

Senate Bill 236

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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**.

Provides that contract is against public policy and void if personal representative, heir or devisee agrees to pay fee for locating heir or devisee of estate that is subject to probate in Oregon, or agrees to pay fee to assist heir or devisee to receive share of estate that is subject to probate in Oregon. Specifies exceptions.

Allows distributee of estate to assign all or part of distributee's interest by assignment of interest.

A BILL FOR AN ACT

1
2 Relating to estates.

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

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 113.**

5 **SECTION 2. (1) Except as provided in subsections (2) to (7) of this section, a contract is**
6 **against the public policy of the State of Oregon and void if by the terms of the contract a**
7 **personal representative, heir or devisee agrees to pay a fee for locating an heir or devisee**
8 **of an estate that is subject to probate in Oregon, or agrees to pay a fee to assist an heir or**
9 **devisee to receive a share of an estate that is subject to probate in Oregon.**

10 **(2) Subsection (1) of this section does not apply to a contract if the fees payable under**
11 **the contract do not exceed:**

12 **(a) 25 percent of the first \$10,000 of the value of the share of an heir or devisee who is**
13 **located or assisted;**

14 **(b) 10 percent of the next \$40,000 of the value of the share of an heir or devisee who is**
15 **located or assisted; and**

16 **(c) 5 percent of the excess over \$50,000 of the value of the share of an heir or devisee**
17 **who is located or assisted.**

18 **(3) Subsection (1) of this section does not apply to a contract that is approved by the**
19 **probate court after the court has determined that the services to be provided are needed and**
20 **that the fees provided for in the contract constitute reasonable compensation for the labor**
21 **required to provide the services.**

22 **(4) Subsection (1) of this section does not apply to a contract that is entered into by the**
23 **personal representative or by the Department of State Lands, or by a person reasonably ex-**
24 **pecting to be appointed personal representative of the estate, if:**

25 **(a) The services provided under the contract are for the purpose of identifying and lo-**
26 **cating all heirs of a decedent required by ORS 113.035 (6);**

27 **(b) The contract provides for payment of a reasonable fixed fee or a reasonable hourly**
28 **fee for the services; and**

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 (c) The fees are payable regardless of whether an heir or devisee is found.

2 (5) Subsection (1) of this section does not apply to a contract if the contract is in writing,
3 the contract is entered into by the heir or devisee more than one year after the death of the
4 decedent, and the contract by its terms may be rescinded without cause at any time during
5 the 10-day period immediately following execution of the contract.

6 (6) Subsection (1) of this section does not apply to:

7 (a) A contract between an attorney and a personal representative, or between an attor-
8 ney and an heir or devisee, for legal services provided by the attorney; or

9 (b) A contract for genealogical research not related to administration of a decedent's
10 estate in Oregon.

11 (7) Subsection (1) of this section does not apply to a contract for a fee payable to a person
12 to locate an heir or devisee who was omitted from a petition filed under ORS 113.035 by
13 reason of a willful failure or reckless disregard of the person signing the petition. The fee
14 payable under a contract described in this subsection may not exceed one-third of the value
15 of the interest of the omitted heir or devisee, and the person who signed the petition is liable
16 to the person who pays the fee for the amount of the fee.

17 SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 116.

18 SECTION 4. (1) A distributee may assign all or part of the interest of the distributee
19 under a general judgment of final distribution by an assignment of interest signed by the
20 distributee. The signature of the distributee must be acknowledged by a notary public, and
21 the assignment must be filed in the estate proceeding. The assignment may be signed and
22 filed before or after the general judgment of final distribution is entered.

23 (2) An assignment of interest under this section is void to the extent that the assignment
24 is made in payment or partial payment of a contract that violates section 2 (1) of this 2009
25 Act, or to secure payment of a contract that violates section 2 (1) of this 2009 Act.

26 SECTION 5. Section 2 of this 2009 Act applies only to contracts entered into on or after
27 the effective date of this 2009 Act.
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