

Enrolled
House Bill 2833

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

CHAPTER

AN ACT

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 declara-

tion, 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 pen-

alty 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 nonprofit 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.

Passed by House April 17, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 14, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State