

B-Engrossed House Bill 4102

Ordered by the Senate February 19
Including House Amendments dated February 5 and Senate Amendments
dated February 19

Sponsored by Representative BARTON (at the request of Oregon Law Commission) (Pre-session filed.)

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.

Updates and modernizes certain laws pertaining to intestacy, wills and estate administration.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to estates; creating new provisions; amending ORS 111.005, 111.015, 111.095, 111.115,
3 111.175, 111.185, 111.275, 112.025, 112.035, 112.045, 112.058, 112.065, 112.135, 112.145, 112.155,
4 112.175, 112.238, 113.005, 113.242, 114.305, 115.125 and 179.610; repealing ORS 112.390; and de-
5 claring an emergency.

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

7 **SECTION 1.** ORS 111.005 is amended to read:

8 111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires
9 otherwise:

10 (1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all
11 claims, expenses and devises in full.

12 (2) "Action" includes suits and legal proceedings.

13 (3) "Administration" means any proceeding relating to the estate of a decedent, whether the
14 decedent died testate, intestate or partially intestate.

15 (4) "Advancement" means a gift by a decedent to an heir *[to enable the donee to anticipate the*
16 *inheritance to the extent of the gift]* **or devisee with the intent that the gift satisfy in whole or**
17 **in part the heir's share of an intestate estate or the devisee's share of a testate estate.**

18 [(5) "All purposes of intestate succession" means succession by, through or from a person, both
19 lineal and collateral.]

20 [(6)] (5) "Assets" includes real, personal and intangible property.

21 [(7)] (6) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or other-
22 wise.

23 [(8)] (7) "Court" or "probate court" means the court in which jurisdiction of probate matters,
24 causes and proceedings is vested as provided in ORS 111.075.

25 [(9)] (8) "Decedent" means a person who has died *[leaving property that is subject to adminis-*
26 *tration]*.

27 (9)(a) "Descendant" means a person who is descended from a specific ancestor and in-
28 cludes an adopted child and the adopted child's descendants.

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 **(b) When used to refer to persons who take by intestate succession, “descendant” does not**
2 **include a person who is the descendant of a living descendant.**

3 (10) “Devise,” when used as a noun, means property disposed of by a will[, *and includes*
4 *“legacy” and “bequest.”*].

5 (11) “Devise,” when used as a verb, means to dispose of property by a will[, *and includes*
6 *“bequeath.”*].

7 (12) “Devisee” [*includes “legatee” and “beneficiary.”*] **means a person designated in a will to**
8 **receive a devise.**

9 (13) “Distributee” means a person entitled to any property of a decedent under the will of the
10 decedent or under intestate succession.

11 (14) “Domicile” means the place of abode of a person, where the person intends to remain and
12 to which, if absent, the person intends to return.

13 (15) “Estate” means the real and personal property of a decedent, as from time to time changed
14 in form by sale, reinvestment, **substitutions** or otherwise, [*and*] augmented by any accretions or
15 additions [*thereto and substitutions therefor*] or diminished by any decreases [*and*] **or** distributions
16 [*therefrom*].

17 (16) “Funeral” includes **the** burial or other disposition of the remains of a decedent, [*including*
18 *the*] **any** plot or tomb and other necessary incidents to the disposition of the remains, **any memorial**
19 **ceremony or other observance and related expenses.**

20 (17) “General devise” means a devise chargeable generally on the estate of a testator [*and*] **so**
21 **that the devise is** not distinguishable from other parts [*thereof or not so given as to amount to*] **of**
22 **the estate and does not constitute** a specific devise.

23 [(18) “Generation” means a group of human beings, living or deceased, that constitute a single step
24 in the line of descent from an ancestor.]

25 [(19) (18) “Heir” means any person[, *including the surviving spouse,*] who is **or would be** entitled
26 under intestate succession to [*the property of a decedent who died wholly or partially intestate*]
27 **property of a person upon that person’s death.**

28 [(20) (19) “Interested person” includes heirs, devisees, children, spouses, creditors and any oth-
29 ers having a property right or claim against the estate of a decedent that may be affected by the
30 proceeding. [*It*] **“Interested person”** also includes fiduciaries representing interested persons.

31 [(21) (20) “Intestate” means one who dies without leaving a valid will, or the circumstance of
32 dying without leaving a valid will, effectively disposing of all the estate.

33 [(22) (21) “Intestate succession” means succession to property of a decedent who dies intestate
34 or partially intestate.

35 [(23) (22) “Issue” [*includes adopted children and their issue and, when used to refer to persons*
36 *who take by intestate succession, includes all lineal descendants, except those who are the lineal de-*
37 *scendants of living lineal descendants*] **means a descendant or descendants.**

38 [(24) (23) “Net estate” means the real and personal property of a decedent, except property used
39 for the support of the surviving spouse and children and for the payment of expenses of adminis-
40 tration, funeral expenses, claims and taxes.

41 [(25) (24) “Net intestate estate” means any part of the net estate of a decedent not effectively
42 disposed of by the will.

