

House Bill 3411

Sponsored by Representative GALIZIO (at the request of Gretchen Buehner, Councilor, City of Tigard)

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**.

Increases value of estate for which small estate affidavit may be filed. Provides for increase in value of estate for which small estate affidavit may be filed every four years.

A BILL FOR AN ACT

Relating to small estates; creating new provisions; and amending ORS 114.515 and 114.540.

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

SECTION 1. ORS 114.515, as amended by section 71, chapter 702, Oregon Laws 2005, is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is [*\$200,000*] \$_____ or less;

(b) Not more than [*\$50,000*] \$_____ of the fair market value of the estate is attributable to personal property; and

(c) Not more than [*\$150,000*] \$_____ of the fair market value of the estate is attributable to real property.

(3)(a) The amount provided for in subsection (2)(a) of this section shall be increased by \$_____ on January 1, 2012, and by \$_____ on January 1 of every fourth year thereafter.

(b) The amount provided for in subsection (2)(b) of this section shall be increased by \$_____ on January 1, 2012, and by \$_____ on January 1 of every fourth year thereafter.

(c) The amount provided for in subsection (2)(c) of this section shall be increased by \$_____ on January 1, 2012, and by \$_____ on January 1 of every fourth year thereafter.

[*3*] (4) An affidavit under this section may not be filed until 30 days after the death of the decedent.

[*4*] (5) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records.

[*5*] (6) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

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 [(6)] (7) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of any
 2 affidavit under this section.

3 [(7)] (8) Any error or omission in an affidavit filed under this section may be corrected by filing
 4 an amended affidavit within four months after the filing of the affidavit.

5 [(8)] (9) One or more supplemental affidavits may be filed at any time after the filing of an af-
 6 fidavit under this section for the purpose of including property not described in the original affida-
 7 vit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all
 8 information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental
 9 affidavit may not be filed if by reason of the additional property described in the supplemental affi-
 10 davit any limitation imposed by [subsection] **subsections (2) and (3)** of this section is exceeded.

11 **SECTION 2.** ORS 114.540 is amended to read:

12 114.540. (1) A claim against an estate with respect to which an affidavit is filed under ORS
 13 114.515 may be presented to the affiant within four months after the affidavit was filed. If an
 14 amended affidavit is filed under ORS 114.515 [(7)] (8), claims against the estate must be filed within
 15 four months after the filing of the amended affidavit. If a supplemental affidavit is filed under ORS
 16 114.515 [(8)] (9), claims against the estate must be filed within four months after the filing of the
 17 supplemental affidavit. Each claim presented to the affiant must include the information required
 18 by ORS 115.025.

19 (2) A claim presented to the affiant shall be considered allowed as presented unless within 60
 20 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance
 21 of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of dis-
 22 allowance of a claim shall inform the claimant that the claim has been disallowed in whole or in
 23 part and, to the extent disallowed, will be barred unless:

24 (a) The claimant proceeds as provided in subsection (3) of this section; or

25 (b) A personal representative is appointed within the time allowed under ORS 114.555.

26 (3) A creditor of the estate whose claim has been presented within the time permitted by sub-
 27 section (1) of this section and disallowed by the affiant may within 30 days after the date of mailing
 28 or delivery of the notice of disallowance file with the probate court a petition for summary deter-
 29 mination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit
 30 as disputed may within four months after the filing of the affidavit file with the probate court a
 31 petition for summary determination of the creditor's claim by the court. The court shall hear the
 32 matter without a jury, after notice to the creditor and affiant, and any interested person may be
 33 heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing
 34 the court shall determine the claim in a summary manner and shall make an order allowing or dis-
 35 allowing the claim in whole or in part. If the court allows the claim in whole or in part, the order
 36 shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim
 37 pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been
 38 made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the
 39 extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal
 40 may be taken from the order of the court made upon the summary determination.

41 **SECTION 3. The amendments to ORS 114.515 by section 1 of this 2007 Act apply only to**
 42 **the estates of decedents who die on or after the effective date of this 2007 Act.**