

# Senate Bill 842

Sponsored by Senator THATCHER; Senator FAGAN

## 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**.

Directs Secretary of State to create Oregon Will Bank and Registry. Limits individuals authorized to access information regarding wills in Oregon Will Bank and Registry. Authorizes destruction of wills in Secretary of State's custody after 75 years and publication of notice.

Requires certain persons destroying will to register destruction of will with Oregon Will Bank and Registry.

## A BILL FOR AN ACT

1  
2 Relating to the custody of wills; creating new provisions; and amending ORS 112.800 and 112.820.

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

4 **SECTION 1. ORS 112.800 to 112.830 are added to and made a part of ORS chapter 112.**

5 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 112.800 to**  
6 **112.830.**

7 **SECTION 3. (1) The Secretary of State shall create and maintain the Oregon Will Bank**  
8 **and Registry and may serve as a custodian of wills for residents of this state.**

9 **(2) Any resident of this state may:**

10 **(a) Request that the Secretary of State serve as custodian of the person's will; or**

11 **(b) Request that the Secretary of State add information regarding the person's will to the**  
12 **Oregon Will Bank and Registry.**

13 **(3) The Secretary of State shall include the following information in the Oregon Will**  
14 **Bank and Registry about each will that is registered with the Oregon Will Bank and Registry**  
15 **or for which the Secretary of State is the custodian:**

16 **(a) The full name of the testator;**

17 **(b) The date the will was made;**

18 **(c) The full name and address of the personal representative named in the will;**

19 **(d) The location of the will at the time of registration; and**

20 **(e) The date the will was destroyed, if applicable.**

21 **(4) The Secretary of State shall store wills for which the secretary is the custodian in a**  
22 **secure location with protections against fire, water and any other natural damage.**

23 **(5) The Secretary of State may release information contained in the Oregon Will Bank**  
24 **and Registry only to the following individuals or the attorneys for the following individuals:**

25 **(a) The testator;**

26 **(b) The testator's conservator;**

27 **(c) The testator's attorney-in-fact; or**

28 **(d) Upon proof of the testator's death:**

29 **(A) The personal representative named in the will;**

30 **(B) The testator's surviving spouse;**

**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 (C) A descendant of the testator; or

2 (D) The testator’s conservator.

3 (6) The Secretary of State is not liable for the accuracy of the information represented  
4 to the secretary by individuals described in subsection (5) of this section.

5 (7) The Secretary of State may dispose of a will in the secretary’s custody in accordance  
6 with ORS 112.820 if:

7 (a) Not less than 75 years have passed since execution of the will;

8 (b) The Secretary of State does not know and after diligent inquiry cannot ascertain the  
9 address of the testator; and

10 (c) The will is not subject to a contract to make a will or devise or not to revoke a will  
11 or devise.

12 (8)(a) A will held in the custody of the Secretary of State is presumed to be the last will  
13 and testament of the testator.

14 (b) The presumption in paragraph (a) of this subsection is rebuttable by clear and con-  
15 vincing evidence.

16 (9) Failure to register or deposit a will with the Secretary of State under this section  
17 does not affect the validity of the will.

18 (10) The Secretary of State shall prescribe by rule the procedures for registering or de-  
19 positing a will with the Secretary of State and for requesting information from the Oregon  
20 Will Bank and Registry.

21 (11) The Secretary of State by rule shall establish fees for acting as the custodian of a  
22 will and for the registration of wills under this section. The fees must be in an amount ade-  
23 quate to pay all administrative costs incurred by the Secretary of State in carrying out the  
24 secretary’s duties under ORS 112.800 to 112.830.

25 **SECTION 4.** ORS 112.800 is amended to read:

26 112.800. As used in ORS 112.800 to 112.830, unless the context requires otherwise[,]:

27 (1) “Conservator” has the meaning given that term in ORS 125.005.

28 (2) “Custodian” means an attorney who has custody of a will or the Secretary of State  
29 who has custody of a will.

30 (3) “Person” means the Secretary of State, a natural person, a partnership, a corporation, a  
31 bank, a trust company and any other organization or legal entity.

32 **SECTION 5.** ORS 112.820 is amended to read:

33 112.820. (1) [An attorney] **A custodian of a will** authorized to destroy a will under ORS 112.815  
34 or section 3 of this 2019 Act may proceed as follows:

35 (a) The **custodian** [attorney] shall first publish a notice in a newspaper of general circulation  
36 in the county of the last-known address of the testator, if any, otherwise in **Marion County** or the  
37 county of the principal place of business of the [attorney] **custodian**. The notice shall state the name  
38 of the testator, the date of the will and the intent of the **custodian** [attorney] to destroy the will if  
39 the testator does not contact the **custodian** [attorney] within 90 days after the date of the notice.

40 (b) If the testator fails to contact the [attorney] **custodian** within 90 days after the date of the  
41 notice, the [attorney] **custodian** may destroy the will.

42 (c) Within 30 days after destruction of the will, the [attorney] **custodian** shall file with the pro-  
43 bate court in the county where the notice was published an affidavit stating the name of the  
44 testator, the name and relationship of each person named in the will whom the testator identified  
45 as related to the testator by blood, adoption or marriage, the date of the will, proof of the publica-

1 tion and the date of destruction.

2 (d) The clerk of the probate court shall charge and collect the fee established under ORS 21.145  
3 for filing of the affidavit.

4 (2) If a will has not been admitted to probate within 40 years following the death of the testator,  
5 [*an attorney having custody*] **the custodian** of the will may destroy the will without notice to any  
6 person or court.

7 **(3) A custodian who destroys a will under this section shall register the destruction of**  
8 **the will with the Oregon Will Bank and Registry created under section 3 of this 2019 Act.**

9 **SECTION 6. The amendments to ORS 112.800 and 112.820 by sections 4 and 5 of this 2019**  
10 **Act apply to the destruction of wills occurring on or after the effective date of this 2019 Act.**

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