

Senate Bill 309

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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**.

Modifies number of weeks notice to interested persons in decedent's estate must be published.

A BILL FOR AN ACT

1
2 Relating to publication of notice to interested persons; creating new provisions; and amending ORS
3 30.065, 93.985, 112.049, 113.075, 113.155, 113.225, 114.085, 115.005, 115.185 and 116.193.

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

5 **SECTION 1.** ORS 113.155 is amended to read:

6 113.155. (1) Except as provided in subsection (5) of this section, upon appointment a personal
7 representative shall cause a notice to interested persons to be published once in [*each of three con-*
8 *secutive weeks in*]:

9 (a) A newspaper published in the county in which the estate proceeding is pending; or

10 (b) If no newspaper is published in the county in which the estate proceeding is pending, a
11 newspaper designated by the court.

12 (2) The notice shall include:

13 (a) The title of the court in which the estate proceeding is pending;

14 (b) The name of the decedent;

15 (c) The name of the personal representative and the address at which claims are to be presented;

16 (d) A statement requiring all persons having claims against the estate to present them, within
17 four months after the date of [*the first*] publication of the notice to the personal representative at
18 the address designated in the notice for the presentation of claims or they may be barred;

19 (e) The date of [*the first*] publication of the notice; and

20 (f) A statement advising all persons whose rights may be affected by the proceeding that addi-
21 tional information may be obtained from the records of the court, the personal representative or the
22 attorney for the personal representative.

23 (3) The failure of the personal representative to cause a notice to be published under this sec-
24 tion is a breach of duty to the persons concerned, but does not affect the validity of appointment,
25 duties or powers or the exercise of duties or powers.

26 (4) A personal representative shall file in the estate proceeding proof of the publication of notice
27 required by this section. The proof shall include a copy of the published notice.

28 (5)(a) This section does not apply if the petition for appointment of the personal representative
29 states that no assets of the estate are known to the petitioner and no assets of the estate have come
30 into the possession or knowledge of the personal representative.

31 (b) If the petition for appointment of the personal representative states that no assets of the

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 estate are known to the petitioner and assets of the estate later come into the possession or
 2 knowledge of the personal representative, the personal representative shall, within 30 days after the
 3 filing of the inventory or supplemental inventory first showing assets of the estate, commence pub-
 4 lication of notice to interested persons as provided in this section.

5 **SECTION 2.** ORS 30.065 is amended to read:

6 30.065. (1) A petition may be filed in probate proceedings to assert that the interest in damages
 7 distributable to a parent or stepparent under ORS 30.030 to 30.060 is subject to forfeiture under ORS
 8 30.063. A petition may be filed under this section only by a person who would be benefited by a
 9 forfeiture of the parent’s or stepparent’s distribution.

10 (2) A petition under this section must be filed not later than:

11 (a) Four months after the date of delivery or mailing of the information described in ORS 113.145
 12 if that information was required to be delivered or mailed to the person on whose behalf the petition
 13 is filed; or

14 (b) If the person on whose behalf the petition is filed was not required to be named as an in-
 15 terested person in the petition for appointment of a personal representative:

16 (A) Four months after the *[first]* **date of** publication of notice to interested persons; or

17 (B) If notice to interested persons was not published, one year after the decedent’s date of death.

18 (3) The petitioner has the burden of proving the facts alleged in a petition filed under this sec-
 19 tion by:

20 (a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

21 (b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

22 **SECTION 3.** ORS 93.985 is amended to read:

23 93.985. (1) A petition may be filed in probate proceedings to assert that the interest in property,
 24 as defined in ORS 93.949, transferred by a transfer on death deed to a parent of a deceased
 25 transferor is subject to forfeiture under ORS 93.983. A petition may be filed under this section only
 26 by a person who would be benefited by a forfeiture of the parent’s share.

27 (2) A petition under this section must be filed not later than:

28 (a) Four months after the date of delivery or mailing of the information described in ORS 113.145
 29 if that information was required to be delivered or mailed to the person on whose behalf the petition
 30 is filed; or

31 (b) If the person on whose behalf the petition is filed was not required to be named as an in-
 32 terested person in the petition for appointment of a personal representative:

33 (A) Four months after the *[first]* **date of** publication of notice to interested persons; or

34 (B) If notice to interested persons was not published, one year after the decedent’s date of death.

