

B-Engrossed
Senate Bill 402

Ordered by the House April 27
Including Senate Amendments dated February 25 and House Amendments
dated April 27

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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.

Permits affiant in small estate to open one or more deposit accounts in financial institution with funds of decedent upon which to withdraw funds to pay certain claims and expenses.

Permits certain attorney affiants to convey real or personal property to third party for valuable consideration when heir or devisee entitled to succeed to conveyance fails or refuses to join in conveyance.

Provides that property conveyed by affiant is subject to liens and encumbrances against decedent or estate of decedent but is not subject to rights of creditors of decedent or liens or encumbrances against heirs or devisees of decedent.

Provides that filing and allowance of claim does not make claimant secured creditor.

Provides that financial institution is not liable to any other person for opening deposit account for affiant in small estate or for permitting affiant to withdraw funds from deposit account.

A BILL FOR AN ACT

1
2 Relating to small estates; amending ORS 114.505 and 114.545.

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

4 **SECTION 1.** ORS 114.545 is amended to read:

5 114.545. (1) The affiant:

6 (a) Shall take control of the property of the estate coming into the possession of the affiant.

7 (b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each in-
8 strument which the affidavit states will be mailed, delivered or recorded.

9 **(c) May open one or more deposit accounts in a financial institution as defined in ORS**
10 **706.008 with funds of the decedent, upon which the affiant may withdraw funds by means of**
11 **checks, drafts or negotiable orders of withdrawal or otherwise for the payment of claims and**
12 **expenses described in paragraph (d) of this subsection.**

13 [(c)] **(d)** From and to the extent of the property of the estate, shall pay or reimburse any person
14 who has paid:

15 (A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;

16 (B) Claims listed in the affidavit as undisputed;

17 (C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

18 (D) Claims which the probate court directs the affiant to pay.

19 [(d)] **(e)** Shall pay claims and expenses under paragraph [(c)] **(d)** of this subsection in the order
20 of priority prescribed by ORS 115.125.

21 [(e)] **(f)** May transfer or sell any vehicle that is part of the estate before the completion of the

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 period established under ORS 114.555 if the affiant complies with the requirements established by
2 the Department of Transportation for such purposes under ORS 803.094.

3 [(f)] (g) May convey any real or personal property that is part of the estate before the com-
4 pletion of the period established under ORS 114.555, provided that each heir or devisee succeeding
5 to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable
6 expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien
7 on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property
8 is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the
9 structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valu-
10 able consideration made by the affiant and the heir or devisee succeeding to the interest conveyed,
11 or made by the heir or devisee succeeding to the interest conveyed after completion of the period
12 established under ORS 114.555, conveys the interest stated in the conveyance free of any interest
13 of the claiming successors, and the purchaser has no duty with respect to application of the con-
14 sideration paid for the conveyance.

15 **(2) Notwithstanding any other provision of this section, when an heir or devisee entitled**
16 **to succeed to a conveyance fails or refuses to join in the conveyance as required by sub-**
17 **section (1)(g) of this section, an affiant approved under ORS 114.517 may convey any real or**
18 **personal property that is part of the estate at any time to a third party for a valuable con-**
19 **sideration.**

20 **(3) Property conveyed by an affiant under this section is subject to liens and**
21 **encumbrances against the decedent or the estate of the decedent but is not subject to rights**
22 **of creditors of the decedent or liens or encumbrances against the heirs or devisees of the**
23 **decedent. The filing and allowance of a claim in a proceeding under ORS 114.505 to 114.560**
24 **does not make the claimant a secured creditor.**

25 [(2)] (4) Any claiming successor to whom payment, delivery or transfer is made under ORS
26 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable
27 and accountable:

28 (a) To the extent of the value of the property received, to creditors of the estate to the extent
29 such creditors are entitled to payment under subsection (1) of this section; and

30 (b) To any personal representative of the estate of the decedent thereafter appointed.

31 [(3)] (5) **After the expiration of the period established in subsection (1)(b) of this section,**
32 **the affiant shall cause to be recorded in the deed records of any county in which real property be-**
33 **longing to the decedent is situated an affiant or claiming successor's deed conveying the property**
34 **to persons entitled to the property, executed in the manner required by ORS chapter 93.**

35 [(4)] (6) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and
36 assessed as personal property, the affiant shall file with the Department of Consumer and Business
37 Services the necessary information for recording the successor's interest in the manufactured
38 structure on an ownership document.

39 **(7) A financial institution as defined in ORS 706.008 that opens one or more deposit ac-**
40 **counts for an affiant pursuant to subsection (1)(c) of this section is not liable to any other**
41 **person for opening the account or accounts or for permitting the affiant to withdraw funds**
42 **from the account or accounts by means of checks, drafts, negotiable orders of withdrawal**
43 **or otherwise. The financial institution is not required to ensure that the funds of the**
44 **decedent that are paid out by the affiant are properly applied.**

45 **SECTION 2.** ORS 114.505 is amended to read:

- 1 114.505. As used in ORS 114.505 to 114.560:
- 2 (1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.
- 3 (2) "Claiming successors" means:
- 4 (a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an
- 5 estate administrator of the Department of State Lands appointed under ORS 113.235;
- 6 (b) If the decedent died testate, the devisee or devisees of the decedent; and
- 7 (c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS
- 8 114.545 [(1)(c)] **(1)(d)** who has not been paid or reimbursed the full amount owed such creditor within
- 9 60 days after the date of the decedent's death.
- 10 (3) "Estate" means decedent's property subject to administration in Oregon.

11
