

AMENDMENTS
TO THE
OREGON RULES OF CIVIL PROCEDURE
promulgated by the
COUNCIL ON COURT PROCEDURES

December 1, 2012

*including additional amendments
by the 77th Oregon Legislative Assembly*

**all amendments effective January 1, 2012
except amendments to ORCP 79 E effective July 29, 2013**

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Staff

Mark A. Peterson, Executive Director
Shari C. Nilsson, Administrative Assistant

1018 Board of Trade Building
310 S.W. Fourth Avenue
Portland, OR 97204-2305
Telephone: (503) 768-6500
FAX: (503) 768-6540
E-Mail: mpeterso@lclark.edu
nilsson@lclark.edu

INTRODUCTION

The following amendments to the Oregon Rules of Civil Procedure have been promulgated by the Council on Court Procedures for submission to the 2013 Legislative Assembly. Pursuant to ORS 1.735, they will become effective January 1, 2014, unless the Legislative Assembly by statute modifies the action of the Council.

The amended rules are set out with both the current and amended language. New language is shown in boldface with underlining, and language to be deleted is italicized and bracketed.

Please note that, during its December 1, 2012, meeting, the Council made a non-substantive word order change to ORCP 19 B in order to conform to the conventions and language of the existing Oregon Rules of Civil Procedure. During this meeting, and based on further deliberations, the Council also promulgated Rules 55 and 57 with amended language to clarify the intention of the rule changes. The specific sections amended at the meeting were: ORCP 55 H(2)(b); ORCP 57 F(1); and ORCP 57 F(3).

The 77th Legislative Assembly also made amendments to the Rules. The Legislative Assembly's changes are included as excerpts from the 2013 Oregon Laws, with relevant portions highlighted. The amendments to ORCP 79 E were passed by the Legislative Assembly and include an emergency clause. The Legislative Assembly's amendments to ORCP 79 E became effective on July 29, 2013.

The Council held the following public meetings during the 2011-2013 biennium:

September 10, 2011 (Oregon State Bar)
October 1, 2011 (Newport - Oregon Coast Community College)
November 5, 2011 (Oregon State Bar)
December 3, 2011 (Oregon State Bar)
January 7, 2012 (Oregon State Bar)
February 4, 2012 (Oregon State Bar)
March 10, 2012 (Oregon State Bar)
April 14, 2012 (University of Oregon School of Law, Eugene)
May 5, 2012 (Oregon State Bar)
June 9, 2012 (Jackson County Courthouse, Medford)
September 8, 2012 (Oregon State Bar)
December 1, 2012 (Oregon State Bar)

The Council expresses its appreciation to the bench and the bar for the comments and suggestions it has received.

**PROPOSED AMENDMENTS TO
THE OREGON RULES OF CIVIL PROCEDURE**

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1 **SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS**

2 **RULE 17**

3 **A Signing by party or attorney; certificate.** Every pleading, motion, and other document
4 of a party represented by an attorney shall be signed by at least one attorney of record who is
5 an active member of the Oregon State Bar. A party who is not represented by an attorney shall
6 sign the pleading, motion, or other document and state the address of the party. **The signature**
7 **for filings may be in the form approved for electronic filing in accordance with these rules or**
8 **any other rule of court.** Pleadings need not be verified or accompanied by **an** affidavit or
9 declaration.

1 require that the deposition be taken by stenographic means if necessary to assure that the recording be
2 accurate.

3 **C(5) Production of documents and things.** The notice to a party deponent may be accompanied
4 by a request made in compliance with Rule 43 for the production of documents and tangible things at
5 the taking of the deposition. The procedures of Rule 43 shall apply to the request.

6 **C(6) Deposition of organization.** A party may in the notice and in a subpoena name as the
7 deponent a public or private corporation or a partnership or association or governmental agency and
8 describe with reasonable particularity the matters on which examination is requested. In that event, the
9 organization so named shall provide notice of no fewer than three (3) days before the scheduled
10 deposition, absent good cause or agreement of the parties and the deponent, [designate] designating
11 the name(s) of one or more officers, directors, managing agents, or other persons who consent to testify
12 on its behalf[,] and [shall set] setting forth, for each person designated, the matters on which such
13 person will testify. A subpoena shall advise a nonparty organization of its duty to make such a
14 designation. The persons so designated shall testify as to matters known or reasonably available to the
15 organization. This subsection does not preclude taking a deposition by any other procedure authorized in
16 these rules.

17 **C(7) Deposition by telephone.** Parties may agree by stipulation or the court may order that
18 testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone
19 pursuant to court order, the order shall designate the conditions of taking testimony, the manner of
20 recording the deposition, and may include other provisions to assure that the recorded testimony will be
21 accurate and trustworthy. If testimony at a deposition is taken by telephone other than pursuant to court
22 order or stipulation made a part of the record, then objections as to the taking of testimony by
23 telephone, the manner of giving the oath or affirmation, and the manner of recording the deposition are
24 waived unless seasonable objection thereto is made at the taking of the deposition. The oath or
25 affirmation may be administered to the deponent, either in the presence of the person administering the
26 oath or over the telephone, at the election of the party taking the deposition.

1 supporting documentation demonstrating that:

2 **H(2)(a)(i)** the party has made a good faith attempt to provide written notice to the individual
3 or the individual's attorney that the individual or the attorney had 14 days from the date of the
4 notice to object;

5 **H(2)(a)(ii)** the notice included the proposed subpoena and sufficient information about the
6 litigation in which the individually identifiable health information was being requested to permit the
7 individual or the individual's attorney to object; **and**

8 **H(2)(a)(iii)** the individual did not object within the 14 days or, if objections were made, they
9 were resolved and the information being sought is consistent with such resolution. The party issuing
10 a subpoena must also certify that he or she will, promptly upon request, permit the patient or the
11 patient's representative to inspect and copy the records received.

12 **H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health**
13 **information, the individual or the individual's attorney objecting to the subpoena shall respond in**
14 **writing to the party issuing the notice, stating the reason for each objection.**

15 H(2)[(b)](c) Except as provided in subsection (4) of this section, when a subpoena is served
16 upon a custodian of individually identifiable health information in an action in which the entity or
17 person is not a party, and the subpoena requires the production of all or part of the records of the
18 entity or person relating to the care or treatment of an individual, it is sufficient compliance
19 therewith if a custodian delivers by mail or otherwise a true and correct copy of all **of** the records
20 responsive to the subpoena within five days after receipt thereof. Delivery shall be accompanied by
21 an affidavit or a declaration as described in subsection (3) of this section.

22 H(2)[(c)](d) The copy of the records shall be separately enclosed in a sealed envelope or
23 wrapper on which the title and number of the action, name of the witness, and date of the
24 subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer
25 envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: [(i)]
26 if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there

1 is no clerk; [(ii)] if the subpoena directs attendance at a deposition or other hearing, to the officer
2 administering the oath for the deposition, at the place designated in the subpoena for the taking of
3 the deposition or at the officer's place of business; [(iii)] in other cases involving a hearing, to the
4 officer or body conducting the hearing at the official place of business; [(iv)] if no hearing is
5 scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the
6 records [*in accordance with subparagraph H(2)(c)(iv)*] **to the attorney or party issuing the**
7 **subpoena**, then a copy of the proposed subpoena shall be served on the person whose records are
8 sought, and on all other parties to the litigation, not less than 14 days prior to service of the
9 subpoena on the entity or person. Any party to the proceeding may inspect the records provided
10 and/or request a complete copy of the records. Upon request, the records must be promptly
11 provided by the party who issued the subpoena at the requesting party's expense.