43 [(26) (25) “Personal property” includes all property other than real property.

44 [(27) (26) “Personal representative” includes executor, administrator, administrator with will
45 annexed and administrator de bonis non, but does not include special administrator.

1 [(28)] **(27)** “Property” includes both real and personal property.

2 [(29)] **(28)** “Real property” includes all legal and equitable interests in land, in fee and for life.

3 [(30)] **(29)** “Settlement” includes, as to the estate of a decedent, the full process of adminis-
4 tration, distribution and closing.

5 [(31)] **(30)** “Specific devise” means a devise of a specific thing or specified part of the estate of
6 a testator that is so described as to be capable of identification. *[It]* **A specific devise** is a gift of
7 a part of the estate identified and differentiated from all other parts.

8 [(32)] **(31)** “Will” includes codicil[; *it*] **and** also includes a testamentary instrument that merely
9 appoints an executor or that merely revokes or revives another will.

10 **SECTION 2.** ORS 112.025 is amended to read:

11 112.025. If the decedent leaves a surviving spouse and *[issue]* **one or more descendants**, the
12 intestate share of the surviving spouse is:

13 (1) If there are *[surviving issue]* **one or more surviving descendants** of the decedent all of
14 whom are *[issue]* **descendants** of the surviving spouse also, the entire net intestate estate.

15 (2) If there are *[surviving issue]* **one or more surviving descendants** of the decedent one or
16 more of whom are not *[issue]* **descendants** of the surviving spouse, one-half of the net intestate es-
17 tate.

18 **SECTION 3.** ORS 112.035 is amended to read:

19 112.035. If the decedent leaves a surviving spouse and no *[issue, the surviving spouse shall have*
20 *all of the net intestate estate]* **descendant, the intestate share of the surviving spouse is the**
21 **entire net intestate estate.**

22 **SECTION 4.** ORS 112.045 is amended to read:

23 112.045. The part of the net intestate estate not passing to the surviving spouse shall pass:

24 (1) To the issue of the decedent. Issue of different generations in relation to the decedent take
25 by representation as defined in ORS 112.065.

26 (2) If there is no surviving issue *[or spouse]*, to the surviving parents of the decedent.

27 (3) If there is no surviving issue*[, spouse]* or parent, to the brothers and sisters of the decedent
28 and the issue of any deceased brother or sister of the decedent by representation as defined in ORS
29 112.065. If there is no surviving brother or sister, the issue of brothers and sisters take equally if
30 they are all of the same generation in relation to the decedent, but if of different generations, then
31 those of later generations take by representation as defined in ORS 112.065.

32 (4)(a) If there is no surviving issue, *[spouse,]* parent or issue of a parent, equally to the
33 grandparents of the decedent and the issue of any deceased grandparent of the decedent by repre-
34 sentation as defined in ORS 112.065 **who left issue surviving at the time of the decedent’s**
35 **death.** If one or more grandparents of the decedent do not survive the decedent, the issue of the
36 grandparents take equally if they are all of the same generation in relation to the decedent, but if
37 of different generations, then those of later generations take by representation as defined in ORS
38 112.065.

39 (b) If there is no surviving grandparent, the issue of grandparents take equally if they are all
40 of the same generation in relation to the decedent, but if of different generations, then those of later
41 generations take by representation as defined in ORS 112.065.

42 (5) If, at the time of taking, surviving parents or grandparents of the decedent are married to
43 each other, they shall take real property as tenants by the entirety and personal property as joint
44 owners with the right of survivorship.

45 **SECTION 4a.** ORS 112.045, as amended by section 4 of this 2016 Act, is amended to read:

1 112.045. The part of the net intestate estate not passing to the surviving spouse shall pass:

2 (1) To the *[issue]* **descendants** of the decedent **by representation as described in ORS**
3 **112.065.** *[Issue of different generations in relation to the decedent take by representation as defined in*
4 *ORS 112.065.]*

5 (2) If there is no surviving *[issue]* **descendant**, to the surviving parents of the decedent.

6 (3) If there is no surviving *[issue]* **descendant** or parent, **equally** to the brothers and sisters of
7 the decedent and *[the issue]* **by representation as described in ORS 112.065 to the descendants**
8 of any deceased brother or sister of the decedent *[by representation as defined in ORS 112.065]*. If
9 there is no surviving brother or sister, the *[issue]* **descendants** of brothers and sisters take equally
10 if they are all of the same generation in relation to the decedent, but if of different generations, then
11 those of later generations take by representation as *[defined]* **described** in ORS 112.065.

12 (4)(a) If there is no surviving *[issue, parent or issue]* **descendant, parent or descendant** of a
13 parent, equally to the grandparents of the decedent and *[the issue]* **by representation as described**
14 **in ORS 112.065 to the descendants** of any deceased grandparent of the decedent *[by representation*
15 *as defined in ORS 112.065]* who left *[issue]* **descendants** surviving at the time of the decedent's
16 death. If one or more grandparents of the decedent do not survive the decedent, the *[issue of the]*
17 **descendants of each of the deceased** grandparents take equally if they are all of the same gener-
18 ation in relation to the decedent, but if of different generations, then those of later generations take
19 by representation as *[defined]* **described** in ORS 112.065.