35 (3) The petitioner has the burden of proving the facts alleged in a petition filed under this sec-
 36 tion by:

37 (a) If the petitioner is a child or sibling of the transferor, a preponderance of evidence; or

38 (b) If the petitioner is not a child or sibling of the transferor, clear and convincing evidence.

39 **SECTION 4.** ORS 112.049 is amended to read:

40 112.049. (1) A petition may be filed in probate proceedings to assert that the intestate share of
 41 a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this
 42 section only by a person who would be benefited by a forfeiture of the parent’s share.

43 (2) A petition under this section must be filed not later than:

44 (a) Four months after the date of delivery or mailing of the information described in ORS 113.145
 45 if that information was required to be delivered or mailed to the person on whose behalf the petition

1 is filed; or

2 (b) If the person on whose behalf the petition is filed was not required to be named as an in-
3 terested person in the petition for appointment of a personal representative:

4 (A) Four months after the *[first]* **date of** publication of notice to interested persons; or

5 (B) If notice to interested persons was not published, one year after the decedent's date of death.

6 (3) The petitioner has the burden of proving the facts alleged in a petition filed under this sec-
7 tion by:

8 (a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

9 (b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

10 **SECTION 5.** ORS 113.075 is amended to read:

11 113.075. (1) Any interested person may contest the probate of the will or the validity of the will
12 or assert an interest in the estate for the reason that:

13 (a) The will alleged in the petition for probate to be the will of the decedent is ineffective in
14 whole or part;

15 (b) There exists a will that has not been alleged in the petition to be the will of the decedent;
16 or

17 (c) The decedent agreed, promised or represented that the decedent would make or revoke a
18 will or devise, or not revoke a will or devise, or die intestate.

19 (2) An action described in subsection (1) of this section must be commenced by the filing of a
20 petition in the probate proceedings, except that an action described in subsection (1)(c) of this sec-
21 tion may be commenced by the filing of a separate action in any court of competent jurisdiction.

22 (3) An action described in subsection (1) of this section must be commenced before the later of:

23 (a) Four months after the date of delivery or mailing of the information described in ORS 113.145
24 if that information was required to be delivered or mailed to the person on whose behalf the action
25 under subsection (1) of this section is filed; or

26 (b) Four months after the *[first]* **date of** publication of notice to interested persons if the person
27 on whose behalf the action under subsection (1) of this section is filed was not required to be named
28 in the petition for probate as an interested person.

29 (4)(a) A person who commences an action under subsection (1) of this section shall give notice
30 of the action to heirs and devisees identified in the petition for probate or amended petition for
31 probate, and to the State Treasurer if the personal representative has delivered or mailed informa-
32 tion to the State Treasurer under ORS 113.045.

33 (b) If any devisee under the contested will is a charitable trust as described in ORS 130.170, a
34 public benefit corporation as defined in ORS 65.001 or a religious organization, a person who com-
35 mences an action under subsection (1) of this section shall give notice to the Attorney General of
36 the action.

37 (5) A cause of action described in subsection (1)(c) of this section may not be presented as a
38 claim under ORS chapter 115.

39 **SECTION 6.** ORS 113.225 is amended to read:

40 113.225. (1) If the personal representative dies, is removed by the court or resigns after the no-
41 tice to interested persons required by ORS 113.155 has been published but before the expiration of
42 four months from the date of *[first]* publication, the successor personal representative shall cause
43 notice to interested persons to be published as if the successor were the original personal repre-
44 sentative. The republished notice shall state:

45 (a) That the original personal representative died, was removed by the court or resigned.

1 (b) The date of death, removal or resignation and the date of appointment of the new personal
2 representative.

3 (c) That all persons having claims against the estate shall present the claims to the new per-
4 sonal representative as provided in ORS 115.005 within four months after the date of [*the first*]
5 publication of the republished notice, or the claims may be barred.

6 (2) Notice by the successor personal representative is not required under subsection (1) of this
7 section if the original personal representative dies, is removed by the court, or resigns after the
8 expiration of four months from the date of [*the first*] publication of the notice to interested persons.

9 **SECTION 7.** ORS 114.085 is amended to read:

10 114.085. If it appears, after the expiration of four months after the date of [*the first*] publication
11 of notice to interested persons, that reasonable provision for support of the spouse and dependent
12 children of the decedent, or any of them, warrants that the whole of the estate, after payment of
13 claims, taxes and expenses of administration, be set apart for such support, the court may so order.
14 There shall be no further proceeding in the administration of the estate, and the estate shall sum-
15 marily be closed.