12 H(2)[(d)](e) After filing and after giving reasonable notice in writing to all parties who have
13 appeared of the time and place of inspection, the copy of the records may be inspected by any party
14 or **by** the attorney of record of a party in the presence of the custodian of the court files, but
15 otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other
16 hearing[,] at the direction of the judge, officer, or body conducting the proceeding. The records shall
17 be opened in the presence of all parties who have appeared in person or by counsel at the trial,
18 deposition, or hearing. Records which are not introduced in evidence or required as part of the
19 record shall be returned to the custodian [*of hospital records*] who [*submitted*] **produced** them.

20 H(2)[(e)](f) For purposes of this section, the subpoena duces tecum to the custodian of the
21 records may be served by first class mail. Service of subpoena by mail under this section shall not be
22 subject to the requirements of subsection (3) of section D.

23 **H(3) Affidavit or declaration of custodian of records.**

24 H(3)(a) The records described in subsection (2) of this section shall be accompanied by the
25 affidavit or declaration of a custodian of the records, stating in substance each of the following:

26 **H(3)(a)(i)** that the affiant or declarant is a duly authorized custodian of the records and has

1 authority to certify records;

2 **H(3)(a)(ii)** that the copy is a true copy of all the records responsive to the subpoena; **and**

3 **H(3)(a)(iii)** that the records were prepared by the personnel of the entity or person acting
4 under the control of either, in the ordinary course of the entity's or person's business, at or near the
5 time of the act, condition, or event described or referred to therein.

6 H(3)(b) If the entity or person has none of the records described in the subpoena, or only a
7 part thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only
8 those records of which the affiant or declarant has custody.

9 H(3)(c) When more than one person has knowledge of the facts required to be stated in the
10 affidavit or declaration, more than one affidavit or declaration may be used.

11 **H(4) Personal attendance of custodian of records may be required.**

12 H(4)(a) The personal attendance of a custodian of records and the production of original
13 records is required if the subpoena duces tecum contains the following statement:

14 _____
15 The personal attendance of a custodian of records and the production of original records is
16 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55
17 H(2) shall not be deemed sufficient compliance with this subpoena.

18 _____
19 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
20 personal attendance is required under each pursuant to paragraph (a) of this subsection, the
21 custodian shall be deemed to be the witness of the party serving the first such subpoena.

22 **H(5) Tender and payment of fees.** Nothing in this section requires the tender or payment of
23 more than one witness and mileage fee or other charge unless there has been agreement to the
24 contrary.

25 **H(6) Scope of discovery.** Notwithstanding any other provision, this rule does not expand the
26 scope of discovery beyond that provided in Rule 36 or Rule 44.

1 bystanders, or **from** the body of the county, the sheriff shall return a list of the persons so
2 summoned to the clerk. The clerk shall draw names at random from the list until the jury is
3 completed.

4 **C Examination of jurors.** When the full number of jurors has been called, they shall be
5 examined as to their qualifications, first by the court, then by the plaintiff, and then by the
6 defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

7 **D Challenges.**

8 **D(1) Challenges for cause; grounds.** Challenges for cause may be taken on any one or more
9 of the following grounds:

10 D(1)(a) The want of any qualification[s] prescribed by ORS 10.030 for a person eligible to act
11 as a juror.

12 D(1)(b) The existence of a mental or physical defect which satisfies the court that the
13 challenged person is incapable of performing the duties of a juror in the particular action without
14 prejudice to the substantial rights of the challenging party.

15 D(1)(c) Consanguinity or affinity within the fourth degree to any party.

16 D(1)(d) Standing in the relation of guardian and ward, physician and patient, master and
17 servant, landlord and tenant, or debtor and creditor[,] to the adverse party; or being a member of
18 the family of, or a partner in business with, or in the employment for wages of, or being an attorney
19 for or a client of[,] the adverse party; or being surety in the action called for trial, or otherwise, for
20 the adverse party.

21 D(1)(e) Having served as a juror on a previous trial in the same action, or in another action
22 between the same parties for the same cause of action, upon substantially the same facts or
23 transaction.

24 D(1)(f) Interest on the part of the juror in the outcome of the action, or the principal
25 question involved therein.

26 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind on

1 | the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror cannot
2 | try the issue impartially and without prejudice to the substantial rights of the party challenging the
3 | juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the action; [(iii)] the sex
4 | of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or ethnic group [that] **of**
5 | **which** the party, the party's attorney, a victim, or a witness is a member [of], or is perceived to be a
6 | member [of]. A challenge for actual bias may be taken for the cause mentioned in this paragraph,
7 | but on the trial of such challenge, although it should appear that the juror challenged has formed or
8 | expressed an opinion upon the merits of the cause from what the juror may have heard or read,
9 | such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied,
10 | from all **of** the circumstances, that the juror cannot disregard such opinion and try the issue
11 | impartially.

12 | **D(2) Peremptory challenges; number.** A peremptory challenge is an objection to a juror for
13 | which no reason need be given, but upon which the court shall exclude such juror. Either party is
14 | entitled to no more than three peremptory challenges if the jury consists of more than six jurors,
15 | and no more than two peremptory challenges if the jury consists of six jurors. Where there are
16 | multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial,
17 | the parties plaintiff or defendant must join in the challenge and are limited to the number of
18 | peremptory challenges specified in this subsection[,] except the court, in its discretion and in the
19 | interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges
20 | and permit them to be exercised separately or jointly.

21 | **D(3) Conduct of peremptory challenges.** After the full number of jurors [have] **has** been
22 | passed for cause, peremptory challenges shall be conducted by written ballot or outside **of** the
23 | presence of the jury as follows: the plaintiff may challenge one and then the defendant may
24 | challenge one, and so alternating until the peremptory challenges shall be exhausted. After each
25 | challenge, the panel shall be filled and the additional juror passed for cause before another
26 | peremptory challenge shall be exercised, and neither party is required to exercise a peremptory

1 challenge unless the full number of jurors *[are]* **is** in the jury box at the time. The refusal to
2 challenge by either party in the order of alternation shall not defeat the adverse party of such
3 adverse party's full number of challenges, and such refusal by a party to exercise a challenge in
4 proper turn shall conclude that party as to the jurors once accepted by that party[,] and, if that
5 party's right of peremptory challenge *[be]* **is** not exhausted, that party's further challenges shall be
6 confined, in that party's proper turn, to such additional jurors as may be called. The court may, for
7 good cause shown, permit a challenge to be taken **as** to any juror before the jury is completed and
8 sworn, notwithstanding **that** the juror challenged may have been *[theretofore]* **previously** accepted,
9 but nothing in this subsection shall be construed to increase the number of peremptory challenges
10 allowed.

11 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

12 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity, or sex.
13 Courts shall presume that a peremptory challenge does not violate this paragraph, but the
14 presumption may be rebutted in the manner provided by this section.

15 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge on a
16 basis prohibited under paragraph (a) of this subsection, the party may object to the exercise of the
17 challenge. The objection must be made before the court excuses the juror. The objection must be
18 made outside of the presence of *[potential]* **the** jurors. The party making the objection has the
19 burden of establishing a prima facie case that the adverse party challenged the *[potential]* juror on
20 the basis of race, ethnicity, or sex.

21 D(4)(c) If the court finds that the party making the objection has established a prima facie
22 case that the adverse party challenged a prospective juror on the basis of race, ethnicity, or sex, the
23 burden shifts to the adverse party to show that the peremptory challenge was not exercised on the
24 basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of justification as to the
25 questioned challenge, the presumption that the challenge does not violate paragraph (a) of this
26 subsection is rebutted.