20 (b) If there is no surviving grandparent, the *[issue]* **descendants** of grandparents take equally
21 if they are all of the same generation in relation to the decedent, but if of different generations, then
22 those of later generations take by representation as *[defined]* **described** in ORS 112.065.

23 (5) If, at the time of taking, surviving parents or grandparents of the decedent are married to
24 each other, they shall take real property as tenants by the entirety and personal property as joint
25 owners with the right of survivorship.

26 **SECTION 5.** ORS 112.058 is amended to read:

27 112.058. (1) In any proceeding to determine the escheat share of the estate of a decedent whose
28 estate is wholly or partially subject to probate in this state:

29 (a) No preference shall be given to any person over escheat; and

30 (b) After diligent search and inquiry appropriate to the circumstances, the following
31 presumptions apply in a proceeding to determine whether a missing person has died:

32 (A) A missing person whose death cannot be proved by other means lives to 100 years of age.

33 (B) A missing person who was exposed to a specific peril at the time the person became missing
34 has died if it is reasonable to expect from the nature of the peril that proof of death would be im-
35 practical.

36 (C) A missing person whose absence is unexplained has died if the character and habits of the
37 person are inconsistent with a voluntary absence for the time that the person has been missing.

38 (D) A missing person known to have been alive who has not been seen or heard from for seven
39 years has died if the person has been absent from the person's usual residence, the absence is un-
40 explained, there are other persons who would have been likely to have heard from the missing per-
41 son during that period were the missing person alive, and those other persons have not heard from
42 the missing person.

43 (2) In any proceeding described by subsection (1) of this section, a missing person who is pre-
44 sumed to be dead is also presumed to have had two children in addition to any known *[issue]* **de-**
45 **scendants** of the person unless the presumption of death arises by reason of the application of

1 subsection (1)(b)(B) or (C) of this section.

2 **SECTION 6.** ORS 112.065 is amended to read:

3 112.065. "Representation" means the method of determining the passing of the net intestate es-
4 tate when the distributees are of different generations in relation to the decedent. Representation
5 is accomplished as follows: *[The estate shall be divided into as many shares as there are surviving*
6 *heirs of the generation closest in relation to the decedent and deceased persons of the same generation*
7 *who left issue who survive the decedent, each surviving heir of the nearest generation in relation to the*
8 *decedent receiving one share and the share of each deceased person of the same generation being di-*
9 *vided among the issue of the deceased person in the same manner.]*

10 **(1) If a distributive share of a wholly or partially intestate estate passes by represen-**
11 **tation to a person's descendants, the share is divided into as many equal shares as there are:**

12 **(a) Surviving descendants in the generation nearest to the person that contains one or**
13 **more surviving descendants; and**

14 **(b) Deceased descendants, in the generation nearest to the person that contains one or**
15 **more surviving descendants, who left surviving descendants, if any.**

16 **(2) Each share created for a surviving descendant in the nearest generation is distributed**
17 **to that descendant. Each share created for a deceased descendant is distributed to the de-**
18 **scendants of the deceased descendant by representation as described in this section.**

19 **SECTION 7. ORS 112.390 is repealed.**

20 **SECTION 8.** ORS 112.135 is amended to read:

21 112.135. **(1)(a)** If a person dies intestate as to all **or part of** the estate of the person, property
22 *[which]* **that** the person *[gave in]* **gives during** the lifetime of the person to an heir *[shall be]* **is**
23 treated as an advancement against the heir's share of the estate if declared in writing by the
24 decedent or acknowledged in writing by the heir to be an advancement.

25 **(b)** *[For that purpose]* **For purposes of applying the gift against the heir's share of the**
26 **intestate estate,** the property advanced *[shall]* **must** be valued as of the time the heir came into
27 possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs
28 first, **unless otherwise directed in the decedent's writing.**

29 **(2)(a) Except as provided in ORS 112.385, property that a testator gives during the**
30 **testator's lifetime to a devisee is treated as an advancement of the devisee's share in whole**
31 **or in part if:**

32 **(A) The will provides for deduction of the gift;**

33 **(B) The testator declared in writing that the gift is in satisfaction of the devise or that**
34 **its value is to be deducted from the value of the devise; or**

35 **(C) The devisee acknowledges in writing, before or after the testator's death, that the**
36 **gift was made in satisfaction of the devise or that its value was to be deducted from the**
37 **value of the devise.**

38 **(b) For purposes of applying the gift against the devisee's share of the testate estate, the**
39 **property advanced must be valued as of the time the devisee came into possession or enjoy-**
40 **ment of the property or as of the time of the testator's death, whichever occurs first, unless**
41 **otherwise directed in the testator's will or a writing described in paragraph (a)(B) of this**
42 **subsection.**

