

HOUSE AMENDMENTS TO HOUSE BILL 3077

By COMMITTEE ON JUDICIARY

April 14

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and insert “114.545,
2 114.555 and 116.133;”.

3 In line 3, after “114.165” insert “; and prescribing an effective date”.

4 Delete lines 8 through 11.

5 In line 15, delete “3” and insert “2”.

6 In line 19, delete “21” and insert “4”.

7 In line 20, delete “21” and insert “4”.

8 In line 23, delete “section 21” and insert “sections 2 to 22”.

9 Delete lines 29 and 30 and insert:

10 **“SECTION 3. Amount of elective share.** (1) Except as otherwise provided in sections 2 to 22
11 of this 2009 Act, the amount of the elective share is a dollar amount determined by multiplying the
12 augmented estate by the percentage provided in this section. All properties included in the aug-
13 mented estate shall be determined as provided in sections 2 to 22 of this 2009 Act. A court of this
14 state has authority to order distribution under sections 2 to 22 of this 2009 Act of all properties
15 included in the augmented estate under sections 2 to 22 of this 2009 Act.”.

16 On page 2, delete lines 1 through 3.

17 After line 37, insert:

18 **“SECTION 4. Manner of making election.** (1) A surviving spouse may claim the elective
19 share only by:

20 **“(a) Filing a petition for the appointment of a personal representative for the estate of**
21 **the deceased spouse, and a motion for the exercise of the election as described in paragraph**
22 **(b) of this subsection, within nine months after the spouse dies.**

23 **“(b) Filing a motion for the exercise of the election in a probate proceeding commenced**
24 **for the estate of the deceased spouse under ORS 113.035. The motion must be filed not later**
25 **than nine months after the death of the decedent. A copy of the motion must be served on**
26 **the personal representative, on all persons who would be entitled to receive information un-**
27 **der ORS 113.145 and on all distributees and recipients of portions of the augmented estate**
28 **known to the surviving spouse who can be located with reasonable efforts. A surviving**
29 **spouse may withdraw a motion for an election filed under this subsection at any time before**
30 **the court enters an order granting the motion.**

31 **“(c) Filing a petition for the exercise of the election under section 21 (1) of this 2009 Act**
32 **within nine months after the death of the decedent.**

33 **“(2) If a court determines that the elective share is payable, the court shall determine**
34 **the amount of the elective share and shall order its payment pursuant to the priorities es-**
35 **ablished under section 18 of this 2009 Act. If it appears that property has not come into the**

1 **possession of the personal representative, or has been distributed by the personal represen-**
2 **tative, the court nevertheless shall fix the liability of any person who has any interest in the**
3 **property or who has possession thereof, whether as trustee or otherwise.”.**

4 In line 39, delete “sections 2 to 22” and insert “section 3”.

5 In line 43, before “surviving” insert “aggregate value of the”.

6 On page 3, line 7, after “proves” insert “by clear and convincing evidence”.

7 In line 9, after “proves” insert “by clear and convincing evidence”.

8 In line 17, after “decide” insert “as a matter of law”.

9 Delete lines 27 through 32 and insert:

10 **“SECTION 7. Who may exercise right of election. The elective share may be personally**
11 **claimed by a surviving spouse, or may be claimed on the surviving spouse’s behalf by a**
12 **conservator, guardian or agent under the authority of a power of attorney.”.**

13 On page 4, line 4, after “property” insert “and all encumbrances on the property”.

14 After line 12, insert:

15 “(4) The value attributable to property included in the augmented estate is equal to the value
16 that would be used for purposes of federal estate and gift tax laws if the property had passed with-
17 out consideration to an unrelated person on the date that the value of the property is determined
18 for the purposes of sections 2 to 22 of this 2009 Act.

19 “(5) In no event may the value of property be included in the augmented estate more than
20 once.”.

21 After line 19, insert:

22 “(3) The augmented estate does not include any real property that is community property under
23 the laws of the jurisdiction where the property is located.”.