1 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the basis
2 of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

3 **E Oath of jury.** As soon as the number of the jury has been completed, an oath or
4 affirmation shall be administered to the jurors, in substance that they and each of them will well
5 and truly try the matter in issue between the plaintiff and defendant, and a true verdict give
6 according to the law and evidence as given them on the trial.

7 **F Alternate jurors.** *[The court may direct that not more than six jurors in addition to the
8 regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which
9 they are called shall replace jurors who, prior to the time the jury retired to consider its verdict,
10 become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be
11 drawn in the same manner, shall have the same qualifications, shall be subject to the same
12 examination and challenges, shall take the same oath, and shall have the same functions, powers,
13 facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror
14 shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory
15 challenge in addition to those otherwise allowed by these rules or other rule or statute if one or two
16 alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are
17 to be impanelled, and three peremptory challenges if five or six alternate jurors are to be
18 impanelled. The additional peremptory challenges may be used against an alternate juror only, and
19 the other peremptory challenges allowed by these rules or other rule or statute shall not be used
20 against an alternate juror.]*

21 **F(1) Definition. Alternate jurors are prospective replacement jurors empanelled at the**
22 **court's discretion to serve in the event that the number of jurors required under Rule 56 is**
23 **decreased by illness, incapacitation, or disqualification of one or more jurors selected.**

24 **F(2) Decision to allow alternate jurors. The court has discretion over whether alternate**
25 **jurors may be empanelled. If the court allows, not more than six alternate jurors may be**
26 **empanelled.**

1 F(3) Peremptory challenges; number. In addition to challenges otherwise allowed by these
2 rules or any other rule or statute, each party is entitled to: one peremptory challenge if one or
3 two alternate jurors are to be empanelled; two peremptory challenges if three or four alternate
4 jurors are to be empanelled; and three peremptory challenges if five or six alternate jurors are to
5 be empanelled. The court shall have discretion as to when and how additional peremptory
6 challenges may be used and when and how alternate jurors are selected.

7 F(4) Duties and responsibilities. Alternate jurors shall be drawn in the same manner; shall
8 have the same qualifications; shall be subject to the same examination and challenge rules; shall
9 take the same oath; and shall have the same functions, powers, facilities, and privileges as the
10 jurors throughout the trial, until the case is submitted for deliberations. An alternate juror who
11 does not replace a juror shall not attend or otherwise participate in deliberations.

12 F(5) Installation and discharge. Alternate jurors shall be installed to replace any jurors who
13 become unable to perform their duties or are found to be disqualified before the jury begins
14 deliberations. Alternate jurors who do not replace jurors before the beginning of deliberations
15 and who have not been discharged may be installed to replace jurors who become ill or otherwise
16 are unable to complete deliberations. If an alternate juror replaces a juror after deliberations
17 have begun, the jury shall be instructed to begin deliberations anew.

1 **ALLOWANCE AND TAXATION OF ATTORNEY FEES AND COSTS AND DISBURSEMENTS**

2 **RULE 68**

3 **A Definitions.** As used in this rule:

4 **A(1) Attorney fees.** “Attorney fees” are the reasonable value of legal services related to the
5 prosecution or defense of an action.

6 **A(2) Costs and disbursements.** “Costs and disbursements” are reasonable and necessary
7 expenses incurred in the prosecution or defense of an action, other than for legal services, and
8 include the fees of officers and witnesses; the expense of publication of summonses or notices, and
9 the postage where the same are served by mail; any fee charged by the Department of
10 Transportation for providing address information concerning a party served with summons pursuant
11 to subparagraph D(4)(a)(i) of Rule 7; the compensation of referees; the expense of copying of any
12 public record, book, or document admitted into evidence at trial; recordation of any document
13 where recordation is required to give notice of the creation, modification, or termination of an
14 interest in real property; a reasonable sum paid a person for executing any bond, recognizance,
15 undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by
16 agreement, by these rules, or by any other rule or statute. The court, acting in its sole discretion,
17 may allow as costs reasonable expenses incurred by a party for interpreter services. The expense of
18 taking depositions shall not be allowed, even though the depositions are used at trial, except as
19 otherwise provided by rule or statute.

20 **B Allowance of costs and disbursements.** In any action, costs and disbursements shall be
21 allowed to the prevailing party[,] unless these rules or any other rule or statute direct that in the
22 particular case costs and disbursements shall not be allowed to the prevailing party or shall be
23 allowed to some other party, or unless the court otherwise directs. If, under a special provision of
24 these rules or any other rule or statute, a party has a right to recover costs, such party shall also
25 have a right to recover disbursements.

26 **C Award of and entry of judgment for attorney fees and costs and disbursements.**

1 **C(1) Application of this section to award of attorney fees.** Notwithstanding Rule 1 A and the
2 procedure provided in any rule or statute permitting recovery of attorney fees in a particular case,
3 this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the
4 source of the right to recover[y of] such fees, except when:

5 C(1)(a) Such items are claimed as damages arising prior to the action; [or]

6 C(1)(b) Such items are granted by order, rather than entered as part of a judgment[.]; **or**

7 **C(1)(c) A statute refers to this rule but provides for a procedure that varies from the**
8 **procedure specified in this rule.**

9 **C(2)(a) Alleging right to attorney fees.** A party seeking attorney fees shall allege the facts,
10 statute, or rule that provides a basis for the award of such fees in a pleading filed by that party.
11 Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney
12 fees shall be awarded unless a right to recover such fee is alleged as provided in this subsection **or in**
13 **paragraph C(2)(b) of this rule.**

14 C(2)(b) If a party does not file a pleading [*and seeks judgment or dismissal by motion*] **but**
15 **instead files a motion or a response to a motion,** a right to attorney fees shall be alleged in such
16 motion **or response,** in similar form to the allegations required in a pleading.

17 C(2)(c) A party shall not be required to allege a right to a specific amount of attorney fees. An
18 allegation that a party is entitled to “reasonable attorney fees” is sufficient.

19 C(2)(d) Any allegation of a right to attorney fees in a pleading, [or] motion, **or response** shall
20 be deemed denied and no responsive pleading shall be necessary. The opposing party may make a
21 motion to strike the allegation or to make the allegation more definite and certain. Any objection[s]
22 to the form or specificity of **the** allegation of the facts, statute, or rule that provides a basis for the
23 award of fees shall be waived if not alleged prior to trial or hearing.

24 **C(3) Proof.** The items of attorney fees and costs and disbursements shall be submitted in the
25 manner provided by subsection (4) of this section, without proof being offered during the trial.

