

Senate Bill 131

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to allowance of telephone testimony in certain proceedings.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to telephone testimony; creating new provisions; amending ORS 45.400; and declaring an
3 emergency.

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

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

6 45.400. (1) [*Upon motion of any party and for good cause shown, the court may order*] **A party**
7 **to any civil proceeding or any proceeding under ORS chapter 419B may move** that the testi-
8 mony of the party or any witness for the moving party be taken by telephone or by other two-way
9 electronic communication device [*in any civil proceeding or any proceeding under ORS chapter*
10 *419B*].

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

15 (3) Except as provided under subsection (4) of this section, the court shall allow telephone tes-
16 timony under this section upon a showing of good cause[. *The court may not allow the use of tele-*
17 *phone testimony in any case if*], **unless a party opposing telephone testimony establishes that**
18 **the allowance of telephone testimony would result in substantial prejudice to the party.**
19 **Factors that the court may consider in deciding whether to allow telephone testimony in-**
20 **clude:**

21 (a) **Whether** the ability to evaluate the credibility and demeanor of a witness or party in person
22 is critical to the outcome of the proceeding;

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

25 (c) **Whether** a perpetuation deposition under ORCP 39 I is a more practical means of presenting
26 the testimony;

27 (d) **Whether** the exhibits or documents the witness or party will testify about are too volumi-
28 nous to make telephone testimony practical;

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

30 **or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

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

3 [(g)] (f) **Whether** other circumstances exist that require the personal appearance of a witness
 4 or party.

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

7 (5) The court may not prohibit the use of telephone testimony solely [*by reason of the provisions*
 8 *of subsection (3)(e) of this section]* **because facilities that would permit the taking of telephone**
 9 **testimony are not available** if the party filing the motion establishes that alternative procedures
 10 or technologies allow the taking of telephone testimony.

11 (6) A party filing a motion for telephone testimony under this section [*must*] **shall** pay all costs
 12 of the telephone testimony, including the costs of alternative procedures or technologies used for the
 13 taking of telephone testimony. [*No part of those costs may be recovered by*] The party filing the
 14 motions **may not recover any part of those costs** as costs and disbursements in the proceeding.

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

17 (a) The witness or party might be unavailable because of age, infirmity or mental or physical
 18 illness;

19 (b) The party filing the motion seeks to take the telephone testimony of a witness whose at-
 20 tendance the party has been unable to secure by process or other reasonable means;

21 (c) A personal appearance by the party or witness would be an undue hardship on the party or
 22 witness; or

23 (d) Any other circumstances that constitute good cause.

24 (8) This section does not apply to a workers' compensation hearing or to any other administra-
 25 tive proceeding.

26 (9) [*For purposes of*] **As used in** this section, "telephone testimony" means testimony given by
 27 telephone **or simultaneous video transmission**, or by any other two-way electronic communication
 28 device, including but not limited to satellite, cellular or other interactive communication device.

29 **SECTION 2. The amendments to ORS 45.400 by section 1 of this 2017 Act apply only to**
 30 **motions for telephone testimony filed on and after the effective date of this 2017 Act.**

31 **SECTION 3. This 2017 Act being necessary for the immediate preservation of the public**
 32 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
 33 **on its passage.**

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