

HOUSE AMENDMENTS TO HOUSE BILL 2362

By COMMITTEE ON JUDICIARY

March 13

1 On page 1 of the printed bill, delete line 3 and insert "111.215, 113.045, 113.145, 113.155, 115.003,
2 116.083, 116.093, 116.253, 117.015 and 125.325."

3 On page 5, after line 14, insert:

4 "I hereby declare that the above statement is true to the best of my knowledge and belief, and
5 that I understand it is made for use as evidence in court and is subject to penalty for perjury."

6 Delete lines 30 through 32.

7 After line 37, insert:

8 "**SECTION 6. Section 7 of this 2007 Act is added to and made a part of ORS chapter 111.**

9 "**SECTION 7. (1) When proof of mailing, or other delivery of notice or other documents,
10 is required to be filed in probate court, proof shall be made in the form required by ORCP 9
11 C.**

12 "**(2) When proof of publication is required to be filed in probate court, proof shall be made
13 in the form required by ORCP 7 F.**

14 "**SECTION 8.** ORS 111.215 is amended to read:

15 "111.215. (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115,
16 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter
17 upon which an order is sought, the petitioner or other person filing the matter shall cause notice
18 of the date, time and place of the hearing to be given to each person interested in the subject of the
19 hearing or to the attorney of the person, if the person has appeared by attorney or requested that
20 notice be sent to the attorney of the person, in any one or more of the following ways and within
21 the following times:

22 "(a) By mailing a copy thereof addressed to the person or the attorney of the person at least
23 14 days before the date set for the hearing.

24 "(b) By delivering a copy thereof to the person personally or to the attorney of the person at
25 least five days before the date set for the hearing.

26 "(c) If the address of any person is not known or cannot be ascertained with reasonable dili-
27 gence, by publishing a copy thereof once in each of three consecutive weeks in a newspaper of
28 general circulation in the county where the hearing is to be held, the last publication of which shall
29 be at least 10 days before the date set for the hearing.

30 "(2) Upon good cause shown the court may change the requirements as to the method or time
31 of giving notice for any hearing.

32 "(3) Proof of the giving of notice must be made at or before the hearing and filed in the pro-
33 ceeding. [*Proof shall be by an admission of service, a return receipt from the postal authorities or an
34 affidavit or certificate of the person giving notice or the publisher, or one of the employees of the pub-
35 lisher, of the newspaper publishing the notice.*]

1 “**SECTION 9.** ORS 113.045 is amended to read:

2 “113.045. (1) Upon appointment, a personal representative shall deliver or mail to an estate ad-
3 ministrators of the Department of State Lands appointed under ORS 113.235 a copy of the petition
4 filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative
5 has not identified and found all heirs and devisees of the decedent. The personal representative shall
6 file *[an affidavit in the probate proceeding proving]* **proof of** the delivery or mailing **with the**
7 **court.**

8 “(2) If at any time after the appointment of a personal representative it appears that any heir
9 or devisee of the decedent cannot be identified and found, the personal representative shall promptly
10 deliver or mail to an estate administrator of the Department of State Lands appointed under ORS
11 113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal
12 representative shall file *[an affidavit in the probate proceeding proving]* **proof of** the delivery or
13 mailing **with the court.**

14 “(3) This section does not affect the requirements of ORS 113.085 (2).

15 “**SECTION 10.** ORS 113.145 is amended to read:

16 “113.145. (1) Upon appointment a personal representative shall deliver or mail to the devisees,
17 heirs and the persons described in ORS 113.035 (8) and (9) who were required to be named in the
18 petition for appointment of a personal representative, at the addresses therein shown, information
19 that shall include:

20 “(a) The title of the court in which the estate proceeding is pending and the clerk’s file number;

21 “(b) The name of the decedent and the place and date of the death of the decedent;

22 “(c) Whether or not a will of the decedent has been admitted to probate;

23 “(d) The name and address of the personal representative and the attorney of the personal rep-
24 resentative;

25 “(e) The date of the appointment of the personal representative;

26 “(f) A statement advising the devisee, heir or other interested person that the rights of the
27 devisee, heir or other interested person may be affected by the proceeding and that additional in-
28 formation may be obtained from the records of the court, the personal representative or the attorney
29 for the personal representative;

30 “(g) If information under this section is required to be delivered or mailed to a person described
31 in ORS 113.035 (8), a statement that the rights of the person in the estate may be barred unless the
32 person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the
33 information; and

34 “(h) If information under this section is required to be delivered or mailed to a person described
35 in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the
36 person proceeds as provided in ORS 112.049 within four months of the delivery or mailing of the
37 information.