26 **C(4) Procedure for seeking attorney fees or costs and disbursements.** The procedure for

1 seeking attorney fees or costs and disbursements shall be as follows:

2 **C(4)(a) Filing and serving statement of attorney fees and costs and disbursements.** A party
3 seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of
4 judgment pursuant to Rule 67:

5 C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees
6 or costs and disbursements **that explains the application of any factors that ORS 20.075 or any**
7 **other statute or rule requires or permits the court to consider in awarding or denying attorney**
8 **fees or costs and disbursements**, together with proof of service, if any, in accordance with Rule 9 C;
9 and

10 C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are
11 not in default for failure to appear.

12 **C(4)(b) Objections.** A party may object to a statement seeking attorney fees or costs and
13 disbursements or any part thereof by **a** written objection[s] to the statement. The objection[s] **and**
14 **supporting documents, if any**, shall be served within 14 days after service on the objecting party of
15 a copy of the statement. The objection[s] shall be specific and may be founded in law or in fact and
16 shall be deemed controverted without further pleading. [*Statements and objections may be*
17 *amended in accordance with Rule 23.*] **The objecting party may present affidavits, declarations,**
18 **and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any**
19 **other statute or rule requires or permits the court to consider in awarding or denying attorney**
20 **fees or costs and disbursements.**

21 **C(4)(c) Response to objections.** **The party seeking an award of attorney fees may file a**
22 **response to an objection filed pursuant to paragraph C(4)(b) of this rule. The response and**
23 **supporting documents, if any, shall be served within seven days after service of the objection. The**
24 **response shall be specific and may address issues of law or fact. The party seeking attorney fees**
25 **may present affidavits, declarations, and other evidence relevant to any factual issue, including**
26 **any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider**

1 in awarding or denying attorney fees or costs and disbursements.

2 C(4)(d) Amendments. Statements, objections, and responses may be amended or
3 supplemented in accordance with Rule 23.

4 C(4)[(c)](e) Hearing on objections. No hearing shall be held and the court may rule on the
5 request for attorney fees based upon the statement, objection, response, and any accompanying
6 affidavits or declarations unless a party has requested a hearing in the caption of the objection or
7 response or unless the court sets a hearing on its own motion.

8 *[C(4)(c)(i) If objections are filed in accordance with paragraph C(4)(b) of this rule,]*

9 C(4)(e)(i) If a hearing is requested the court, without a jury, shall hear and determine all
10 issues of law and fact raised by *[the statement of attorney fees or costs and disbursements and by]*
11 *the objection[s]. [The parties shall be given a reasonable opportunity to present affidavits,*
12 *declarations and other evidence relevant to any factual issue, including any factors that ORS 20.075*
13 *or any other statute or rule requires or permits the court to consider in awarding or denying attorney*
14 *fees or costs and disbursements.]*

15 C(4)[(c)](e)(ii) The court shall deny or award in whole or in part the amounts sought as
16 attorney fees or costs and disbursements.

17 C(4)[(d)](f) No timely objections. If objections are not timely filed, the court may award
18 attorney fees or costs and disbursements sought in the statement.

19 C(4)[(e)](g) Findings and conclusions. On the request of a party, the court shall make special
20 findings of fact and state its conclusions of law on the record regarding the issues material to the
21 award or denial of attorney fees. A party **must** *[shall]* make a request pursuant to this paragraph by
22 including a request for findings and conclusions in the title of the statement of attorney fees or costs
23 and disbursements, *[or] objection[s], or response* filed pursuant to paragraph (a), *[or] (b), or (c)* of
24 this subsection. In the absence of a request under this paragraph, the court may make either
25 general or special findings of fact and may state its conclusions of law regarding attorney fees.

26 **C(5) Judgment concerning attorney fees or costs and disbursements.**

1 **C(5)(a) As part of judgment.** If all issues regarding attorney fees or costs and disbursements
2 are decided before entry of a judgment pursuant to Rule 67, the court shall include any award or
3 denial of attorney fees or costs and disbursements in that judgment.

4 **C(5)(b) By supplemental judgment; notice.** If any issue regarding attorney fees or costs and
5 disbursements is not decided before entry of a general judgment, any award or denial of attorney
6 fees or costs and disbursements shall be made by supplemental judgment.

7 **C(6) Avoidance of multiple collection of attorney fees and costs and disbursements.**

8 **C(6)(a) Separate judgments for separate claims.** If more than one judgment is entered in an
9 action, the court shall take such steps as necessary to avoid the multiple taxation of the same
10 attorney fees and costs and disbursements in those judgments.

11 **C(6)(b) Separate judgments for the same claim.** If more than one judgment is entered for
12 the same claim (when separate actions are brought for the same claim against several parties who
13 might have been joined as parties in the same action[,] or, when pursuant to Rule 67 B, separate
14 limited judgments are entered against several parties for the same claim), attorney fees and costs
15 and disbursements may be entered in each judgment as provided in this rule, but satisfaction of one
16 judgment bars recovery of attorney fees or costs and disbursements included in all other judgments.

CHAPTER 218

AN ACT

HB 2833

Relating to unsworn foreign declarations; creating new provisions; and amending ORS 18.887, 45.010, 45.130, 111.205, 116.083, 116.253, 125.325, 136.583, 162.055, 162.065 and 162.075 and ORCP 1 E.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Short title. Sections 1 to 8 of this 2013 Act may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 2. Definitions. As used in sections 1 to 8 of this 2013 Act:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state Constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order and an administrative rule, regulation or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. "Sworn declaration" includes a sworn statement, verification, certificate and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

SECTION 3. Applicability. (1) Sections 1 to 8 of this 2013 Act apply to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.

(2) Sections 1 to 8 of this 2013 Act do not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to

the jurisdiction of another country or a federally recognized Indian tribe.

SECTION 4. Validity of unsworn declaration.

(1) Except as otherwise provided in subsection (2) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of sections 1 to 8 of this 2013 Act has the same effect as a sworn declaration.

(2) Sections 1 to 8 of this 2013 Act do not apply to:

(a) A deposition;

(b) An oath of office;

(c) An oath required to be given before a specified official other than a notary public;

(d) A declaration to be recorded pursuant to the recording laws of this state, including but not limited to ORS 205.130 and ORS chapters 92, 93, 94, 100 and 105; or

(e) An oath required by ORS 113.055 (1).

SECTION 5. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

SECTION 6. Form of unsworn declaration. An unsworn declaration under sections 1 to 8 of this 2013 Act must be in substantially the following form:

I declare under penalty of perjury under the law of Oregon that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ____ day of _____, _____, at _____, (date) (month) (year) (city or other location, and state)

(country)

(printed name)

(signature)

SECTION 7. Uniformity of application and construction. In applying and construing sections 1 to 8 of this 2013 Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 8. Relation to Electronic Signatures in Global and National Commerce Act. Sections 1 to 8 of this 2013 Act modify, limit and supersede the federal Electronic Signatures in

Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

SECTION 9. ORCP 1 E is amended to read:

E Use of declaration under penalty of perjury in lieu of affidavit; "declaration" defined. A declaration under penalty of perjury, or an unsworn declaration under sections 1 to 8 of this 2013 Act, if the declarant is physically outside the boundaries of the United States, may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the following sentence in prominent letters immediately above the signature of the declarant: "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." As used in these rules, "declaration" means a declaration under penalty of perjury.

SECTION 10. ORS 18.887 is amended to read:

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

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

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

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

SECTION 11. ORS 45.010 is amended to read:

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

- (1) Affidavit.
- (2) Deposition.
- (3) Oral examination.
- (4) Telephone examination under ORS 45.400.
- (5) Examination before a grand jury by means of simultaneous television transmission under ORS 132.320.
- (6) Declaration under penalty of perjury, as described in ORCP 1 E, **or unsworn declaration under sections 1 to 8 of this 2013 Act, if the declarant is physically outside the boundaries of the United States.**

SECTION 12. ORS 45.130 is amended to read:

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

SECTION 13. ORS 111.205 is amended to read:

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

- (1) A petition of a party in interest.
- (2) A notice to a party.
- (3) A subpoena to a witness.
- (4) Orders and judgments.

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

SECTION 14. ORS 116.083 is amended to read:

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

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

(b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.