43 **(3)(a) Property not subject to probate administration, the transfer of which is intended**
44 **by the decedent to take effect on death, is treated as an advancement against the heir's**
45 **share of the estate or the devisee's devise under the will if declared in writing by the**

1 **decedent, or acknowledged in writing by the heir or devisee, to be an advancement. Examples**
2 **of transfers under this subsection include but are not limited to beneficiary designation,**
3 **right of survivorship and transfer on death deed or transfer on death designation.**

4 **(b) The property transferred under this subsection must be valued as of the time of the**
5 **decedent's death, unless otherwise directed in the testator's will or in a writing by the**
6 **decedent.**

7 **SECTION 9.** ORS 112.145 is amended to read:

8 112.145. (1) If the value of *[the]* **an** advancement exceeds the heir's **or devisee's** share of the
9 estate, the heir **or devisee** shall be excluded from any further share of the estate, but the heir **or**
10 **devisee** shall not be required to refund any part of the advancement. If the value of *[the]* **an** ad-
11 vancement is less than the heir's **or devisee's** share, the heir **or devisee** shall be entitled upon
12 distribution of the estate to such additional amount as will give the heir **or devisee** the heir's **or**
13 **devisee's** share of the estate.

14 (2) The property advanced is not a part of the estate, but for the purpose of determining the
15 shares of the heirs **or devisees** the advancement shall be added to the **value of the** estate, the sum
16 then divided among the heirs **or devisees according to the laws of intestate succession or the**
17 **testator's will** and the advancement then deducted from the share of the heir **or devisee** to whom
18 the advancement was made.

19 **SECTION 10.** ORS 112.155 is amended to read:

20 112.155. If the recipient of the property advanced fails to survive the decedent, the amount of
21 the advancement shall be taken into account in computing the share of the *[issue]* **descendants** of
22 the recipient, whether or not the *[issue]* **descendants** take by representation.

23 **SECTION 11.** ORS 112.175 is amended to read:

24 112.175. (1) An adopted person, the *[issue]* **descendants** and kindred of the adopted person shall
25 take by intestate succession from the adoptive parents, their *[issue]* **descendants** and kindred, and
26 the adoptive parents, their *[issue]* **descendants** and kindred shall take by intestate succession from
27 the adopted person, the *[issue]* **descendants** and kindred of the adopted person, as though the
28 adopted person were the biological child of the adoptive parents.

29 (2) An adopted person shall cease to be treated as the child of any person other than the
30 adopted person's adoptive parents for all purposes of intestate succession except in the following
31 circumstances:

32 (a) If a person is adopted by a stepparent or a domestic partner of a parent in a domestic
33 partnership registered under ORS 106.300 to 106.340 or under a similar law in another state, the
34 adopted person shall continue also to be treated, for all purposes of intestate succession, as the child
35 of the parent who is the spouse of, or other domestic partner in the domestic partnership with, the
36 adoptive parent.

37 (b) If a parent of a person dies, and the other parent of the person marries or enters into a do-
38 mestic partnership registered under ORS 106.300 to 106.340 or under a similar law in another state,
39 and the person is adopted by a stepparent or the other domestic partner, the adopted person shall
40 continue also to be treated, for all purposes of intestate succession, as the child of the deceased
41 parent.

42 (3) ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply to adopted persons who were adopted
43 in this state or elsewhere.

44 **SECTION 12.** ORS 111.015 is amended to read:

45 111.015. Except as specifically provided otherwise in chapter 591, Oregon Laws 1969, on July

1 1, 1970[:],

2 [(1)] chapter 591, Oregon Laws 1969, applies to wills of decedents dying [*thereon or*] thereafter,
3 and a will executed before July 1, 1970, shall be considered lawfully executed if the application of
4 ORS 112.255 would make it so, but the construction of a will executed before July 1, 1970, shall be
5 governed by the law in effect on the date of execution unless a contrary intent is established by the
6 will.

7 [(2)] *The procedure prescribed by chapter 591, Oregon Laws 1969, applies to any proceedings com-*
8 *menced thereon or thereafter regardless of the time of the death of a decedent, and also as to any fur-*
9 *ther procedure in proceedings then pending except to the extent that in the opinion of the court the*
10 *former procedure should be made applicable in a particular case in the interest of justice or because*
11 *of infeasibility of application of the procedure prescribed by chapter 591, Oregon Laws 1969.]*

12 [(3)] *A personal representative, guardian or conservator holding an appointment on that date shall*
13 *continue to hold the appointment, but shall have only the powers conferred and be subject to the duties*
14 *imposed by chapter 591, Oregon Laws 1969, with respect to any act occurring or done thereon or*
15 *thereafter, other than acts pursuant to powers or duties validly conferred or imposed by a will executed*
16 *before July 1, 1970.]*

