

## **SB 220 STAFF MEASURE SUMMARY**

### **House Committee On Judiciary**

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**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 5/3, 5/5, 5/20

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#### **WHAT THE MEASURE DOES:**

Specifies process and formalities for electronic witnessing of execution or acknowledgment of writings. Specifies that persons may be in electronic presence communicating in real time to the same extent as if the individuals were physically present in the same location. Specifies five requirements that must be met for a writing to be properly executed or acknowledged through electronic presence: 1) the witness has satisfactory evidence of the identity of the person; 2) the person executes or acknowledges the writing while in the electronic presence of the witness and causes the signature page to be emailed or sent by facsimile; 3) the witness, while located inside the United States, attests to the writing by signing the transmitted copy of the signature page while in the electronic presence of the person and delivers the signed executed signature page to the person via email or facsimile; 4) the person completes a declaration of electronic presence under penalty of perjury; and 5) the witness completes a declaration of remote attestation under penalty of perjury. Specifies criteria for satisfactory evidence of a person's identity and provides form for declaration of electronic presence. Prohibits remote witnessing for notarial acts, witnessing of execution of wills, or witnessing of signatures on petitions. Declares emergency, effective on passage.

#### **ISSUES DISCUSSED:**

- Documents may require witnessing but not notarization
- Difficulty in gathering witnesses during COVID-19 pandemic
- Applicability to wedding witnesses
- Definition of "in real time"

#### **EFFECT OF AMENDMENT:**

No amendment.

#### **BACKGROUND:**

Oregon law requires several forms or documents to be executed or acknowledged in the presence of a witness in order to be effective. These include consent for autopsy, a record of or revocation of an anatomical gift, an advance directive, a declaration for mental health treatment, a voluntary acknowledgment of paternity, or consent to a life settlement contract. Due to the COVID-19 pandemic and Governor's Emergency Orders on social distancing, it may not be possible for persons wishing to execute one of these documents to meet with a witness. The Oregon Law Commission's Probate Modernization Work Group undertook an effort to provide parameters on remote attestation.

Senate Bill 220 is the product of the Probate Modernization Work Group's efforts. It provides that remote attestation of documents and forms may be allowed if the person's identification is provided to a satisfactory level and if particular formalities are followed. The measure requires that the parties be in electronic communication in real time to the extent they would be if they were in person. The person must execute or acknowledge the writing and send the signature page to the person, who then signs it in the presence of the person and sends it back. Both witness and signer must complete a declaration of remote attestation under penalty of perjury. SB 220 specifies that remote attestation cannot be used for execution of wills, documents requiring notarial acts, or witnessing of signatures on petitions.

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Senate Judiciary: 4-3-0-0

Senate Floor: 22-5-3-0

No Fiscal Impact

No Revenue Impact

PRELIMINARY