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

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

(2) Each account must include the following information:

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

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

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

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

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

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

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

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

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

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

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

(a) A statement that all Oregon income taxes, inheritance or estate taxes and personal property

taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all required tax returns have been filed.

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

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

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

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

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

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

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

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

SECTION 15. ORS 116.253 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

SECTION 16. ORS 125.325 is amended to read:

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

IN THE _____ COURT
_____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE
In the Matter of the) No. _____
Guardianship of)
)
(Name of protected)

person))
A Protected)
Person.)

GUARDIAN'S REPORT

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

- 1. My name is _____.
- 2. My address and telephone number are:

Phone _____

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

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

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

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

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

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

- 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 this state or the Constitution of the United States.

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

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

(b) Sending a copy by:

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

(B) Express mail; or

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

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

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

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

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

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

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

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

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

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

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

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

(8) Failure by a party that receives notice under subsection (7) of this section to timely file a motion opposing admission of the paper, document, record or other thing constitutes a waiver of objection to

the admission of the evidence on the basis of the insufficiency of the affidavit or declaration unless the court finds good cause to grant relief from the waiver. If the court grants relief from the waiver, the court shall order the trial continued upon the request of the proponent of the evidence and allow the proponent sufficient time to arrange for the necessary witness to appear.

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

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

(11) As used in this section:

(a) "Applicant" means:

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

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

(b) "Criminal process" means a subpoena, search warrant or other court order.

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

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

(e) "Recipient" means a business entity or non-profit entity that has conducted business or engaged in transactions occurring at least in part in this state.

SECTION 18. ORS 162.055 is amended to read:

162.055. As used in ORS 162.055 to 162.425 and 162.465, unless the context requires otherwise:

(1) "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.

(2) "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a false statement is "material" in a given factual situation is a question of law.

(3) "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

(4) "Sworn statement" means any statement that attests to the truth of what is stated and that is knowingly given under any form of oath or affirmation or by declaration under penalty of perjury as described in ORCP 1 E.

(5) "Unsworn declaration" has the meaning given that term in section 2 of this 2013 Act.

SECTION 19. ORS 162.065 is amended to read:

162.065. (1) A person commits the crime of perjury if the person makes a false sworn statement **or a false unsworn declaration** in regard to a material issue, knowing it to be false.

(2) Perjury is a Class C felony.

SECTION 20. ORS 162.075 is amended to read:

162.075. (1) A person commits the crime of false swearing if the person makes a false sworn statement **or a false unsworn declaration**, knowing it to be false.

(2) False swearing is a Class A misdemeanor.

SECTION 21. The section captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.

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

Approved by the Governor May 23, 2013

Filed in the office of Secretary of State May 23, 2013

Effective date January 1, 2014

CHAPTER 1

AN ACT

HB 2148

Relating to correction of erroneous material in Oregon law; creating new provisions; amending ORS 30.865, 109.135, 146.035, 161.327, 163.193, 163.700, 173.763, 173.766, 174.112, 174.120, 174.535, 174.540, 176.260, 181.610, 197.649, 200.065, 215.211, 255.235, 258.280, 273.554, 291.229, 295.046, 329.704, 332.118, 334.125, 336.585, 336.590, 339.035, 341.425, 341.430, 341.440, 341.535, 342.156, 342.173, 342.360, 343.155, 343.224, 346.015, 346.035, 346.041, 348.105, 348.270, 351.293, 351.296, 352.720, 352.790, 390.114, 408.370, 413.011, 413.032, 413.037, 413.520, 418.580, 419B.100, 427.293, 431.864, 433.815, 442.342, 443.065, 460.330, 460.355, 461.010, 468.581, 469.805, 471.580, 496.090, 536.220, 539.040, 608.015, 646.605, 646.951, 646.957, 657.335, 671.425, 684.040, 685.060, 688.132, 701.348, 743.777, 774.070, 802.110 and 830.990 and section 4, chapter 455, Oregon Laws 2005, sections 8, 12, 14 and 16, chapter 624, Oregon Laws 2011, section 3, chapter 88, Oregon Laws 2012, and section 1, chapter 101, Oregon Laws 2012, and ORCP 38 C; and repealing section 13, chapter 658, Oregon Laws 2003, and section 8, chapter 59, Oregon Laws 2010.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 174.535 is amended to read:

174.535. It is the policy of the Legislative Assembly to revise sections from Oregon Revised Statutes and Oregon law periodically in order to maintain accuracy. However, nothing in chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, chapter 71, Oregon Laws 2007, chapter 11, Oregon Laws 2009, [or] chapter 9, Oregon Laws 2011, **or this 2013 Act** is intended to alter the legislative intent or purpose of statutory sections affected by chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, chapter 71, Oregon Laws 2007, chapter 11, Oregon Laws 2009, [and] chapter 9, Oregon Laws 2011, **and this 2013 Act** except insofar as the amendments thereto, or repeals thereof, specifically require.

NOTE: Sets forth Reviser's Bill policy statement.

SECTION 2. ORCP 38 C is amended to read:

C Foreign depositions and subpoenas.

C(1) Definitions. For the purpose of this [rule] section:

C(1)(a) "Foreign subpoena" means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

C(2) Issuance of subpoena.

C(2)(a) To request issuance of a subpoena under this [rule] section, a party or attorney shall submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.

C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure and requirements, shall assign a case number and promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed. If a party to an out-of-state proceeding retains an attorney licensed to practice in this state, that attorney may assist the clerk in drafting the subpoena.

C(2)(c) A subpoena under this subsection shall:

(i) [conform] **Conform** to the requirements of these Oregon Rules of Civil Procedure, including Rule 55, and conform substantially to the form provided in Rule 55 A but may otherwise incorporate the terms used in the foreign subpoena as long as those terms conform to these rules; and

(ii) [contain] **Contain** or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

C(3) **Service of subpoena.** A subpoena issued by a clerk of court under subsection (2) of this [rule] section shall be served in compliance with Rule 55.

C(4) **Effects of request for subpoena.** A request for issuance of a subpoena under this [rule] section does not constitute an appearance in the court. A request does allow the court to impose sanctions for any action in connection with the subpoena that is a violation of applicable law.

C(5) **Motions.** A motion to the court, or a response thereto, for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this [rule] section is an appearance before the court and shall comply with the rules and statutes of this state. The motion shall be submitted to the court in the county in which discovery is to be conducted.

C(6) **Uniformity of application and construction.** In applying and construing this [rule] section, consideration shall be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it.

NOTE: Corrects internal references in C(1), (2)(a), (3), (4), (5) and (6); uppercases beginning of C(2)(c)(i) and (ii) in conformance with legislative style.

CHAPTER 687

AN ACT

HB 2779

Relating to protective orders for victims of sexual abuse; creating new provisions; amending ORS 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79 E; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 8 of this 2013 Act:

(1) "Family or household members," "interfere," "intimidate," "menace" and "molest" have the meanings given those terms in ORS 107.705.

(2) "Sexual abuse" means sexual contact with:

(a) A person who does not consent to the sexual contact; or

(b) A person who is considered incapable of consenting to a sexual act under ORS 163.315, unless the sexual contact would be lawful under ORS 163.325 or 163.345.

(3) "Sexual contact" has the meaning given that term in ORS 163.305.

SECTION 2. (1) A person who has been subjected to sexual abuse and who reasonably fears for the person's physical safety may petition the circuit court for a restraining order if:

(a) The person and the respondent are not family or household members;

(b) The respondent is at least 18 years of age; and

(c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020, 163.738 or 419B.845 or an order entered in a criminal action.

