motion opposing admission of the paper, document,
12 record or other thing constitutes a waiver of objection to the admission of
13 the evidence on the basis of the insufficiency of the affidavit or declaration
14 unless the court finds good cause to grant relief from the waiver. If the
15 court grants relief from the waiver, the court shall order the trial continued
16 upon the request of the proponent of the evidence and allow the proponent
17 sufficient time to arrange for the necessary witness to appear.

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

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

1 a subpoena under this section.

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

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

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

11 “(e) ‘Recipient’ means a business entity or nonprofit entity that has con-
12 ducted business or engaged in transactions occurring at least in part in this
13 state.”.

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

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

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

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

18 Delete lines 24 through 26 and insert:

19 **“SECTION 22. Sections 1 to 8 of this 2013 Act and the amendments**
20 **to ORS 18.887, 45.010, 45.130, 111.205, 116.083, 116.253, 125.325, 136.583,**
21 **162.055, 162.065 and 162.075 and ORCP 1 E by sections 9 to 20 of this 2013**
22 **Act apply to unsworn declarations made on or after the effective date**
23 **of this 2013 Act.”.**

24