38 “(2) If the personal representative is a devisee, heir or other interested person named in the
39 petition the personal representative is not required to deliver or mail the information under this
40 section to the personal representative.

41 “(3) The failure of the personal representative to give information under this section is a breach
42 of duty to the persons concerned, but does not affect the validity of appointment, duties or powers
43 or the exercise of duties or powers.

44 “(4) Within 30 days after the date of appointment a personal representative shall cause to be
45 filed in the estate proceeding proof *[by an affidavit]* of the delivery or mailing required by this sec-

1 tion or a waiver of notice as provided under ORS 111.225. The *[affidavit]* **proof** shall include a copy
2 of the information delivered or mailed and the names of the persons to whom it was delivered or
3 mailed.

4 “(5) If before the filing of the final account the personal representative has actual knowledge
5 that the petition did not include the name and address of any person described in ORS 113.035 (4),
6 (5), (7), (8) or (9), the personal representative shall:

7 “(a) Make reasonable efforts under the circumstances to ascertain each of those names and ad-
8 dresses;

9 “(b) Promptly deliver or mail information as described in subsection (1) of this section to each
10 of those persons located after the filing of the petition and before the filing of the final account; and

11 “(c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof
12 *[by affidavit]* of compliance with this subsection or a waiver of notice as provided under ORS
13 111.225.

14 “(6) Within 30 days after the appointment of a personal representative, the personal represen-
15 tative must mail or deliver the information specified in subsection (1) of this section and a copy of
16 the death certificate of the decedent to the Department of Human Services.

17 “**SECTION 11.** ORS 113.155 is amended to read:

18 “113.155. (1) Upon appointment a personal representative shall cause a notice to interested
19 persons to be published once in each of three consecutive weeks in:

20 “(a) A newspaper published in the county in which the estate proceeding is pending; or

21 “(b) If no newspaper is published in the county in which the estate proceeding is pending, a
22 newspaper designated by the court.

23 “(2) The notice shall include:

24 “(a) The title of the court in which the estate proceeding is pending;

25 “(b) The name of the decedent;

26 “(c) The name of the personal representative and the address at which claims are to be pre-
27 sented;

28 “(d) A statement requiring all persons having claims against the estate to present them, within
29 four months after the date of the first publication of the notice to the personal representative at the
30 address designated in the notice for the presentation of claims or they may be barred;

31 “(e) The date of the first publication of the notice; and

32 “(f) A statement advising all persons whose rights may be affected by the proceeding that addi-
33 tional information may be obtained from the records of the court, the personal representative or the
34 attorney for the personal representative.

35 “(3) The failure of the personal representative to cause a notice to be published under this
36 section is a breach of duty to the persons concerned, but does not affect the validity of appointment,
37 duties or powers or the exercise of duties or powers.

38 “(4) A personal representative shall file in the estate proceeding proof *[by an affidavit]* of the
39 publication of notice required by this section. The *[affidavit]* **proof** shall include a copy of the pub-
40 lished notice.

41 “**SECTION 12.** ORS 115.003 is amended to read:

42 “115.003. (1) During the three months following appointment, unless a longer time is allowed by
43 the court, the personal representative shall make reasonably diligent efforts to investigate the fi-
44 nancial records and affairs of the decedent and shall take such further actions as may be reasonably
45 necessary to ascertain the identity and address of each person who has or asserts a claim against

1 the estate. The personal representative shall request and the court shall allow a longer time for
2 ascertaining claims if the personal representative cannot complete reasonably diligent efforts to
3 identify persons with claims during the time required by this section or by a previous order of the
4 court.