24 In line 34, delete “is” and insert “consists of the”.

25 On page 5, delete lines 11 through 14 and insert:

26 “(3) A decedent’s nonprobate estate includes any property owned by the decedent immediately
27 before death for which the decedent had the power to designate a beneficiary.

28 “(4) A decedent’s nonprobate estate includes any property that immediately before death the
29 decedent could have acquired by the exercise of a revocation, without regard to whether the revo-
30 cation was required to be made by the decedent alone or in conjunction with other persons.”.

31 In line 15, delete “(4)” and insert “(5)”.

32 In line 25, after “property” insert “to a donee” and delete “any one” and insert “the”.

33 Delete lines 40 through 42 and insert:

34 “(a) All property of the spouse other than decedent’s probate transfers to the surviving spouse
35 under section 16 of this 2009 Act, as determined on the date of the decedent’s death.”.

36 On page 6, delete lines 4 through 7 and insert:

37 “(2)(a) For the purpose of establishing the value of the surviving spouse’s estate under this
38 section, the estate includes 100 percent of the corpus of any trust or portion of a trust from which
39 all income must be distributed to or for the benefit of the surviving spouse during the life of the
40 surviving spouse, and for which the surviving spouse has a general power of appointment that the
41 surviving spouse, acting alone, may exercise, during the surviving spouse’s lifetime or at death of
42 the surviving spouse, to or for the benefit of the surviving spouse or the surviving spouse’s estate.

43 “(b) For the purpose of establishing the value of the surviving spouse’s estate under this section,
44 the estate includes 50 percent of the corpus of a trust or portion of a trust, if all income from the
45 trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during

1 the life of the surviving spouse and the trust principal may be accessed only by the trustee or the
2 spouse and only for the purpose of providing for the health, education, support or maintenance of
3 the spouse.

4 “(c) For the purpose of establishing the value of the surviving spouse’s estate under this section,
5 the estate includes 35 percent of the corpus of a trust or portion of a trust if all income from the
6 trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during
7 the life of the surviving spouse and neither the trustee nor the spouse has the power to distribute
8 trust principal to or for the benefit of the surviving spouse or any other person during the spouse’s
9 lifetime.

10 “(d) For the purposes of this section, all amounts distributed to a surviving spouse from a
11 unitrust that meets the requirements of ORS 129.225 (4) shall be considered income.”.

12 In line 15, after “property” insert “to a donee” and delete “any one” and insert “the”.

13 On page 7, line 12, delete “an elective share amount” and insert “the dollar amount of the
14 elective share”.

15 In line 29, delete “burdens” and insert “liability”.

16 Delete lines 39 through 44 and insert:

17 “(5) If after application of the amounts specified in subsections (1) and (2) of this section the
18 elective share amount is not fully satisfied, amounts included in the decedent’s nonprobate estate
19 under section 13 of this 2009 Act, other than transfers to charitable institutions, must be applied
20 next to satisfy the elective share amount. Amounts must be applied under this subsection in a
21 manner that ensures that each recipient of a transfer bears liability for a portion of the repayment
22 that is proportionate to the recipient’s share of all noncharitable transfers included in the decedent’s
23 nonprobate estate under section 13 of this 2009 Act.

24 “(6) If after application of the amounts specified in subsections (1), (2) and (5) of this section the
25 elective share amount is not fully satisfied, amounts included in the decedent’s nonprobate estate
26 under section 13 of this 2009 Act that were transfers to charitable institutions must be applied next
27 to satisfy the elective share amount. Transfers to charitable institutions may not be applied to sat-
28 isfy the elective share amount under this subsection if making that application would disqualify the
29 transfer from a deduction under federal gift tax laws or regulations. Amounts must be applied under
30 this subsection in a manner that ensures that each recipient of a transfer bears liability for a por-
31 tion of the repayment that is proportionate to the recipient’s share of all charitable transfers applied
32 under this subsection.”.