17 [(4)] *An act done before July 1, 1970, in any proceeding and any accrued right shall not be impaired*
18 *by chapter 591, Oregon Laws 1969. When a right is acquired, extinguished or barred upon the expi-*
19 *ration of a prescribed period of time which has commenced to run by the provisions of any statute be-*
20 *fore July 1, 1970, those provisions shall remain in force with respect to that right.]*

21 **SECTION 13.** ORS 111.095 is amended to read:

22 111.095. (1) The general legal and equitable powers of a circuit court [*are applicable to effectuate*
23 *the jurisdiction of*] **apply to** a probate court[, *punish contempts and carry out its determinations, or-*
24 *ders and judgments as a court of record with general jurisdiction, and*]

25 (2) The same validity, finality and presumption of regularity shall be accorded to [*its*] **the** de-
26 terminations, orders and judgments **of a probate court**[, *including determinations of its own juris-*
27 *isdiction,*] as to those of a [*court of record with general jurisdiction*] **circuit court**.

28 [(2)] (3) A probate court has full, legal and equitable powers to make declaratory judgments, as
29 provided in ORS 28.010 to 28.160, in all matters involved in the administration of an estate, including
30 [*those*] **matters** pertaining to the title of real property **and ownership of personal property**, the
31 determination of heirship and the distribution of the estate.

32 **SECTION 14.** ORS 111.115 is amended to read:

33 111.115. (1) An estate proceeding[, *including all probate matters, causes and proceedings pertain-*
34 *ing thereto,*] may be transferred at any time from a county court [*sitting in probate*] to the circuit
35 court for the county by order of the county court.

36 (2) An estate proceeding[, *including all probate matters, causes and proceedings pertaining*
37 *thereto,*] commenced in a county court [*sitting in probate*] and in which the county judge is a party
38 or directly interested [*shall*] **must** be transferred from the county court to the circuit court for the
39 county by order of the county court.

40 (3) Upon transfer of an estate proceeding from a county court to the circuit court **for the**
41 **county** under this section[,]:

42 (a) The county clerk shall certify and cause to be filed in the records of the circuit court all
43 original papers and proceedings pertaining to the estate proceeding[, *and thereafter jurisdiction of*
44 *all probate matters, causes and proceedings pertaining to the estate proceeding is vested in the circuit*
45 *court as if that jurisdiction had been originally and exclusively vested in the circuit court*]; **and**

1 **(b) Jurisdiction over the estate proceeding vests in the circuit court as if the jurisdiction**
2 **had been originally and exclusively vested in the circuit court.**

3 **SECTION 15.** ORS 111.175 is amended to read:

4 111.175. *[The court may appoint the clerk of the probate court or some other suitable person at the*
5 *county seat to act as probate commissioner within the county. If the clerk of the probate court is ap-*
6 *pointed probate commissioner, the deputy of the clerk has the power to perform any act as probate*
7 *commissioner that the clerk has, and the clerk is responsible for conduct of the deputy so acting.]* **The**
8 **presiding judge of a circuit court or the county judge of a county court may appoint a pro-**
9 **bate commissioner and one or more deputy probate commissioners and, if such appointments**
10 **are made, shall prescribe, by rule or order, the duties and responsibilities of the probate**
11 **commissioner and deputy probate commissioners, subject to ORS 111.185.**

12 **SECTION 16.** ORS 111.185 is amended to read:

13 111.185. (1) **To the extent prescribed or otherwise authorized by rule or order made under**
14 **ORS 111.175, a probate commissioner or deputy probate commissioner may:**

15 **(a)** Act upon uncontested petitions for appointment of special administrators, for probate of wills
16 and for appointment of personal representatives, guardians and conservators[, *to the extent author-*
17 *ized by rule of the court. Pursuant thereto the probate commissioner may*];

18 **(b)** Make and enter orders **and judgments** [*on behalf of the court*] admitting wills to probate and
19 appointing and setting the amount of the bonds of special administrators, personal representatives,
20 guardians and conservators[, *subject to the orders of the probate commissioner being set aside or*
21 *modified by the judge of the court within 30 days after the date an order is entered*]; **and**

22 **(c) Appoint court visitors.**

23 (2) Any matter presented to the probate commissioner **or deputy probate commissioner** may
24 be referred [*by the probate commissioner*] to the judge **of the court.**

25 **(3) Any order or judgment made by a probate commissioner or deputy probate commis-**
26 **sioner is subject to being set aside or modified by the judge of the court within 30 days after**
27 **the date of the order or judgment.**

28 **(4) Any interested person may object to an order or judgment of a probate commissioner**
29 **or deputy probate commissioner within 30 days after the date of the order or judgment, and**
30 **the judge of the court may set aside or modify the order or judgment.**

31 [(3)] **(5) Unless set aside or modified by the judge of the court, the orders and judgments of**
32 **the probate commissioner or deputy probate commissioner have the same effect as if made by the**
33 **judge of the court.**

34 **SECTION 17.** ORS 112.238 is amended to read:

35 112.238. (1) Although a writing was not executed in compliance with ORS 112.235, the writing
36 may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the
37 writing establishes by clear and convincing evidence that the decedent intended the writing to
38 constitute:

39 (a) The decedent's will;

40 (b) A partial or complete revocation of the decedent's will; or

41 (c) An addition to or an alteration of the decedent's will.

