76th OREGON LEGISLATIVE ASSEMBLY – 2011 Regular Session **MEASURE: SB 386**
STAFF MEASURE SUMMARY **CARRIER: Sen. Bonamici**
Senate Committee on Judiciary

REVENUE: No revenue impact
FISCAL: No fiscal impact

Action:		Do Pass
Vote:		5 - 0 - 0
	Yeas:	Bonamici, Dingfelder, Kruse, Whitsett, Prozanski
	Nays:	0
	Exc.:	0
Prepared By:		Cheyenne Ross, Counsel
Meeting Dates:		3/10, 3/17

WHAT THE MEASURE DOES: Excludes property gifted to and held separately by one party to dissolution of marriage from presumption of equal contribution that applies to marital assets.

ISSUES DISCUSSED:
- *Olesberg* case
- Testator's intent and plain language of testamentary documents
- Common sense understanding of what separate property is
- Court's authority to reach separate assets regardless, if just and proper to do so

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: In a dissolution action, current law presumes that parties to a marriage contribute equally to the acquisition of marital assets. (ORS 107.105(1)(f).) If one party receives property as a gift, they may rebut the presumption that it was mutually acquired, by showing that the donor did not intend for the other party to share in the gift. However, a relatively recent Court of Appeals decision held that if a donor specifically named only one spouse as the recipient of the gift, that was not enough to demonstrate the donor's intent that no one else should receive the gift. (*Olesberg and Olesberg*, 206 Or. App. 496 (2006).) This ruling is considered inconsistent with principles of estate planning. Senate Bill 386 provides that separate, gifted property is not subject to the presumption that the parties contributed equally to its acquisition. It is submitted by both the Estate Planning Section and the Family Law Section of the Oregon State Bar.