

House Bill 3246

Sponsored by Representative NEARMAN

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 **as introduced**.

Removes requirement that person may not file small estate affidavit until 30 days after death of decedent.

Extends period during which claims may be filed against small estate from four months to five months.

A BILL FOR AN ACT

1
2 Relating to small estates; creating new provisions; and amending ORS 114.515, 114.525, 114.540 and
3 114.555.

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

5 **SECTION 1.** ORS 114.515 is amended to read:

6 114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section,
7 any of the following persons may file an affidavit with the clerk of the probate court in any county
8 where there is venue for a proceeding seeking the appointment of a personal representative for the
9 estate:

10 (a) One or more of the claiming successors of the decedent.

11 (b) If the decedent died testate, any person named as personal representative in the decedent's
12 will.

13 (c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney
14 approved under ORS 114.517, if the decedent received public assistance as defined in ORS 411.010,
15 received medical assistance as defined in ORS 414.025 or received care at an institution as defined
16 in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the
17 estate of the decedent.

18 (2) An affidavit under this section may be filed only if:

19 (a) The fair market value of the estate is \$275,000 or less;

20 (b) Not more than \$75,000 of the fair market value of the estate is attributable to personal
21 property; and

22 (c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

23 (3) An affidavit under this section may [*not*] be filed [*until 30 days*] **at any time** after the death
24 of the decedent.

25 (4) An affidavit filed under the provisions of this section must contain the information required
26 in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney ap-
27 proved by the Director of Human Services or the Director of the Oregon Health Authority, a copy
28 of the document approving the attorney must be attached to the affidavit.

29 (5) In determining fair market value under this section, the fair market value of the entire in-
30 terest in the property included in the estate shall be used without reduction for liens or other debts.

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 (6) The clerk of the probate court shall charge and collect the fee established under ORS 21.145
 2 for the filing of any affidavit under this section.

3 (7) Any error or omission in an affidavit filed under this section may be corrected by filing an
 4 amended affidavit within [four] **five** months after the filing of the affidavit.

5 (8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit
 6 under this section for the purpose of including property not described in the original affidavit.
 7 Copies of all previously filed affidavits must be attached to the supplemental affidavit and all infor-
 8 mation required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental af-
 9 fidavit may not be filed if by reason of the additional property described in the supplemental
 10 affidavit any limitation imposed by subsection (2) of this section is exceeded.

11 **SECTION 2.** ORS 114.525 is amended to read:

12 114.525. An affidavit filed under ORS 114.515 must:

13 (1) State the name, age, domicile, post-office address and Social Security number of the decedent;

14 (2) State the date and place of the decedent's death. A certified copy of the death record must
 15 be attached to the affidavit;

16 (3) Describe and state the fair market value of all property in the estate, including a legal de-
 17 scription of any real property;

18 (4) State that no application or petition for the appointment of a personal representative has
 19 been granted in Oregon;

20 (5) State whether the decedent died testate or intestate, and if the decedent died testate, the
 21 will must be attached to the affidavit;

22 (6) List the heirs of the decedent and the last address of each heir as known to the affiant, and
 23 state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent
 24 died testate, will be delivered to each heir or mailed to the heir at the last-known address;

25 (7) If the decedent died testate, list the devisees of the decedent and the last address of each
 26 devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing
 27 the date of filing will be delivered to each devisee or mailed to the devisee at the last-known ad-
 28 dress;

29 (8) State the interest in the property described in the affidavit to which each heir or devisee is
 30 entitled and the interest, if any, that will escheat;

31 (9) State that reasonable efforts have been made to ascertain creditors of the estate;

32 (10) List the expenses of and claims against the estate remaining unpaid or on account of which
 33 the affiant or any other person is entitled to reimbursement from the estate, including the known
 34 or estimated amounts of the expenses and claims and the names and addresses of the creditors as
 35 known to the affiant, and state that a copy of the affidavit showing the date of filing will be deliv-
 36 ered to each creditor who has not been paid in full or mailed to the creditor at the last-known ad-
 37 dress;