(2)(a) A petition seeking relief under sections 1 to 8 of this 2013 Act must be filed in the circuit court for the county in which the petitioner or the respondent resides. The petition may be filed, without the appointment of a guardian ad litem, by a person who is at least 12 years of age or by a parent or lawful guardian of a person who is under 18 years of age.

(b) The petition must allege that:

(A) The petitioner reasonably fears for the petitioner's physical safety with respect to the respondent; and

(B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition.

(c) Statements in the petition must be made under oath or affirmation.

(d) The petitioner has the burden of proving a claim under sections 1 to 8 of this 2013 Act by a preponderance of the evidence.

(3) The following periods of time may not be counted for the purpose of computing the 180-day period described in this section and section 3 of this 2013 Act:

(a) Any time during which the respondent is incarcerated.

(b) Any time during which the respondent has a principal residence more than 100 miles from the principal residence of the petitioner.

(c) Any time during which the respondent is subject to an order described in subsection (1)(c) of this section.

SECTION 3. (1) When a petition is filed in accordance with section 2 of this 2013 Act, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if an order granting relief under sections 1 to 8 of this 2013 Act is not entered and that the respondent has subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition, the circuit court:

(a) Shall enter an order restraining the respondent from contacting the petitioner and from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner.

(b) If the petitioner requests, may order:

(A) That the respondent be restrained from contacting the petitioner's children or family or household members;

(B) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's residence;

(C) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children or family or household members of the petitioner, or attempting to intimidate, molest, interfere with or menace any children or family or household members of the petitioner;

(D) That the respondent be restrained from entering, or attempting to enter, any premises and a reasonable area surrounding the premises when necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or the petitioner's children or family or household members; and

(E) Other relief necessary to provide for the safety and welfare of the petitioner or the petitioner's children or family or household members.

(2) If the respondent is restrained from entering or attempting to enter an area surrounding the petitioner's residence or any other premises, the restraining order must specifically describe the area or premises.

(3) When the circuit court enters a restraining order under this section, the court shall set a security amount for the violation of the order.

(4) If the circuit court enters a restraining order under subsection (1) of this section:

(a) The clerk of the court shall provide, without charge, the number of certified true copies of the petition and the restraining order necessary to provide the petitioner with one copy and to effect service and shall have a true copy of the petition and the restraining order delivered to the county sheriff for service upon the respondent, unless the circuit court finds that further service is unnecessary because the respondent appeared in person before the court. In addition and upon request by the petitioner, the clerk of the court shall provide the petitioner, without charge, two exemplified copies of the petition and the restraining order.

(b) The county sheriff shall serve the respondent personally unless the petitioner elects to have the respondent served personally by another party. Proof of service shall be made in accordance with section 6 of this 2013 Act. When the restraining order does not contain the respondent's date of birth and service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the respondent and shall record that date on the restraining order or proof of service entered into the Law Enforcement Data System under section 6 of this 2013 Act.

(5) If the county sheriff:

(a) Determines that the restraining order and petition are incomplete, the sheriff shall return the restraining order and petition to the clerk of the court. The clerk of the court shall notify the petitioner, at the address provided by the petitioner, of the error or omission.

(b) Cannot complete service within 10 days after accepting the restraining order and petition, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the sheriff shall hold the restraining order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(6)(a) Within 30 days after a restraining order is served under this section, the respondent may request a circuit court hearing upon any relief granted.

(b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner of the date and time of the hearing and shall supply the petitioner with a copy of the respondent's request for a hearing. The petitioner shall give the clerk of the court information sufficient to allow such notification.

(7) If the respondent fails to request a hearing within 30 days after a restraining order is

served, the restraining order is confirmed by operation of law.

(8) A restraining order entered under this section is effective for a period of one year, unless the restraining order is renewed, modified or terminated in accordance with sections 1 to 8 of this 2013 Act.

SECTION 4. (1) If the respondent requests a hearing under section 3 (6) of this 2013 Act, the circuit court shall hold the hearing within 21 days after the request. At the hearing, the circuit court may terminate or modify the restraining order issued under section 3 of this 2013 Act.

(2)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing, the circuit court may extend the date of the hearing for up to five days so that the party may seek representation.

(b) If one party is represented by an attorney at the hearing, the circuit court may extend the date of the hearing for up to five days at the other party's request so that the other party may seek representation.

(3) If the circuit court continues the restraining order issued under section 3 of this 2013 Act, with or without modification, at a hearing about which the respondent received actual notice and the opportunity to be heard, the court shall include in the restraining order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

**CERTIFICATE OF COMPLIANCE
WITH THE VIOLENCE
AGAINST WOMEN ACT OF 1994**

This protective order meets all full faith and credit requirements of the Violence Against Women Act of 1994, 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice and timely opportunity to be heard as provided by the law of this jurisdiction. This protective order is valid and entitled to enforcement in this and all other jurisdictions.

(4) The circuit court may approve a consent agreement if the court determines that the agreement provides sufficient protections to the petitioner. The circuit court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted a restraining order issued under section 3 of this 2013 Act.

(5) A restraining order entered under this section, or a consent agreement entered into under this section, shall continue for a period

of one year from the date of the restraining order issued under section 3 of this 2013 Act, unless the restraining order is renewed, modified or terminated in accordance with section 7 of this 2013 Act.

SECTION 5. (1) A party may file a motion under ORS 45.400 requesting that the circuit court allow the appearance of the party or a witness by telephone or by other two-way electronic communication device in a proceeding under sections 1 to 8 of this 2013 Act.

(2) In determining whether to allow written notice less than 30 days before the proceeding under ORS 45.400 (2), the circuit court shall consider the expedited nature of a proceeding under sections 1 to 8 of this 2013 Act.

(3) In addition to the factors listed in ORS 45.400 (7) that would support a finding of good cause, the circuit court shall consider whether the safety or welfare of the party or witness would be threatened if testimony were required to be provided in person at a proceeding under sections 1 to 8 of this 2013 Act.

(4) A motion or good cause determination is not required for ex parte hearings held by telephone under section 3 of this 2013 Act.

SECTION 6. (1)(a) When a restraining order is issued in accordance with sections 1 to 8 of this 2013 Act and the person to be restrained has actual notice of the restraining order, the clerk of the court or any other person serving the petition and the restraining order shall immediately deliver to a county sheriff copies of the petition and the restraining order and a true copy of the affidavit of proof of service on which it is stated that the petition and the restraining order were served personally on the respondent. If a restraining order entered by the circuit court recites that the respondent appeared in person before the court, the necessity for service of the restraining order and an affidavit of proof of service is waived.

(b) Upon receipt of a copy of the restraining order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the restraining order into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice. If the petition and the restraining order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the restraining order into the Law Enforcement Data System and the databases of the National Crime Information Center upon receipt of a true copy of the affidavit of proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service.

(c) Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the restraining order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the restraining order may be informed of the existence and terms of the restraining order. The restraining order is fully enforceable in any county or tribal land in this state.

(d) When a restraining order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice under this subsection, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the restraining order or to transmit a copy of the restraining order to the requesting jurisdiction.

(2) A sheriff may serve a restraining order issued under sections 1 to 8 of this 2013 Act in the county in which the sheriff was elected and in any county that is adjacent to the county in which the sheriff was elected.

(3)(a) A sheriff may serve and enter into the Law Enforcement Data System a copy of a restraining order issued under sections 1 to 8 of this 2013 Act that was transmitted to the sheriff by a circuit court or law enforcement agency through an electronic communication device. Before transmitting a copy of a restraining order to a sheriff under this subsection through an electronic communication device, the person transmitting the copy must receive confirmation from the sheriff's office that an electronic communication device is available and operating.

