

D R A F T

SUMMARY

Modifies court procedure for determining whether decedent intended writing to be decedent's will, partial or complete revocation of decedent's will or addition to or alteration of decedent's will.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to wills; amending ORS 112.238; and declaring an emergency.

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

SECTION 1. ORS 112.238 is amended to read:

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

(a) The decedent's will;

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

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

(2) A writing described in subsection (1) of this section may be filed with the court for administration as the decedent's will pursuant to ORS 113.035.

The proponent of the writing shall give notice of the filing of the petition under ORS 113.035 to those persons identified in ORS 113.035 (5), (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

(3) The proponent of a writing described in subsection (1) of this section

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 may file a petition with the court to establish the decedent's intent that the
 2 writing was to be [*the decedent's will*,] a partial or complete revocation of
 3 the decedent's will[,] or an addition to or an alteration of the decedent's will.
 4 The proponent shall give notice of the filing to any personal representative
 5 appointed by the court, the devisees named in any will admitted to probate
 6 and those persons identified in ORS 113.035 (5). Persons receiving notice
 7 under this subsection shall have 20 days after the notice was given to file
 8 written objections to the petition. The court may make a determination re-
 9 garding the decedent's intent after a hearing or on the basis of affidavits.

10 (4)(a) If the court determines that clear and convincing evidence exists
 11 showing that a writing described in subsection (1) of this section was in-
 12 tended by the decedent to accomplish one of the purposes set forth in sub-
 13 section (1) of this section, the court shall:

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

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

18 (b) A determination under this subsection does not preclude the filing of
 19 a will contest under ORS 113.075, except that the will may not be contested
 20 on the grounds that the will was not executed in compliance with ORS
 21 112.235.

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

24 **SECTION 2. This 2021 Act being necessary for the immediate pres-**
 25 **ervation of the public peace, health and safety, an emergency is de-**
 26 **clared to exist, and this 2021 Act takes effect on its passage.**