16 **SECTION 8.** ORS 115.005 is amended to read:

17 115.005. (1)(a) Claims against the estate of a decedent, other than claims of the personal repre-
18 sentative as a creditor of the decedent, shall be presented to the personal representative. Filing a
19 claim with the court does not constitute presentation to the personal representative. Except as
20 provided in paragraph (b) of this subsection, a claim is presented to the personal representative
21 when the claim is mailed or personally delivered to the personal representative at:

22 (A) The address for the personal representative included in the petition for appointment of the
23 personal representative under ORS 113.035;

24 (B) The address provided for presentation of claims under ORS 115.003; or

25 (C) The address provided for presentation of claims in the published notice under ORS 113.155
26 or 113.225.

27 (b) In addition to the addresses for the presentation of claims under paragraph (a) of this sub-
28 section, the personal representative may authorize creditors to present claims by electronic mail or
29 facsimile communication to a designated electronic mail address or facsimile number. If the personal
30 representative authorizes alternative methods of presentation under this subsection, a claim is pre-
31 sented to the personal representative when it is sent to the electronic mail address or the facsimile
32 number designated by the personal representative for the presentation of claims, unless the sender
33 receives a notice that the electronic mail was not delivered or the facsimile communication was not
34 successful. If the personal representative denies receiving the electronic mail or facsimile commu-
35 nication, the burden of proof is on the creditor to demonstrate that the electronic mail was properly
36 addressed and sent or that the facsimile communication was properly addressed and successfully
37 delivered or transmitted.

38 (2) Except as provided in subsection (3) of this section, a claim is barred from payment from the
39 estate if not presented within the statute of limitations applicable to the claim and before the later
40 of:

41 (a) Four months after the date of [*first*] publication of notice to interested persons; or

42 (b) If the claim was one with respect to which the personal representative was required to de-
43 liver or mail a notice under ORS 115.003 (2), 45 days after a notice meeting the requirements of ORS
44 115.003 (3) is delivered or mailed to the last-known address of the person asserting the claim.

45 (3) A claim against the estate presented after claims are barred under subsection (2) of this

1 section shall be paid from the estate if the claim:

2 (a) Is presented before the expiration of the statute of limitations applicable to the claim and
3 before the personal representative files the final account;

4 (b) Is presented by a person who did not receive a notice under ORS 115.003 mailed or delivered
5 more than 30 days prior to the date on which the claim is presented and who is not an assignee of
6 a person who received such notice; and

7 (c) Would be allowable but for the time at which the claim is presented.

8 (4) A claim against an estate may be paid under subsection (3) of this section only after payment
9 of all expenses having priority over claims under ORS 115.125 and payment of all previously pre-
10 sented claims.

11 (5) This section does not affect or prevent:

12 (a) Any proceeding to enforce a mortgage, pledge or other lien upon property of the estate, or
13 to quiet title or reform any instrument with respect to title to property; or

14 (b) To the limits of the insurance protection only, any proceeding to establish liability of the
15 decedent or the personal representative for which the decedent or personal representative is pro-
16 tected by liability insurance at the time the proceeding is commenced.

17 **SECTION 9.** ORS 115.185 is amended to read:

18 115.185. A creditor whose claim has been allowed or established by summary determination or
19 separate action, and who has not received payment within six months after the date of [*the first*]
20 publication of notice to interested persons, may apply to the court for an order directing the per-
21 sonal representative to pay the claim to the extent that funds of the estate are available for that
22 payment.

23 **SECTION 10.** ORS 116.193 is amended to read:

24 116.193. If it appears to the court, at any time after the expiration of four months after the date
25 of [*the first*] publication of notice to interested persons, that there is no known person to take by
26 descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon
27 and that the whole of the estate, after payment of claims, taxes and expenses of administration, be
28 distributed to the State Treasurer for deposit into the Unclaimed Property and Estates Fund. There
29 shall be no further proceeding in the administration of the estate, and the estate shall summarily
30 be closed.

31 **SECTION 11.** The amendments to statutes by sections 1 to 10 of this 2023 Act apply to
32 probate proceedings commenced on or after the effective date of this 2023 Act.
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