(b) For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.

(4) When a circuit court enters an order terminating a restraining order issued under sections 1 to 8 of this 2013 Act before the expiration date, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original restraining order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original restraining order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(5)(a) A contempt proceeding for an alleged violation of a restraining order issued under sections 1 to 8 of this 2013 Act must be conducted by the circuit court that issued the restraining order or by the circuit court for the county in which the alleged violation of the restraining order occurs. If contempt proceedings

are initiated in the circuit court for the county in which the alleged violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order that is certified by the clerk of the court that originally issued the restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall enforce the restraining order as though that court had originally issued the restraining order.

(b) Pending a contempt hearing for an alleged violation of a restraining order issued under sections 1 to 8 of this 2013 Act, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

(c) Service of process or other legal documents upon the petitioner is not a violation of a restraining order entered under sections 1 to 8 of this 2013 Act if the petitioner is served as provided in ORCP 7 or 9.

SECTION 7. (1)(a) A circuit court may renew a restraining order entered under sections 1 to 8 of this 2013 Act upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if the restraining order is not renewed. A finding that the respondent has subjected the petitioner to additional sexual abuse is not required.

(b) A circuit court may renew a restraining order on the basis of a sworn, ex parte petition alleging facts supporting the required finding. If the renewal order is granted, the provisions of sections 3 (4) to (8) and 4 (3) of this 2013 Act apply, except that the court may hear no issue other than the basis for renewal, unless requested in the hearing request form and thereafter agreed to by the petitioner. The circuit court shall hold a hearing required under this paragraph within 21 days after the respondent's request.

(2) At any time after the time period set forth in section 3 (6) of this 2013 Act:

(a) A party may request that the circuit court modify terms in the restraining order for good cause shown.

(b) A petitioner may request that the circuit court remove terms in the restraining order or make terms in the order less restrictive. Application to the circuit court under this paragraph may be by ex parte motion.

(3) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the restraining order and notice of hearing necessary to effect service and, at the election of the party requesting the modification, shall have a true copy of the request and notice delivered to the county sheriff for service upon the other party.

(4) The county sheriff shall serve the other party with a request for modification of a restraining order under subsection (2)(a) of this section by personal service, unless the party requesting the modification elects to have the other party personally served by a private party or unless otherwise ordered by the circuit court.

(5) The provisions of section 4 (3) of this 2013 Act apply to a modification of a restraining order under this section.

(6) The clerk of the court shall deliver a copy of an order of modification entered under this section to the county sheriff for service and entry into the Law Enforcement Data System as provided in section 6 of this 2013 Act.

(7)(a) The county sheriff shall serve a copy of an order of modification:

(A) Entered under subsection (2)(a) of this section by personal service on the nonrequesting party.

(B) Entered under subsection (2)(b) of this section by mailing a copy of the order of modification to the respondent by first class mail.

(b) If the order of modification recites that the respondent appeared in person before the circuit court, the necessity for service of the order and an affidavit of proof of service is waived.

(8) A restraining order entered under sections 1 to 8 of this 2013 Act may not be terminated on motion of the petitioner, unless the motion is notarized.

SECTION 8. (1)(a) A filing fee, service fee or hearing fee may not be charged for proceedings seeking only the relief provided under sections 1 to 8 of this 2013 Act.

(b) An undertaking may not be required in any proceeding under sections 1 to 8 of this 2013 Act.

(2) A proceeding under sections 1 to 8 of this 2013 Act is in addition to any other available civil or criminal remedies.

(3)(a) After obtaining the approval of the Chief Justice of the Supreme Court, the Attorney General's Sexual Assault Task Force shall produce:

(A) The forms for petitions and restraining orders, hearing requests and any related forms for use under sections 1 to 8 of this 2013 Act; and

(B) An instructional brochure explaining the rights set forth in sections 1 to 8 of this 2013 Act.

(b) After obtaining the approval of the Chief Justice of the Supreme Court of the forms and instructional brochures produced pursuant to this subsection, the Attorney General's Sexual Assault Task Force shall provide the forms and copies of the instructional brochure to the clerks of the circuit court who shall make the forms and brochures available to the public.

SECTION 9. The amendments to section 8 of this 2013 Act by section 10 of this 2013 Act become operative on July 1, 2021.

SECTION 10. Section 8 of this 2013 Act is amended to read:

Sec. 8. (1)(a) A filing fee, service fee or hearing fee may not be charged for proceedings seeking only the relief provided under sections 1 to 8 of this 2013 Act.

(b) An undertaking may not be required in any proceeding under sections 1 to 8 of this 2013 Act.

(2) A proceeding under sections 1 to 8 of this 2013 Act is in addition to any other available civil or criminal remedies.

(3)(a) *[After obtaining the approval of the Chief Justice of the Supreme Court, the Attorney General's Sexual Assault Task Force]* **The State Court Administrator** shall produce:

(A) The forms for petitions and restraining orders, hearing requests and any related forms for use under sections 1 to 8 of this 2013 Act; and

(B) An instructional brochure explaining the rights set forth in sections 1 to 8 of this 2013 Act.

(b) *[After obtaining the approval of the Chief Justice of the Supreme Court of the forms and instructional brochures produced pursuant to this subsection, the Attorney General's Sexual Assault Task Force]* **The State Court Administrator** shall provide the forms and copies of the instructional brochure to the clerks of the circuit court who shall make the forms and brochures available to the public.

SECTION 11. ORS 21.245 is amended to read:

21.245. (1) The State Court Administrator may prescribe and charge a reasonable price, covering the costs of labor and material, for any forms provided by the courts of this state. The sums so collected shall be paid over to the State Treasurer and credited to the Court Forms Revolving Fund.

(2) Notwithstanding subsection (1) of this section, no charge shall be made for forms made available under the provisions of ORS 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8 of this 2013 Act.**

SECTION 12. ORS 36.185 is amended to read:

36.185. After the appearance by all parties in any civil action, except proceedings under ORS 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8 of this 2013 Act**, a judge of any circuit court may refer a civil dispute to mediation under the terms and conditions set forth in ORS 36.185 to 36.210. When a party to a case files a written objection to mediation with the court, the action shall be removed from mediation and proceed in a normal fashion. All civil disputants shall be provided with written information describing the mediation process, as provided or approved by the State Court Administrator, along with information on established court mediation opportunities. Filing parties shall be provided with this information at the time of filing

a civil action. Responding parties shall be provided with this information by the filing party along with the initial service of filing documents upon the responding party.

SECTION 13. ORS 40.210 is amended to read:

40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, *[or]* in a prosecution for an attempt to commit one of these crimes **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim *[of the crime]* or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim *[of the crime]* incited the crime **or, in a proceeding under sections 1 to 8 of this 2013 Act, incited the sexual abuse**, or indicated consent to the sexual acts **that are alleged** *[in the charge]*.

(2) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, *[or]* in a prosecution for an attempt to commit one of these crimes **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence of *[a]* **an alleged** victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, *[or]* in a prosecution for an attempt to commit one of these crimes **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime **or, in a proceeding conducted under sections 1 to 8 of this 2013 Act, by the respondent**, is also not admissible, unless the evidence is:

(a) Admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;

(C) Is necessary to establish the identity of the **alleged** victim; or

(D) Is otherwise constitutionally required to be admitted.

