

Enrolled
House Bill 3008

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission Probate Modernization Work Group)

CHAPTER

AN ACT

Relating to estates; creating new provisions; and amending ORS 30.030, 113.015 and 116.173.

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

DEFINITIONS

SECTION 1. Definitions for sections 1 to 8 of this 2019 Act. As used in sections 1 to 8 of this 2019 Act:

(1) “Beneficiary” means a person for whose benefit an action against a wrongdoer may be brought under ORS 30.020.

(2) “Interested person” has the meaning given that term in ORS 111.005.

(3) “Personal injury claim” means a cause of action arising out of injuries to a decedent, caused by the wrongful act or omission of another, that do not result in the death of the decedent.

(4) “Wrongful death claim” means a cause of action arising out of injuries to a decedent, caused by the wrongful act or omission of another, that result in the death of the decedent.

APPLICATION

SECTION 2. Application. Except as specifically provided in sections 1 to 8 of this 2019 Act, ORS 30.010 to 30.100 and 119.006 to 119.081 and ORS chapters 111, 112, 113, 114, 115, 116, 117 and 118 apply to wrongful death claims and estates with personal injury claims.

PERSONAL INJURY CLAIMS AND WRONGFUL DEATH CLAIMS

SECTION 3. Court approval of settlement of personal injury claim or wrongful death claim. (1) The parties to a personal injury claim or a wrongful death claim may enter into a settlement agreement, subject to the approval of the probate court, whether or not an action asserting the personal injury claim or the wrongful death claim has been commenced. The personal representative shall petition the probate court for approval of the proposed settlement. The petition need not state the amount of the proposed settlement.

(2) A petition to approve a settlement under this section must be accompanied by a declaration under penalty of perjury of the attorney for the personal representative in the personal injury claim or the wrongful death claim:

- (a) Stating whether the claim being settled is a personal injury claim or a wrongful death claim;
- (b) Describing the incident causing the injury or death;
- (c) Describing the injuries;
- (d) Stating the amount of the claim;
- (e) Stating the amount of the settlement;
- (f) Stating the amount of attorney fees and costs;
- (g) Stating the amount of payments or reimbursements owed under ORS 30.030 (3) and, in the case of a personal injury claim, under ORS 416.540;
- (h) Stating the amount of any personal representative fee attributable to a wrongful death claim;
- (i) Stating the reasons for the settlement and the efforts to maximize recovery;
- (j) Stating that the attorney has examined the applicable medical records; and
- (k) Explaining why it is appropriate to settle the case.

SECTION 4. Deferral of requirements in certain cases. If the only asset of an estate is a personal injury cause of action that has not been adjudicated or settled, the court shall:

- (1) Defer bond requirements until a settlement of the personal injury claim is approved under section 3 of this 2019 Act; and
- (2) Accept an annual report on the status of the personal injury claim in lieu of the annual account required under ORS 116.083.

PROBATE FOR SOLE PURPOSE OF PURSUING WRONGFUL DEATH CLAIM

SECTION 5. Petition for appointment of personal representative. Any beneficiary, any interested person or the person nominated as personal representative named in the will may petition for the appointment of a personal representative for the sole purpose of pursuing a claim for the wrongful death of the decedent. Except as provided in section 7 of this 2019 Act, a personal representative appointed under this section has all the duties of a personal representative under ORS 119.006 to 119.081 and ORS chapters 113, 114, 115, 116, 117 and 118. In addition to the information required under ORS 113.035, a petition filed under this section must include the following information, so far as known:

- (1) A statement that the petitioner is filing the petition for the sole purpose of pursuing a wrongful death claim;
- (2) The names, relationship to the decedent and post-office addresses of beneficiaries, and the ages of any beneficiaries who are minors; and
- (3) A statement that reasonable efforts have been made to identify and locate all beneficiaries. If the petitioner knows of any actual or possible omissions from the list of beneficiaries, the petition must include a statement indicating that there are omissions from the information relating to beneficiaries.

SECTION 6. Information to beneficiaries and Department of Human Services and Oregon Health Authority. (1) A personal representative appointed under section 5 of this 2019 Act shall deliver or mail to the beneficiaries at their last-known address information that must include:

- (a) The title of the court in which the estate proceeding is pending and the case number;
- (b) The name of the decedent and the place and date of the death of the decedent;
- (c) The name and address of the personal representative, the attorney representing the personal representative in the wrongful death action and the attorney representing the personal representative in the probate proceeding;
- (d) The date of the appointment of the personal representative; and
- (e) A statement advising the beneficiaries that the rights of the beneficiaries may be affected by the proceeding and that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(2) If the personal representative is a beneficiary named in the petition, the personal representative is not required to deliver or mail the information under this section to the personal representative.

