

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	10 - 0 - 0
Yeas:	Garrett, Hicks, Nolan, Olson, Schaufler, Tomei, Wand, Whisnant, Barker, Krieger
Nays:	0
Exc.:	0
Prepared By:	Cheyenne Ross, Counsel
Meeting Dates:	5/4, 5/17

WHAT THE MEASURE DOES: Clarifies exclusions from augmented estate to distinguish irrevocable transfer of property before death and transfers of property on or after death with written joinder or consent of surviving spouse, and to include property held by either spouse in a solely fiduciary capacity. Permits value of nonprobate estate to be determined after administration expenses. Allows property held by decedent immediately before death to be included in nonprobate estate only to the extent that decedent could designate either self or spouse as beneficiary. Allows decedent's nonprobate transfers to surviving spouse to be included in surviving spouse's estate. Clarifies that provisions governing valuation of trusts that benefit a surviving spouse apply to trusts created by the decedent spouse, and for valuation of other trusts, references ORS 114.630(3) and (4). Permits will, trust, or other instrument of decedent spouse to control satisfaction of balance of elective share. Applies retroactively to January 1, 2011. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Correction of unintended consequences

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: Senate Bill 385 comes from both the Estate Planning and Administration Section of the Oregon State Bar and the Oregon Law Commission (the Commission). It is a follow-up to House Bill 3077 (2009), which went into effect January 1, 2011. House Bill 3077 was a long and complex measure that represented almost a decade of cooperative effort by the Commission to update Oregon's elective share statutes. Senate Bill 385 makes a number of technical and corrective modifications to resolve inconsistencies noticed by practitioners.