33 In line 45, delete “(6)” and insert “(7)”.

34 On page 8, after line 3, insert:

35 “(8) In any proceeding described in section 4 of this 2009 Act, the court may allocate the cost
36 of storing and maintaining property included in the augmented estate pending distribution of the
37 property.”.

38 Delete lines 23 through 45 and insert:

39 “**SECTION 20. Protective order.** (1) **If a surviving spouse has filed a motion or petition**
40 **described in section 4 of this 2009 Act, the surviving spouse or any person who has received**
41 **any part of the decedent’s probate or nonprobate estate may request, at any time after the**
42 **filing, that the court issue a protective order. The protective order shall prohibit or impose**
43 **conditions on the transfer of property included in the augmented estate. The protective order**
44 **may be served on any person holding property included in the augmented estate.**

45 “(2) **Upon the filing of a motion or petition under section 4 of this 2009 Act, any person**

1 who has received any part of the decedent's probate or nonprobate estate and who is re-
2 quired to make a contribution toward the satisfaction of the elective share may file a motion
3 or petition with the court requesting a determination of the amount of the person's propor-
4 tionate contribution toward the satisfaction of the elective share. Upon that determination
5 being made, the person may deposit with the court the amount so determined in the form
6 of money or a bond or other security. The deposit discharges the person from all claims re-
7 lating to the satisfaction of the elective share. In lieu of deposit with the court under this
8 subsection the court may require that the money or security be deposited with a person
9 designated by the court.

10 “(3) If a surviving spouse has filed a motion or petition described in section 4 of this 2009
11 Act, and a notice of pendency of action under ORS 93.740 is recorded, a temporary restrain-
12 ing order is issued under ORCP 79, or provisional process is issued under ORCP 83, an owner
13 of the property that is subject to the notice, order or process may seek relief from the no-
14 tice, order or process by providing a bond or other security to the court in such amount as
15 the court may determine adequate to satisfy the person's proportionate contribution toward
16 the satisfaction of the elective share.”

17 On page 9, delete lines 3 through 31 and insert:

18 “**SECTION 21. Proceedings to claim elective share.** (1) A surviving spouse may claim the
19 elective share by filing a petition for the exercise of the election in a circuit court within the
20 time allowed by section 4 (1)(c) of this 2009 Act. Venue for the proceeding is as provided in
21 ORS 113.015. A copy of the petition must be served on all persons who would be entitled to
22 receive information under ORS 113.145 and on all distributees and recipients of portions of
23 the augmented estate known to the surviving spouse who can be located with reasonable
24 efforts. The fee for filing a petition under this subsection shall be the amount prescribed in
25 ORS 21.310, based on the value of the nonprobate estate. The Oregon Rules of Civil Procedure
26 apply to proceedings under this section. Any party to a proceeding under this section may
27 request that the pleadings and records in the proceeding be sealed.

28 “(2) A surviving spouse may withdraw a petition filed under this section at any time be-
29 fore entry of a judgment on the petition.

30 “(3) If a probate proceeding is commenced for the estate of the deceased spouse under
31 ORS 113.035 either before or after a petition is filed under this section, the court shall con-
32 solidate the proceedings under this section with the probate proceedings.”

33 After line 42, insert:

34 “**SECTION 23.** ORS 114.545 is amended to read:

35 “114.545. (1) The affiant:

36 “(a) Shall take control of the property of the estate coming into the possession of the affiant.

37 “(b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each
38 instrument which the affidavit states will be mailed, delivered or recorded.

39 “(c) From and to the extent of the property of the estate, shall pay or reimburse any person who
40 has paid:

41 “(A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;

42 “(B) Claims listed in the affidavit as undisputed;

43 “(C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

44 “(D) Claims which the probate court directs the affiant to pay.

45 “(d) Shall pay claims and expenses under paragraph (c) of this subsection in the order of priority

1 prescribed by ORS 115.125.