(4)(a) If the person accused of committing rape, sodomy or sexual abuse or attempted rape, sodomy or sexual abuse, **or the respondent in a proceeding conducted under sections 1 to 8 of this 2013 Act**, intends to offer evidence under subsection (2) or (3) of this section, the accused **or the respondent** shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties[,] and, **in a criminal proceeding**, on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused **or the respondent** seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused **or the respondent** seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with respect to which a witness may be examined or cross-examined.

(d) An order admitting evidence under this subsection **in a criminal prosecution** may be appealed by the [government] state before trial.

(5) For purposes of this section:

(a) **“Alleged victim” includes the petitioner in a proceeding conducted under sections 1 to 8 of this 2013 Act.**

[(a)] (b) “In camera” means out of the presence of the public and the jury.[: and]

[(b)] (c) “Past sexual behavior” means sexual behavior other than:

(A) The sexual behavior with respect to which rape, sodomy or sexual abuse or attempted rape, sodomy or sexual abuse is alleged[:.]; or

(B) **In a proceeding conducted under sections 1 to 8 of this 2013 Act, the alleged sexual abuse.**

(d) **“Trial” includes a hearing conducted under sections 1 to 8 of this 2013 Act.**

SECTION 14. ORS 107.835 is amended to read:

107.835. (1) When a court enters a judgment, order or modification of a judgment or order under ORS chapter 25, 107, 108, 109, 110 or 416 **or sections 1 to 8 of this 2013 Act**, the court shall allow any party to the judgment or order to include in the judgment or order a waiver of personal service in a subsequent contempt proceeding in order to maintain the confidentiality of the party’s residential address. In the waiver, the party shall give a contact address for service of process and select one of the following methods of substituted service:

- (a) Mailing address;
- (b) Business address; or
- (c) Specified agent.

(2) Any time after a party has waived personal service under subsection (1) of this section, the party may file an amended waiver designating a different method of substituted service or a different address for substituted service. The party shall give notice of the amendment to all other parties.

(3) The State Court Administrator shall prescribe the content and form of the waiver and amended waiver described in this section.

SECTION 15. ORS 133.310 is amended to read:

133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

- (a) A felony.
- (b) A misdemeanor.
- (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor.

(d) Any other crime committed in the officer’s presence.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer’s jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:

(a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718, 124.015, 124.020, 163.738 or 419B.845 **or section 3 or 4 of this 2013 Act** restraining the person;

(b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720, 124.030, 163.741 or 419B.845 **or section 6 of this 2013 Act**; and

(c) The person to be arrested has violated the terms of that order.

(4) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy of the foreign restraining order to the officer and represents to the officer that the order supplied is the most recent order in effect between the parties and that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(5) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy of the foreign restraining order with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(6) A peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe:

(a) The person has been charged with an offense and is presently released as to that charge under ORS 135.230 to 135.290; and

(b) The person has failed to comply with a no contact condition of the release agreement.

SECTION 16. ORS 133.381 is amended to read:

133.381. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to a warrant issued under ORS 33.075 by a court or judicial officer for the arrest of a person charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716, 107.718, 124.015 or 124.020 **or section 3 or 4 of this 2013 Act**, if the person is arrested in a county other than that in which the warrant or order was originally issued, the peace officer shall take the person before a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the warrant or order was originally issued, the costs of such transportation shall be paid by that county.

(2) If a person arrested for the reasons described in subsection (1) of this section is subsequently found subject to the imposition of sanctions for contempt, the court, in addition to any other sanction it may impose, may order the person to repay a county all costs of transportation incurred by the county pursuant to subsection (1) of this section.

SECTION 17. ORS 659A.270 is amended to read: 659A.270. As used in ORS 659A.270 to 659A.285:

(1) "Covered employer" means an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible

employee takes leave to address domestic violence, harassment, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking.

(2) "Eligible employee" means an employee who:

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave; and

(b) Is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.

(3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 **or sections 1 to 8 of this 2013 Act** or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(4) "Victim of domestic violence" means:

(a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(b) Any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.

(5) "Victim of harassment" means:

(a) An individual against whom harassment has been committed as described in ORS 166.065.

(b) Any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.

(6) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.

(7) "Victim of stalking" means:

(a) An individual against whom stalking has been committed as described in ORS 163.732;

(b) An individual designated as a victim of stalking by rule adopted under ORS 659A.805; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(8) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

SECTION 18. ORCP 79 E is amended to read:

E Scope of rule.

E(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8 of this 2013 Act.**

E(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted

pursuant to ORCP 83 except for the application of section D of this rule.

E(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

SECTION 19. Notwithstanding any other provision of law, the General Fund appropriation made to the Judicial Department by section 1 (2), chapter 632, Oregon Laws 2013 (Enrolled House Bill 5016), for the biennium beginning July 1, 2013, as modified by legislative or Emergency Board action, is increased by \$85,000 for the purpose of implementing the provisions of sections 1 to 8 of this 2013 Act.

SECTION 20. Sections 1 to 8 of this 2013 Act and the amendments to ORS 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E by sections 11 to 18 of this 2013 Act become operative on January 1, 2014.

SECTION 21. If Senate Bill 673 becomes law, section 13 of this 2013 Act (amending ORS 40.210) is repealed and ORS 40.210, as amended by section 5, chapter 720, Oregon Laws 2013 (Enrolled Senate Bill 673), is amended to read:

40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670 or 167.017, [or] in a prosecution for an attempt to commit one of those crimes **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim [*of the crime*] or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim [*of the crime*] incited the crime **or, in a proceeding under sections 1 to 8 of this 2013 Act, incited the sexual abuse**, or indicated consent to the sexual acts **that are alleged** [*in the charge*].

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence of [a] **an alleged** victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit

a crime listed in subsection (1) of this section **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime **or, in a proceeding conducted under sections 1 to 8 of this 2013 Act, by the respondent**, is also not admissible, unless the evidence is:

(a) Admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;

(C) Is necessary to establish the identity of the **alleged** victim; or

(D) Is otherwise constitutionally required to be admitted.

(4)(a) If the person accused of a crime or an attempt to commit a crime listed in subsection (1) of this section, **or the respondent in a proceeding conducted under sections 1 to 8 of this 2013 Act**, intends to offer evidence under subsection (2) or (3) of this section, the accused **or the respondent** shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties[,] and, **in a criminal proceeding**, on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused **or the respondent** seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused **or the respondent** seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with

respect to which a witness may be examined or cross-examined.

(d) An order admitting evidence under this subsection **in a criminal prosecution** may be appealed by the [*government*] **state** before trial.

(5) For purposes of this section:

(a) **“Alleged victim” includes the petitioner in a proceeding conducted under sections 1 to 8 of this 2013 Act.**

[(a)] (b) “In camera” means out of the presence of the public and the jury; *and*].

[(b)] (c) “Past sexual behavior” means sexual behavior other than:

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged[.]; **or**

(B) In a proceeding conducted under sections 1 to 8 of this 2013 Act, the alleged sexual abuse.

(d) **“Trial” includes a hearing conducted under sections 1 to 8 of this 2013 Act.**

SECTION 22. If Senate Bill 673 becomes law, section 20 of this 2013 Act is amended to read:

Sec. 20. Sections 1 to 8 of this 2013 Act and the amendments to ORS 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E by sections 11, 12, 14 to 18 and 21 of this 2013 Act become operative on January 1, 2014.

SECTION 23. **This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

Approved by the Governor July 29, 2013

Filed in the office of Secretary of State July 30, 2013

Effective date July 29, 2013