42 (2) *The proponent of the writing must file a petition with the court to establish the decedent's in-*
43 *tention with respect to the writing. The proponent shall provide notice of the petition to heirs, devisees*
44 *under prior wills and persons interested in the estate of the decedent that would be required to be*
45 *identified and set forth in a petition for the appointment of a personal representative under ORS*

1 113.035. Persons receiving notice and other interested persons shall have 20 days after service of the
2 notice under this subsection to file written objections to the petition. The court may make a determi-
3 nation regarding the decedent's intent after a hearing or on the basis of affidavits.]

4 **(2) A writing described in subsection (1) of this section may be filed with the court for**
5 **administration as the decedent's will pursuant to ORS 113.035. The proponent of the writing**
6 **shall give notice of the filing of the petition to those persons identified in ORS 113.035 (5), (7),**
7 **(8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice**
8 **was given to file written objections to the petition. The court may make a determination**
9 **regarding the decedent's intent after a hearing or on the basis of affidavits.**

10 *[(3) If the court determines that clear and convincing evidence exists showing that the writing was*
11 *intended by the decedent to accomplish one of the purposes set forth in subsection (1) of this section,*
12 *the court shall:]*

13 *[(a) Prepare written findings of fact in support of the determination; and]*

14 *[(b) Enter a limited judgment that admits the writing for probate or otherwise acknowledges the*
15 *validity and intent of the writing.]*

16 **(3) The proponent of a writing described in subsection (1) of this section may file a peti-**
17 **tion with the court to establish the decedent's intent that the writing was to be a partial or**
18 **complete revocation of the decedent's will, or an addition to or an alteration of the**
19 **decedent's will. The proponent shall give notice of the filing to any personal representative**
20 **appointed by the court, the devisees named in any will admitted to probate and those persons**
21 **identified in ORS 113.035 (5). Persons receiving notice under this subsection shall have 20**
22 **days after the notice was given to file written objections to the petition. The court may make**
23 **a determination regarding the decedent's intent after a hearing or on the basis of affidavits.**

24 *[(4) A petition filed under this section must be filed within four months after the date on which the*
25 *notice required by subsection (2) of this section was provided.]*

26 **(4)(a) If the court determines that clear and convincing evidence exists showing that a**
27 **writing described in subsection (1) of this section was intended by the decedent to accomplish**
28 **one of the purposes set forth in subsection (1) of this section, the court shall:**

29 **(A) Prepare written findings of fact in support of the determination; and**

30 **(B) Enter a limited judgment that admits the writing for probate as the decedent's will**
31 **or otherwise acknowledges the validity and intent of the writing.**

32 **(b) A determination under this subsection does not preclude the filing of a will contest**
33 **under ORS 113.075, except that the will may not be contested on the grounds that the will**
34 **was not executed in compliance with ORS 112.235.**

35 **(5) The fee imposed and collected by the court for the filing of a petition under this section shall**
36 **be in accordance with ORS 21.135.**

37 **SECTION 18.** ORS 111.275 is amended to read:

38 111.275. (1) The court in a probate proceeding under ORS chapters 111, 112, 113, 114, 115, 116
39 and 117 may enter a limited judgment only for the following decisions of the court:

40 (a) A decision on a petition for appointment or removal of a personal representative.

41 (b) A decision in a will contest filed in the probate proceeding.

42 (c) A decision on an objection to an accounting.

43 (d) A decision on a request made in the proceeding for a declaratory judgment under ORS
44 111.095.

45 (e) A decision on a request for an award of expenses under ORS 116.183.

1 **(f) A decision on a petition filed under ORS 112.238 admitting a writing for probate or**
2 **otherwise acknowledging the validity and intent of the writing.**

3 [(f)] **(g)** Such decisions of the court as may be specified by rules or orders of the Chief Justice
4 of the Supreme Court under ORS 18.028.

5 (2) A court may enter a limited judgment under this section only if the court determines that
6 there is no just reason for delay. The judgment document need not reflect the court's determination
7 that there is no just reason for delay.

8 **SECTION 19.** ORS 179.610 is amended to read:

9 179.610. As used in ORS 179.610 to 179.770, unless the context requires otherwise:

10 (1) "Authorized representative" means an individual or entity appointed under authority of ORS
11 chapter 125, as guardian or conservator of a person, who has the ability to control the person's fi-
12 nances, and any other individual or entity holding funds or receiving benefits or income on behalf
13 of any person.

14 (2) "Care" means all services rendered to a patient by the state institutions as described in ORS
15 179.321 or by the Eastern Oregon Training Center. These services include, but are not limited to,
16 such items as medical care, room, board, administrative costs and other costs not otherwise excluded
17 by law.

