

House Bill 2046

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

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**.

Permits Director of Veterans' Affairs to retract waiver of claim against estate of person under certain circumstances. Establishes priority for payment of claim from estate of decedent.

A BILL FOR AN ACT

1
2 Relating to claims of the Department of Veterans' Affairs against estates; amending ORS 87.533,
3 115.125 and 406.110.

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

5 **SECTION 1.** ORS 115.125 is amended to read:

6 115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims
7 in full, the personal representative shall make payment in the following order:

8 (a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

9 (b) Expenses of administration.

10 (c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

11 (d) Debts and taxes with preference under federal law.

12 (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent,
13 including compensation of persons attending the decedent.

14 (f) Taxes with preference under the laws of this state that are due and payable while possession
15 of the estate of the decedent is retained by the personal representative.

16 (g) Debts owed employees of the decedent for labor performed within 90 days immediately pre-
17 ceding the date of death of the decedent.

18 (h) Child support arrearages.

19 (i) **The claim of the Department of Veterans' Affairs under ORS 406.100, including a claim**
20 **the waiver of which was retracted by the Director of Veterans' Affairs under ORS 406.110.**

21 [(i)] (j) The claim of the Department of Human Services or the Oregon Health Authority for the
22 amount of the state's monthly contribution to the federal government to defray the costs of outpa-
23 tient prescription drug coverage provided to a person who is eligible for Medicare Part D pre-
24 scription drug coverage and who receives benefits under the state medical assistance program or
25 Title XIX of the Social Security Act.

26 [(j)] (k) The claim of the Department of Human Services or the Oregon Health Authority for the
27 net amount of assistance paid to or for the decedent, in the following order:

28 (A) Public assistance, as defined in ORS 411.010, funded entirely by moneys from the General
29 Fund; and

30 (B) Public assistance, as defined in ORS 411.010, funded by a combination of state and federal
31 funds.

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 [(k)] (L) The claim of the Department of Human Services or the Oregon Health Authority for
2 the care and maintenance of the decedent at a state institution, as provided in ORS 179.610 to
3 179.770.

4 [(L)] (m) The claim of the Department of Corrections for care and maintenance of any decedent
5 who was at a state institution to the extent provided in ORS 179.610 to 179.770.

6 [(m)] (n) All other claims against the estate.

7 (2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of
8 any one class specified in subsection (1) of this section, each expense or claim of that class shall
9 be paid only in proportion to the amount thereof.

10 **SECTION 2.** ORS 406.110 is amended to read:

11 406.110. (1) The Director of Veterans' Affairs may waive all or any portion of a claim arising
12 under ORS 406.100 if the director finds that payment of the claim, or a portion thereof, would pose
13 a hardship to the person from whose estate the claim is payable, or would deplete the estate.

14 (2) **The director may retract a waiver made under subsection (1) of this section if the**
15 **director finds that payment of the claim, or a portion thereof, would no longer pose a hard-**
16 **ship to the person from whose estate the claim is payable, or would no longer deplete the**
17 **estate.**

18 (3) **The statute of limitations applicable to a claim under ORS 406.100, the waiver of which**
19 **has been retracted under this section, is tolled for the period of time from the date the di-**
20 **rector waived the claim to the date the director retracted the waiver of the claim.**

21 **SECTION 3.** ORS 87.533 is amended to read:

22 87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

23 (1) Any assets or income allowed to the community spouse or dependent family member under
24 42 U.S.C. 1396r-5(d) or any rule of the Department of Human Services or the Oregon Health Au-
25 thority.

26 (2) The priority given to the recovery of medical assistance payments under ORS 115.125 [(1)(i)
27 or (j)] **(1)(j) or (k)** or other medical assistance claims under ORS 411.708, 411.795 and 416.350.

28 (3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance pay-
29 ments.

30 (4) The priority given to the recovery of cost of care payments under ORS 115.125 [(1)(k)]
31 **(1)(L)**, 179.620 or 179.740.

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