

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
House Committee On Judiciary

MEASURE: SB 402 B
CARRIER: Rep. Olson

Fiscal: No Fiscal Impact

Revenue: No Revenue Impact

Action Date: 04/23/15

Action: Do Pass As Amended And Be Printed Engrossed.

Meeting Dates: 04/23

Vote:

Yeas: 6 - Barker, Barton, Lininger, Olson, Post, Sprenger

Nays: 1 - Greenlick

Exc: 2 - Krieger, Williamson

Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Allows affiant in small estate to open deposit accounts with funds from decedent and to pay claims and expenses of decedent or small estate. Provides liability protection for financial institutions that open accounts for small estate affiants. Specifies financial institution is not required to ensure that funds are properly applied. Allows affiant approved by Department of Human Services or Oregon Health Authority to convey any real or personal property to third party for valuable consideration prior to expiration of period for appointment of personal representative, even if heir or devisee fails or refuses to join in conveyance. Allows liens on property conveyed by affiant as against decedent or estate, but not against heirs or devisees. Makes conforming changes.

ISSUES DISCUSSED:

- Administration of small estates
- Clarity for financial institutions
- Whether financial institutions need specific liability protection
- State may have claim against property and property may be sold to settle claim
- Current law requires signature of all heirs to convey property, even if heirs receive no proceeds
- Few affiants appointed by Department of Human Services
- Limited scope of amendments

EFFECT OF COMMITTEE AMENDMENT:

Allows affiant approved by Department of Human Services or Oregon Health Authority to convey any real or personal property to third party for valuable consideration prior to expiration of period for appointment of personal representative, even if heir or devisee fails or refuses to join in conveyance. Allows liens on property conveyed by affiant as against decedent or estate, but not against heirs or devisees. Makes conforming changes.

BACKGROUND:

Oregon allows a successor or personal representative of a deceased person to file an affidavit in probate court for administration of the estate, if the estate has no more than \$200,000 value in real property and \$75,000 in personal property. Through the use of the small estate affidavit, the successor can access a decedent's assets and pay debts. Oregon law is silent on the successor's ability to open bank accounts with the decedent's money, and as a result, some financial institutions may be wary of opening such accounts without clear guidance.

Senate Bill 402 B allows an affiant in a small estate proceeding to open deposit accounts with the decedent's funds, for the purpose of paying claims and expenses of the estate. It further specifies that financial institutions are not liable to any person for the affiant's use of those funds, nor is the institution required to ensure the funds are used properly. It also allows the

Department of Human Services or the Oregon Health Authority to appoint an affiant in cases in which money from a small estate is owed to the agency. The affiant may proceed with the sale of property without the signature of other heirs or devisees, who may have no incentive to sign for the conveyance.