(3) Within 30 days after the date of appointment the personal representative shall cause to be filed in the estate proceeding proof of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The proof must include a copy of the information delivered or mailed and the names of the persons to whom it was delivered or mailed.

(4) If before the filing of the motion to close the estate under section 8 of this 2019 Act the personal representative has actual knowledge that the petition did not include the name and address of any beneficiary, the personal representative shall:

(a) Make reasonable efforts under the circumstances to ascertain the names and addresses of the beneficiaries that were not included;

(b) Promptly deliver or mail information specified in subsection (1) of this section to each beneficiary located after the filing of the petition and before the filing of the motion to close the estate under section 8 of this 2019 Act and to the Department of State Lands; and

(c) File in the estate proceeding, on or before filing the motion to close the estate under section 8 of this 2019 Act, proof of compliance with this subsection or a waiver of notice as provided under ORS 111.225.

(5) Within 30 days after the appointment of the personal representative, the personal representative must mail or deliver the following information to the Department of Human Services and the Oregon Health Authority:

(a) The title of the court in which the estate proceeding is pending and the case number;

(b) The name of the decedent and the place and date of the death of the decedent;

(c) The name and address of the personal representative, the attorney representing the personal representative in the wrongful death action and the attorney representing the personal representative in the probate proceeding;

(d) The date of the appointment of the personal representative; and

(e) Any other information required by rule of the department or the authority.

SECTION 7. Waiver of requirements. (1) When a personal representative is appointed under section 5 of this 2019 Act and no assets of the estate have been discovered:

(a) The following requirements are waived:

(A) Information to devisees, heirs and interested persons of appointment of personal representative under ORS 113.145;

(B) Publication of notice under ORS 113.155;

(C) The bond required under ORS 113.105;

(D) Proof of compliance of diligent search for claimants under ORS 115.003; and

(E) The inventory required under ORS 113.165.

(b) The personal representative may file an annual report on the status of the wrongful death claim in lieu of the annual account required under ORS 116.083.

(c) In lieu of filing a final account under ORS 116.083 (3), the personal representative may file a motion to close the estate under section 8 of this 2019 Act.

(2) This section does not limit or modify the provisions of ORS 30.030 (3).

SECTION 8. (1) When a personal representative is appointed under section 5 of this 2019 Act and no assets of the estate have been discovered, the personal representative may move to close the estate after resolution of the wrongful death claim and distribution of any funds recovered in the wrongful death claim, but no earlier than four months after the latest date of delivery or mailing of the information described in section 6 of this 2019 Act.

(2) The motion must state that no assets of the estate have been discovered and that the wrongful death claim has been resolved.

(3) The motion must be accompanied by receipts or other evidence satisfactory to the court showing that the damages accepted or recovered in the wrongful death claim have been distributed as provided in ORS 30.030.

(4) The personal representative shall set a time for filing objections to the motion to close the estate. Not less than 20 days before the time set, the personal representative shall mail a copy of the motion to close the estate to each beneficiary.

(5) If the court grants the motion, the court shall enter a general judgment closing the estate and discharging the personal representative. The discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative. The court may, in its discretion and upon such terms as may be just, within one year after entry of the judgment of discharge, permit an action to be brought against the personal representative if the judgment of discharge was taken through fraud or misrepresentation of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant.

SECTION 9. When damages for wrongful death are accepted or recovered in an action filed under ORS 30.020, the damages must be placed in the lawyer trust account for an attorney representing the personal representative in the estate or in the wrongful death claim or, upon order of the court, in an account subject to withdrawal only on order of the court, before being distributed under ORS 30.030.

PERSONAL REPRESENTATIVE FEES

SECTION 10. ORS 116.173 is amended to read:

116.173. (1) As used in this section, "property subject to the jurisdiction of the court" means:

(a) All property owned by the decedent at the time of death that is subject to administration, **including but not limited to amounts recovered on a personal injury claim, as defined in section 1 of this 2019 Act;**

(b) All income received during the course of the administration of the estate;

(c) All gains realized on the sale or disposition of assets during the course of the administration of the estate, to the extent that the gain realized on each asset sold or disposed of exceeds the value of the asset as provided in subsection (2) of this section; *[and]*

(d) All unrealized gains on assets acquired during the course of administration of the estate; **and**

(e) **Proceeds recovered in a wrongful death claim, as defined in section 1 of this 2019 Act, by judgment or settlement.**

(2)(a) For purposes of this section, each asset shall be valued at its highest value as *[reported]* **shown** in the inventory, any amended or supplemental inventory, any interim account or the final account or statement in lieu of the final account filed under ORS 116.083, which may be based upon revaluation of the asset to reflect its then current fair market value.

