



Oregon Law Commission

The Hon. Tina Kotek
Speaker of the House
Oregon State Capitol
900 Court St. NE, Room 269
Salem OR 97301

Re: Oregon Law Commission “Remote Witnessing” Legislation
LC 210 Insert 3

COMMISSIONERS

Chair:
P.K. Runkles-Pearson

Vice-Chair:
Keith S. Dubanevich

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Stephen K. Bushong

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Ellen. F. Rosenblum

Jennifer A. Williamson

Dear Speaker Kotek:

On behalf of the Oregon Law Commission, I respectfully request that you include the Commission’s proposed “Remote Witnessing” legislation in LC 29, or another appropriate vehicle, for consideration during the anticipated special legislative session. A copy of the proposed legislation, LC 210 Insert 3, is enclosed for your reference, together with a draft report with comments on the legislation, prepared by University of Oregon Law Prof. Susan Gary, who served as reporter for the work group.

As you know, many legal documents that are critical to Oregonians’ lives and wellbeing require signature or acknowledgement before a witness or witnesses. Some of these are described below. Currently, the law contemplates that such witnessing will happen in the immediate physical presence of the signer (or attestor) and the witnesses. During the COVID-19 pandemic and public health emergency, lawyers around the state report it has been difficult (and impossible, in some cases) for people to gather witnesses in person.

Even as the Governor phases out the strictest limitations on social contact in her Executive Orders, some Oregonians will necessarily remain isolated. These are people who are highest risk of contracting the virus, including those who live in nursing homes and senior care and residential facilities.

In order to address this serious impediment to the signing and witnessing of important legal documents, the Oregon Law Commission’s Probate Modernization Work Group has prepared the enclosed legislative concept to allow the witnessing of documents remotely, through the use of computer technology. The concept allows the person signing or acknowledging the document to do so in the “electronic presence” of the witness (or witnesses) and prescribes a procedure that protects the integrity of the document and the process and the parties involved.

Documents that could be signed and witnessed remotely under this concept include Advance Directives; certain records concerning anatomical gifts; a declaration for mental health treatment; and a request for medication under ORS 127.800 to 127.897 (Oregon’s Death With Dignity Law). Wills and the witnessing of signatures collected in connection





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with the circulation of a petition are expressly excluded for specific policy reasons. Notarial acts are excluded because they are addressed separately in another legislative proposal for the special session from the Law Commission.

Clearly, these are important documents that Oregonians execute on a daily basis. For some, the ability to sign the documents quickly can be of critical importance. Many people can't wait for the public health emergency to pass, and many may need to sign these documents *because* of the health emergency.

The proposal includes an emergency clause and a sunset date of June 30, 2021. While the immediate public health emergency was the impetus for the proposed legislation, we believe it merits consideration during the next regular session to be made permanent. There are plenty of other circumstances in which the requirement to gather witnesses together can be serious barrier to finalizing a document promptly, and the June 30, 2021 sunset date will give the legislature the opportunity to extend the legislation.

Again, we respectfully request that you authorize LC 210 Insert 3 to be included in LC 29, or another appropriate legislative vehicle, to be considered in the coming special session.

Thank you for your courtesies in this matter.

Yours very truly,

LANE P. SHETTERLY

Former Chair, Oregon Law Commission

Chair, Oregon Law Commission's Probate Modernization Work Group

cc: Ms. P.K. Runkles-Pearson, Oregon Law Commission Chair (w/enc)