38 (11) Separately list the name and address of each person known to the affiant to assert a claim
 39 against the estate that the affiant disputes and the known or estimated amount of the claim and
 40 state that a copy of the affidavit showing the date of filing will be delivered to each such person
 41 or mailed to the person at the last-known address;

42 (12) State that a copy of the affidavit showing the date of filing will be mailed or delivered to
 43 the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the
 44 department or authority;

45 (13) State that claims against the estate not listed in the affidavit or in amounts larger than

1 those listed in the affidavit may be barred unless:

2 (a) A claim is presented to the affiant within *[four]* **five** months of the filing of the affidavit at
 3 the address stated in the affidavit for presentation of claims; or

4 (b) A personal representative of the estate is appointed within the time allowed under ORS
 5 114.555; and

6 (14) If the affidavit lists one or more claims that the affiant disputes, state that any such claim
 7 may be barred unless:

8 (a) A petition for summary determination is filed within *[four]* **five** months of the filing of the
 9 affidavit; or

10 (b) A personal representative of the estate is appointed within the time allowed under ORS
 11 114.555.

12 **SECTION 3.** ORS 114.540 is amended to read:

13 114.540. (1) A claim against an estate with respect to which an affidavit is filed under ORS
 14 114.515 may be presented to the affiant within *[four]* **five** months after the affidavit was filed. If an
 15 amended affidavit is filed under ORS 114.515 (7), claims against the estate must be filed within
 16 *[four]* **five** months after the filing of the amended affidavit. If a supplemental affidavit is filed under
 17 ORS 114.515 (8), claims against the estate must be filed within *[four]* **five** months after the filing of
 18 the supplemental affidavit. Each claim presented to the affiant must include the information required
 19 by ORS 115.025.

20 (2) A claim presented to the affiant shall be considered allowed as presented unless within 60
 21 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance
 22 of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of dis-
 23 allowance of a claim shall inform the claimant that the claim has been disallowed in whole or in
 24 part and, to the extent disallowed, will be barred unless:

25 (a) The claimant proceeds as provided in subsection (3) of this section; or

26 (b) A personal representative is appointed within the time allowed under ORS 114.555.

27 (3) A creditor of the estate whose claim has been presented within the time permitted by sub-
 28 section (1) of this section and disallowed by the affiant may within 30 days after the date of mailing
 29 or delivery of the notice of disallowance file with the probate court a petition for summary deter-
 30 mination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit
 31 as disputed may within *[four]* **five** months after the filing of the affidavit file with the probate court
 32 a petition for summary determination of the creditor's claim by the court. The court shall hear the
 33 matter without a jury, after notice to the creditor and affiant, and any interested person may be
 34 heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing
 35 the court shall determine the claim in a summary manner and shall make an order allowing or dis-
 36 allowing the claim in whole or in part. If the court allows the claim in whole or in part, the order
 37 shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim
 38 pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been
 39 made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the
 40 extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal
 41 may be taken from the order of the court made upon the summary determination.

42 **SECTION 4.** ORS 114.555 is amended to read:

43 114.555. If a personal representative is not appointed within *[four]* **five** months after the filing
 44 of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property de-
 45 scribed in the affidavit is transferred to the person or persons shown by the affidavit to be entitled

1 thereto, and any other claims against the property are barred, except:

2 (1) As provided in ORS 114.540, 114.545 and 114.550; and

3 (2) For the purposes of a surviving spouse's claim for an elective share in the manner provided
4 by ORS 114.600 to 114.725.

5 **SECTION 5. The amendments to ORS 114.515, 114.525, 114.540 and 114.555 by sections 1**
6 **to 4 of this 2019 Act apply to decedents who die on or after the effective date of this 2019**
7 **Act.**

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