

SENATE AMENDMENTS TO SENATE BILL 131

By COMMITTEE ON JUDICIARY

April 11

1 On page 1 of the printed bill, line 2, delete “45.400” and insert “45.010, 45.400, 107.717 and
2 163.770”.

3 Delete lines 5 through 30 and delete page 2 and insert:

4 “**SECTION 1.** ORS 45.400 is amended to read:

5 “45.400. *[(1) Upon motion of any party and for good cause shown, the court may order that the*
6 *testimony of the party or any witness for the moving party be taken by telephone or by other two-way*
7 *electronic communication device in any civil proceeding or any proceeding under ORS chapter 419B.]*

8 “**(1) A party to any civil proceeding or any proceeding under ORS chapter 419B may move**
9 **that the party or any witness for the moving party may give remote location testimony.**

10 “(2) A party filing a motion under this section must give written notice to all other parties to
11 the proceeding at least 30 days before the trial or hearing at which the *[telephone]* **remote location**
12 **testimony** will be offered. The court may allow written notice less than 30 days before the trial or
13 hearing for good cause shown.

14 “*[(3) Except as provided under subsection (4) of this section, the court shall allow telephone testi-*
15 *mony under this section upon a showing of good cause. The court may not allow the use of telephone*
16 *testimony in any case if:]*

17 “*[(a) The ability to evaluate the credibility and demeanor of a witness or party in person is critical*
18 *to the outcome of the proceeding;]*

19 “*[(b) The issue or issues the witness or party will testify about are so determinative of the outcome*
20 *that face-to-face cross-examination is necessary;]*

21 “*[(c) A perpetuation deposition under ORCP 39 I is a more practical means of presenting the tes-*
22 *timony;]*

23 “*[(d) The exhibits or documents the witness or party will testify about are too voluminous to make*
24 *telephone testimony practical;]*

25 “*[(e) Facilities that would permit the taking of telephone testimony are not available;]*

26 “*[(f) The failure of the witness or party to appear personally will result in substantial prejudice to*
27 *a party to the proceeding; or]*

28 “*[(g) Other circumstances exist that require the personal appearance of a witness or party.]*

29 “**(3)(a) Except as provided under subsection (5) of this section, the court may allow re-**
30 **remote location testimony under this section upon a showing of good cause by the moving**
31 **party, unless the court determines that the use of remote location testimony would result**
32 **in prejudice to the nonmoving party and that prejudice outweighs the good cause for allowing**
33 **the remote location testimony.**

34 “**(b) Factors that a court may consider that would support a finding of good cause for the**
35 **purpose of a motion under this subsection include:**

1 “(A) Whether the witness or party might be unavailable because of age, infirmity or
2 mental or physical illness.

3 “(B) Whether the party filing the motion seeks to take the remote location testimony
4 of a witness whose attendance the party has been unable to secure by process or other rea-
5 sonable means.

6 “(C) Whether a personal appearance by the witness or party would be an undue hardship
7 on the witness or party.

8 “(D) Whether a perpetuation deposition under ORCP 39 I, or another alternative, pro-
9 vides a more practical means of presenting the testimony.

10 “(E) Any other circumstances that constitute good cause.

11 “(c) Factors that a court may consider that would support a finding of prejudice under
12 this subsection include:

13 “(A) Whether the ability to evaluate the credibility and demeanor of a witness or party
14 in person is critical to the outcome of the proceeding.

15 “(B) Whether the nonmoving party demonstrates that face-to-face cross-examination is
16 necessary because the issue or issues the witness or party will testify about may be
17 determinative of the outcome.

18 “(C) Whether the exhibits or documents the witness or party will testify about are too
19 voluminous to make remote location testimony practical.

20 “(D) The nature of the proceeding, with due consideration for a person’s liberty or par-
21 ental interests.

22 “(E) Whether facilities that would permit the taking of remote location testimony are
23 readily available.

24 “(F) Whether the nonmoving party demonstrates that other circumstances exist that
25 require the personal appearance of a witness or party.

26 “(4) In exercising its discretion to allow remote location testimony under this section, a
27 court may authorize telephone or other nonvisual transmission only upon finding that video
28 transmission is not readily available.

29 “[(4)] (5) The court may not allow use of [telephone] remote location testimony in a jury trial
30 unless good cause is shown and there is a compelling need for the use of [telephone] remote lo-
31 cation testimony.

