

# Enrolled Senate Bill 131

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CHAPTER .....

AN ACT

Relating to telephone testimony; creating new provisions; amending ORS 45.010, 45.400, 107.717 and 163.770; and declaring an emergency.

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

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

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

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

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

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

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

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

*[(c) A perpetuation deposition under ORCP 39 I is a more practical means of presenting the testimony;]*

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

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

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

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

**(3)(a) Except as provided under subsection (5) of this section, the court may allow remote location testimony under this section upon a showing of good cause by the moving party, unless the court determines that the use of remote location testimony would result in prej-**

udice to the nonmoving party and that prejudice outweighs the good cause for allowing the remote location testimony.

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

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

(B) Whether the party filing the motion seeks to take the remote location testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means.

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

(D) Whether a perpetuation deposition under ORCP 39 I, or another alternative, provides a more practical means of presenting the testimony.

(E) Any other circumstances that constitute good cause.

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

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

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

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

(D) The nature of the proceeding, with due consideration for a person's liberty or parental interests.

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

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

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

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

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

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

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

[a] *The witness or party might be unavailable because of age, infirmity or mental or physical illness;*

[b] *The party filing the motion seeks to take the telephone testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means;*

[c] *A personal appearance by the party or witness would be an undue hardship on the party or witness; or*

[d] *Any other circumstances that constitute good cause.*

[8] (7) This section does not apply to a workers' compensation hearing or to any other administrative proceeding.

[9] For purposes of this section, "telephone testimony" means testimony given by telephone or by any other two-way electronic communication device, including but not limited to satellite, cellular or other interactive communication device.]

**(8) As used in this section:**

(a) **"Remote location testimony"** means live testimony given by a witness or party from a physical location outside of the courtroom of record via simultaneous electronic transmission.

(b) **"Simultaneous electronic transmission"** means television, telephone or any other form of electronic communication transmission if the form of transmission allows:

(A) **The court, the attorneys and the person testifying from a remote location to communicate with each other during the proceeding;**

(B) **A witness or party who is represented by counsel at the hearing to be able to consult privately with counsel during the proceeding; and**

(C) **The public to hear and, if the transmission includes a visual image, to see the witness or party if the public would otherwise have the right to hear and see the witness or party testifying in the courtroom of record.**

**SECTION 2.** 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] **Remote location** 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 ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States.

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

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

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

(3) In addition to the factors listed in ORS 45.400 [(7)] **(3)(b)** that would support a finding of good cause, the 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 ORS 107.700 to 107.735.

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

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

163.770. (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 ORS 163.760 to 163.777.

(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 ORS 163.760 to 163.777.

(3) In addition to the factors listed in ORS 45.400 [(7)] **(3)(b)** 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 ORS 163.760 to 163.777.

(4) A motion or good cause determination is not required for ex parte hearings held by telephone under ORS 163.765.

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

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

**Passed by Senate April 13, 2017**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 24, 2017**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2017

**Approved:**

.....M,....., 2017

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2017

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Dennis Richardson, Secretary of State