18 (3) "Decedent's estate" has the meaning given "estate" in ORS 111.005 [(15)].

19 (4) "Person," "person in a state institution" or "person at a state institution," or any similar
20 phrase, means an individual who is or has been at a state institution described in ORS 179.321 or
21 in the Eastern Oregon Training Center.

22 (5) "Personal estate" means all income and benefits as well as all assets, including all personal
23 and real property of a living person, and includes assets held by the person's authorized represen-
24 tative and all other assets held by any other individual or entity holding funds or receiving benefits
25 or income on behalf of any person.

26 **SECTION 20.** ORS 113.005 is amended to read:

27 113.005. (1) If, prior to appointment and qualification of a personal representative, property of
28 a decedent is in danger of loss, injury or deterioration, or disposition of the remains of a decedent
29 is required, the court may appoint a special administrator to take charge of the property or the
30 remains. The petition for appointment shall state the reasons for special administration and specify
31 the property, so far as known, requiring administration, and the danger to which it is subject.

32 (2) The special administrator shall qualify by filing a bond in the amount set by the court, con-
33 ditioned upon the special administrator faithfully performing the duties of the trust.

34 (3) The special administrator may:

35 (a) Incur expenses for the funeral[, *burial or other disposition of the remains*] of **the** decedent in
36 a manner suitable to the condition in life of the decedent;

37 (b) Incur expenses for the protection of the property of the estate; and

38 (c) Sell perishable property of the estate, whether or not listed in the petition, if necessary to
39 prevent loss to the estate.

40 (4) The special administrator shall not approve or reject claims of creditors or pay claims or
41 expenses of administration or take possession of assets of the estate other than those in danger of
42 loss, injury or deterioration pending the appointment of a personal representative.

43 (5) Upon the appointment and qualification of a personal representative the powers of the spe-
44 cial administrator shall cease. Within 30 days after the issuance of letters testamentary to a per-
45 sonal representative, the special administrator shall make and file an account and deliver to the

1 personal representative the assets of the estate in the possession of the special administrator. If the
2 personal representative objects to the account of the special administrator, the court shall hear the
3 objections, and, whether or not objections are made, shall examine the account.

4 (6) To the extent approved by the court, the compensation of the special administrator and ex-
5 penses properly incurred by the special administrator, including a reasonable fee of the attorney of
6 the special administrator, shall be paid as expenses of administration.

7 **SECTION 21.** ORS 113.242 is amended to read:

8 113.242. (1) An estate administrator of the Department of State Lands appointed under ORS
9 113.235 may take custody of the property of a decedent who died owning property subject to probate
10 in Oregon upon the estate administrator receiving notice that:

11 (a) The decedent died wholly intestate and without a known heir as described in ORS 113.238
12 (3); or

13 (b) The decedent left a valid will, but no devisee has been identified and found.

14 (2) For any estate described in subsection (1) of this section, an estate administrator of the De-
15 partment of State Lands appointed under ORS 113.235 may:

16 (a) Incur expenses for the funeral[, *burial or other disposition of the remains*] of the decedent in
17 a manner suitable to the condition in life of the decedent;

18 (b) Incur expenses for the protection of the property of the estate;

19 (c) Incur expenses searching for a will or for heirs or devisees of the decedent;

20 (d) Have access to the property and records of the decedent other than records that are made
21 confidential or privileged by statute;

22 (e) With proof of the death of the decedent, have access to all financial records of accounts or
23 safe deposit boxes of the decedent at banks or other financial institutions; and

24 (f) Sell perishable property of the estate.

25 (3) The reasonable funeral and administrative expenses of the Department of State Lands in-
26 curred under this section, including a reasonable attorney fee, shall be paid from the assets of the
27 estate with the same priority as funeral and administration expenses under ORS 115.125.

28 **SECTION 22.** ORS 114.305 is amended to read:

29 114.305. Subject to the provisions of ORS 97.130 (2) and (10) and except as restricted or other-
30 wise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or by
31 court order, a personal representative, acting reasonably for the benefit of interested persons, is
32 authorized to:

33 (1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and
34 incur expenses for the funeral[, *burial or other disposition of the remains*] in a manner suitable to the
35 condition in life of the decedent. Only those funeral expenses necessary for a plain and decent fu-
36 neral [*and disposition of the remains of the decedent*] may be paid from the estate if the assets are
37 insufficient to pay the claims of the Department of Human Services and the Oregon Health Au-
38 thority for the net amount of public assistance, as defined in ORS 411.010, or medical assistance,
39 as defined in ORS 414.025, paid to or for the decedent and for care and maintenance of any decedent
40 who was at a state institution to the extent provided in ORS 179.610 to 179.770.

41 (2) Retain assets owned by the decedent pending distribution or liquidation.

42 (3) Receive assets from fiduciaries or other sources.