2 “(e) May transfer or sell any vehicle that is part of the estate before the completion of the pe-
3 riod established under ORS 114.555 if the affiant complies with the requirements established by the
4 Department of Transportation for such purposes under ORS 803.094.

5 “(f) May convey any real or personal property that is part of the estate before the completion
6 of the period established under ORS 114.555, provided that each heir or devisee succeeding to the
7 interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable ex-
8 penses of sale and any debt secured as of the date of the decedent’s death by a duly perfected lien
9 on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property
10 is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the
11 structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valu-
12 able consideration made by the affiant and the heir or devisee succeeding to the interest conveyed,
13 or made by the heir or devisee succeeding to the interest conveyed after completion of the period
14 established under ORS 114.555, conveys the interest stated in the conveyance free of any interest
15 of the claiming successors, and the purchaser has no duty with respect to application of the con-
16 sideration paid for the conveyance.

17 **“(2) If the decedent was married at the time of death and the decedent’s spouse survives**
18 **the decedent, an affiant may not sell, transfer or convey any property of the estate, other**
19 **than payment of claims, until the expiration of nine months after the death of the decedent**
20 **unless the affiant files with the court a written document signed by the surviving spouse**
21 **consenting to the transfer.**

22 “[2] (3) Any claiming successor to whom payment, delivery or transfer is made under ORS
23 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable
24 and accountable:

25 “(a) To the extent of the value of the property received, to creditors of the estate to the extent
26 such creditors are entitled to payment under subsection (1) of this section; and

27 “(b) To any personal representative of the estate of the decedent thereafter appointed.

28 “[3] (4) The affiant shall cause to be recorded in the deed records of any county in which real
29 property belonging to the decedent is situated an affiant or claiming successor’s deed executed in
30 the manner required by ORS chapter 93.

31 “[4] (5) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and
32 assessed as personal property, the affiant shall file with the Department of Consumer and Business
33 Services the necessary information for recording the successor’s interest in the manufactured
34 structure on an ownership document.

35 **“SECTION 24.** ORS 114.555 is amended to read:

36 “114.555. If a personal representative is not appointed within four months after the filing of the
37 affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in
38 the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto,
39 and any other claims against the property are barred, except:

40 **“(1) As provided in ORS 114.540, 114.545 and 114.550; and**

41 **“(2) For the purposes of a surviving spouse’s claim for an elective share in the manner**
42 **provided by sections 2 to 22 of this 2009 Act.”.**

43 In line 43, delete “23” and insert “25”.

44 On page 10, delete lines 26 through 38 and insert:

45 **“SECTION 26. Sections 2 to 22 of this 2009 Act and the amendments to ORS 114.545 and**

1 114.555 by sections 23 and 24 of this 2009 Act apply only to the surviving spouses of decedents
2 who die on or after the effective date of this 2009 Act. Notwithstanding the repeal of ORS
3 114.105, 114.115, 114.125, 114.135, 114.145, 114.155 and 114.165 by section 28 of this 2009 Act, the
4 rights of a surviving spouse of a decedent who dies before the effective date of this 2009 Act
5 shall continue to be governed by the law in effect immediately before the effective date of
6 this 2009 Act.

7 **“SECTION 27. A written contract, agreement or waiver entered into before the effective**
8 **date of this 2009 Act, whether prenuptial or post-nuptial, that waives in whole or in part the**
9 **elective share of a surviving spouse is effective as a waiver under section 6 of this 2009 Act**
10 **unless a court determines that the contract, agreement or waiver is not enforceable under**
11 **the standards of section 6 of this 2009 Act. Section 6 (5) of this 2009 Act applies to contracts,**
12 **agreements or waivers entered into before, on or after the effective date of this 2009 Act.”.**

13 In line 39, delete “26” and insert “28”.

14 In line 41, delete “27” and insert “29”.

15 After line 43, insert:

16
17 **“EFFECTIVE DATE**

18
19 **“SECTION 30. This 2009 Act takes effect on January 1, 2011.”.**
20