32 “[(5) The court may not prohibit the use of telephone testimony solely by reason of the provisions
33 of subsection (3)(e) of this section if the party filing the motion establishes that alternative procedures
34 or technologies allow the taking of telephone testimony.]

35 “(6) A party filing a motion for [telephone] remote location testimony under this section must
36 pay all costs of the [telephone] remote location testimony, including the costs of alternative proce-
37 dures or technologies used for the taking of [telephone] remote location testimony. No part of those
38 costs may be recovered by the party filing the motions as costs and disbursements in the proceeding.

39 “[(7) Factors that a court may consider that would support a finding of good cause for the purpose
40 of a motion under this section include:]

41 “[(a) The witness or party might be unavailable because of age, infirmity or mental or physical
42 illness;]

43 “[(b) The party filing the motion seeks to take the telephone testimony of a witness whose attend-
44 ance the party has been unable to secure by process or other reasonable means;]

45 “[(c) A personal appearance by the party or witness would be an undue hardship on the party or

1 witness; or]

2 “[(d) Any other circumstances that constitute good cause.]

3 “[(8)] (7) This section does not apply to a workers’ compensation hearing or to any other ad-
4 ministrative proceeding.

5 “[(9) For purposes of this section, ‘telephone testimony’ means testimony given by telephone or by
6 any other two-way electronic communication device, including but not limited to satellite, cellular or
7 other interactive communication device.]

8 “(8) As used in this section:

9 “(a) ‘Remote location testimony’ means live testimony given by a witness or party from
10 a physical location outside of the courtroom of record via simultaneous electronic trans-
11 mission.

12 “(b) ‘Simultaneous electronic transmission’ means television, telephone or any other
13 form of electronic communication transmission if the form of transmission allows:

14 “(A) The court, the attorneys and the person testifying from a remote location to com-
15 municate with each other during the proceeding;

16 “(B) A witness or party who is represented by counsel at the hearing to be able to con-
17 sult privately with counsel during the proceeding; and

18 “(C) The public to hear and, if the transmission includes a visual image, to see the wit-
19 ness or party if the public would otherwise have the right to hear and see the witness or
20 party testifying in the courtroom of record.

21 “**SECTION 2.** 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] **Remote location** examination under ORS 45.400.

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

29 “(6) Declaration under penalty of perjury, as described in ORCP 1 E, or unsworn declaration
30 under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United
31 States.

32 “**SECTION 3.** ORS 107.717 is amended to read:

33 “107.717. (1) A party may file a motion under ORS 45.400 requesting that the court allow the
34 appearance of the party or a witness by telephone or by other two-way electronic communication
35 device in a proceeding under ORS 107.700 to 107.735.

36 “(2) In exercising its discretion to allow written notice less than 30 days before the proceeding
37 as required under ORS 45.400 (2), the court shall consider the expedited nature of a proceeding un-
38 der ORS 107.700 to 107.735.

39 “(3) In addition to the factors listed in ORS 45.400 [(7)] (3)(b) that would support a finding of
40 good cause, the court shall consider whether the safety or welfare of the party or witness would be
41 threatened if testimony were required to be provided in person at a proceeding under ORS 107.700
42 to 107.735.

43 “(4) A motion or good cause determination under this section or ORS 45.400 is not required for
44 ex parte hearings held by telephone under ORS 107.718.

45 “**SECTION 4.** ORS 163.770 is amended to read:

1 “163.770. (1) A party may file a motion under ORS 45.400 requesting that the circuit court allow
2 the appearance of the party or a witness by telephone or by other two-way electronic communi-
3 cation device in a proceeding under ORS 163.760 to 163.777.

4 “(2) In determining whether to allow written notice less than 30 days before the proceeding
5 under ORS 45.400 (2), the circuit court shall consider the expedited nature of a proceeding under
6 ORS 163.760 to 163.777.

7 “(3) In addition to the factors listed in ORS 45.400 [(7)] (3)(b) that would support a finding of
8 good cause, the circuit court shall consider whether the safety or welfare of the party or witness
9 would be threatened if testimony were required to be provided in person at a proceeding under ORS
10 163.760 to 163.777.

11 “(4) A motion or good cause determination is not required for ex parte hearings held by tele-
12 phone under ORS 163.765.

13 “**SECTION 5. The amendments to ORS 45.010, 45.400, 107.717 and 163.770 by sections 1 to**
14 **4 of this 2017 Act apply only to motions for remote location testimony filed on or after the**
15 **effective date of this 2017 Act.**

16 “**SECTION 6. This 2017 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
18 **on its passage.”.**

19