5 “(2) Not later than 30 days after expiration of the period, including any extensions, described
6 in subsection (1) of this section, the personal representative shall cause to be delivered or mailed
7 to each person known by the personal representative during such period to have or assert a claim
8 against the estate a notice containing the information required in subsection (3) of this section, ex-
9 cept that it shall not be necessary to give notice on account of a claim that has already been pre-
10 sented, accepted or paid in full or on account of a claim that is merely conjectural. The personal
11 representative may also cause such a notice to be delivered or mailed to any person discovered by
12 the personal representative after expiration of the period described in subsection (1) of this section
13 to have or assert a claim against the estate.

14 “(3) The notice shall include:

15 “(a) The title of the court in which the estate proceeding is pending;

16 “(b) The name of the decedent;

17 “(c) The name of the personal representative and the address at which claims are to be pre-
18 sented;

19 “(d) A statement that claims against the estate not presented to the personal representative
20 within 30 days of the date of the notice may be barred; and

21 “(e) The date of the notice, which shall be the date on which it is delivered or mailed.

22 “(4) Not later than 60 days after expiration of the period, including any extensions, described
23 in subsection (1) of this section, the personal representative shall cause to be filed in the estate
24 proceeding proof [*by an affidavit*] of compliance with subsections (1) and (2) of this section. The
25 [*affidavit*] **proof** shall include a copy of the form of any notice delivered or mailed, the date on which
26 each notice was delivered or mailed and the name and address of the person to whom each notice
27 was delivered or mailed.

28 “(5) The failure of the personal representative to make reasonably diligent efforts to ascertain
29 claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed
30 as required by subsection (2) of this section is a breach of duty to the persons concerned, but does
31 not affect the validity of appointment, duties or powers or the exercise of duties or powers.

32 “**SECTION 13.** ORS 116.093 is amended to read:

33 “116.093. (1) Upon filing the final account and petition for a judgment of distribution, the per-
34 sonal representative shall fix a time for filing objections thereto in a notice thereof. Not less than
35 20 days before the time fixed in the notice, the personal representative shall cause a copy of the
36 notice to be mailed to:

37 “(a) Each heir at the last-known address of the heir, if the decedent died intestate.

38 “(b) Each devisee at the last-known address of the devisee, if the decedent died testate.

39 “(c) Each creditor who has not received payment in full and whose claim has not otherwise been
40 barred.

41 “(d) Any other person known to the personal representative to have or to claim an interest in
42 the estate being distributed.

43 “(2) The notice need not be mailed to the personal representative.

44 “(3) Proof of the mailing to those persons entitled to notice shall be [*made by affidavit and*] filed
45 in the estate proceeding at or before approval of the final account.

1 “(4) If the Department of Human Services has presented a claim under ORS chapter 411 or 414
2 or ORS 416.310 to 416.340, 416.510 to 416.990 or 417.010 to 417.080, or the Department of Corrections
3 or the authorized agent of the Department of Corrections has presented a claim under ORS 179.620
4 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the
5 appropriate department a copy of the final account at the same time, and shall make proof of the
6 mailing in the same manner, as the notice provided for in this section.

7 “**SECTION 14.** ORS 117.015 is amended to read:

8 “117.015. (1) Upon the filing of a petition under ORS 117.005, the clerk of the court shall set a
9 date for hearing not less than 30 days after the date of filing the petition, unless the court sets an
10 earlier date. A copy of the notice of the hearing shall be sent:

11 “(a) To the absentee at the last-known address of the absentee by registered mail or by certified
12 mail with return receipt.

13 “(b) By ordinary mail to the devisees and heirs named in the petition.

14 “(2) The court may order that additional notice of the hearing be given by publication or by
15 other means. Proof of mailing [*may*] **or other notice shall** be made by the petitioner [*by affidavit*]
16 **and filed in the proceeding.**

17 “**SECTION 15. Section 7 of this 2007 Act and the amendments to ORS 111.215, 113.045,**
18 **113.145, 113.155, 115.003, 116.093 and 117.015 by sections 8 to 14 of this 2007 Act apply only to**
19 **proofs filed in probate court on or after the effective date of this 2007 Act.”.**

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