43 (4) Complete, compromise or refuse performance of contracts of the decedent that continue as
44 obligations of the estate, as the personal representative may determine under the circumstances. In
45 performing enforceable contracts by the decedent to convey or lease real property, the personal

1 representative, among other courses of action, may:

2 (a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt
3 of the note of the purchaser adequately secured; or

4 (b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with
5 the escrow agreement, be paid to the successors of the decedent, as designated in the escrow
6 agreement.

7 (5) Satisfy written pledges of the decedent for contributions, whether or not the pledges consti-
8 tuted binding obligations of the decedent or were properly presented as claims.

9 (6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately
10 distributable, in bank or savings and loan association accounts, or invest the funds in bank or
11 savings and loan association certificates of deposit, or federally regulated money-market funds and
12 short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or
13 short-term United States Government obligations.

14 (7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition
15 that it is of no benefit to the estate.

16 (8) Vote stocks or other securities in person or by general or limited proxy.

17 (9) Pay calls, assessments and other sums chargeable or accruing against or on account of se-
18 curities.

19 (10) Sell or exercise stock subscription or conversion rights.

20 (11) Consent, directly or through a committee or other agent, to the reorganization, consol-
21 idation, merger, dissolution or liquidation of a corporation or other business enterprise.

22 (12) Hold a security in the name of a nominee or in other form without disclosure of the interest
23 of the estate, but the personal representative is liable for any act of the nominee in connection with
24 the security so held.

25 (13) Insure the assets of the estate against damage and loss, and insure the personal represen-
26 tative against liability to third persons.

27 (14) Advance or borrow money with or without security.

28 (15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A per-
29 sonal representative who holds a mortgage, pledge, lien or other security interest may accept a
30 conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction
31 of the indebtedness.

32 (16) Accept other real property in part payment of the purchase price of real property sold by
33 the personal representative.

34 (17) Pay taxes, assessments and expenses incident to the administration of the estate.

35 (18) Employ qualified persons, including attorneys, accountants and investment advisers, to ad-
36 vise and assist the personal representative and to perform acts of administration, whether or not
37 discretionary, on behalf of the personal representative.

38 (19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
39 the estate and of the personal representative in the performance of duties as personal represen-
40 tative.

41 (20) Prosecute claims of the decedent including those for personal injury or wrongful death.

42 (21) Continue any business or venture in which the decedent was engaged at the time of death
43 to preserve the value of the business or venture.

44 (22) Incorporate or otherwise change the business form of any business or venture in which the
45 decedent was engaged at the time of death.

1 (23) Discontinue and wind up any business or venture in which the decedent was engaged at the
2 time of death.

3 (24) Provide for exoneration of the personal representative from personal liability in any con-
4 tract entered into on behalf of the estate.

5 (25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113,
6 114, 115, 116 and 117.

7 (26) Perform all other acts required or permitted by law or by the will of the decedent.

8 **SECTION 23.** ORS 115.125 is amended to read:

9 115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims
10 in full, the personal representative shall make payment in the following order:

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

12 (b) Expenses of administration.

13 (c) Expenses of a plain and decent funeral [*and disposition of the remains of the decedent*].

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

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

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

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

21 (h) Child support arrearages.

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

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

29 (k) The claim of the Department of Human Services or the Oregon Health Authority for the net
30 amount of assistance paid to or for the decedent, in the following order:

31 (A) Public assistance, as defined in ORS 411.010, and medical assistance, as defined in ORS
32 414.025, funded entirely by moneys from the General Fund; and

33 (B) Public assistance, as defined in ORS 411.010, and medical assistance, as defined in ORS
34 414.025, that may be recovered from an estate under ORS 416.350, funded by a combination of state
35 and federal funds.

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

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

40 (n) All other claims against the estate.

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

44 **SECTION 24.** The amendments to ORS 111.005, 111.015, 111.095, 111.115, 111.175, 111.185,
45 111.275, 112.025, 112.035, 112.045, 112.058, 112.065, 112.135, 112.145, 112.155, 112.175, 113.005,

1 113.242, 114.305, 115.125 and 179.610 by sections 1 to 3, 4a, 5, 6, 8 to 16 and 18 to 23 of this 2016
2 Act and the repeal of ORS 112.390 by section 7 of this 2016 Act become operative on January
3 1, 2017.

4 **SECTION 25.** (1) The amendments to ORS 111.005, 111.015, 111.095, 111.115, 111.175,
5 111.185, 111.275, 112.025, 112.035, 112.045, 112.058, 112.065, 112.135, 112.145, 112.155, 112.175,
6 113.005, 113.242, 114.305, 115.125 and 179.610 by sections 1 to 3, 4a, 5, 6, 8 to 16 and 18 to 23
7 of this 2016 Act and the repeal of ORS 112.390 by section 7 of this 2016 Act apply to estates
8 of decedents dying after the operative date specified in section 24 of this 2016 Act.

9 (2) The amendments to ORS 112.045 and 112.238 by sections 4 and 17 of this 2016 Act apply
10 to estates of decedents dying after the effective date of this 2016 Act.

11 **SECTION 26.** This 2016 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect
13 on its passage.