(b) **If the highest value of an asset as shown in the inventory, any amended or supplemental inventory, any interim account or the final account or statement in lieu of the final account filed under ORS 116.083 was materially misstated at the time of filing of the document, the value of the asset is the highest correctly stated value of the asset as shown in the inventory, any amended or supplemental inventory, any interim account or the final account or statement in lieu of the final account filed under ORS 116.083.**

(3) Unless the court has granted a request for a different determination of the compensation of the personal representative under ORS 113.038, upon application to the court a personal representative is entitled to receive compensation for services as provided in this section. If there is more than one personal representative acting concurrently or consecutively, the compensation may not be increased, but may be divided among the personal representatives as they agree or as the court may order. The compensation is a commission upon the whole estate, as follows:

(a) Upon the property subject to the jurisdiction of the court:

- (A) Seven percent of any sum not exceeding \$1,000.
- (B) Four percent of all above \$1,000 and not exceeding \$10,000.
- (C) Three percent of all above \$10,000 and not exceeding \$50,000.
- (D) Two percent of all above \$50,000.
- (b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon estate tax or federal estate tax purposes.
- (4) In all cases, further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual services, including services not ordinarily required of a personal representative in the performance of duties as a personal representative.
- (5) When a decedent by will has made special provision for the compensation of a personal representative:
 - (a) The personal representative is not entitled to any other compensation for services unless prior to appointment the personal representative signs and files with the clerk of the court a written renunciation of the compensation provided by the will.
 - (b) If the assets of the estate are insufficient to pay in full all expenses or claims of the estate, the compensation of the personal representative may not exceed the compensation provided by subsections (3) and (4) of this section.

SECTION 11. ORS 30.030 is amended to read:

- 30.030. (1) Upon settlement of a claim, or recovery of judgment in an action, for damages for wrongful death, by the personal representative of a decedent under ORS 30.020, the amount of damages so accepted or recovered shall be distributed in the manner prescribed in this section.
- (2) The personal representative shall make payment or reimbursement for costs, expenses and fees incurred in prosecution or enforcement of the claim, action or judgment, **including fees paid to the personal representative of the decedent attributable to the wrongful death claim under ORS 116.173 (1)(e).**
- (3) The personal representative shall make payment or reimbursement for reasonable charges necessarily incurred for doctors' services, hospital services, nursing services or other medical services, burial services and memorial services rendered for the decedent.
- (4) If under ORS 30.040 or 30.050 or by agreement of the beneficiaries a portion of the damages so accepted or recovered is apportioned to a beneficiary as recovery for loss described in ORS 30.020 (2)(d), the personal representative shall distribute that portion to the beneficiary.
- (5) The remainder of damages accepted or recovered shall be distributed to the beneficiaries in the proportions prescribed under the laws of intestate succession of the state of decedent's domicile, or as agreed by the beneficiaries, but no such damages shall be subject to payment of taxes or claims against the decedent's estate.

VENUE

SECTION 12. ORS 113.015 is amended to read:

- 113.015. (1) The venue for a proceeding seeking the appointment of a personal representative and for a proceeding to probate a will is:
- (a) In the county where the decedent had a domicile or where the decedent had a place of abode at the time of death;
 - (b) In any county where property of the decedent was located at the time of death or is located at the time the proceeding is commenced; *[or]*
 - (c) In the county in which the decedent died; **or**
 - (d) **In the county where a personal injury claim or wrongful death claim, as those terms are defined in section 1 of this 2019 Act, could be maintained.**
- (2) Filing a proceeding in a county other than specified in subsection (1) of this section does not constitute a jurisdictional defect.

APPLICABILITY

SECTION 13. (1) Section 3 of this 2019 Act applies to settlement agreements entered into on or after the effective date of this 2019 Act.

(2) Sections 1, 2 and 4 to 8 of this 2019 Act and the amendments to ORS 30.030 and 113.015 by sections 11 and 12 of this 2019 Act apply to estates in which a petition for the appointment of a personal representative is filed on or after the effective date of this 2019 Act.

(3) Section 9 of this 2019 Act applies to damages accepted or recovered on or after the effective date of this 2019 Act.

(4)(a) Except as provided in paragraph (b) of this subsection, the amendments to ORS 116.173 by section 10 of this 2019 Act apply to estates in which a petition for the appointment of a personal representative is filed on or after the effective date of this 2019 Act.

(b) The amendments to ORS 116.173 (2) by section 10 of this 2019 Act apply to applications for compensation of a personal representative filed on or after the effective date of this 2019 Act.

CAPTIONS

SECTION 14. The unit and section captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

Passed by House April 18, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 16, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State