

## **HB 3007 -4 STAFF MEASURE SUMMARY**

### **House Committee On Judiciary**

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**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 3/13, 4/8

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

Clarifies process for use of small estate affidavit in probate proceedings involving estates with less than \$75,000 in personal property and \$200,000 in real property. Specifies that the fair market value of the estate is determined at the time of the death of the decedent or, if the date of death is more than one year before the date of filing, then within 45 days of the filing. Prohibits use of the affidavit if person would be disqualified from acting as a personal representative or if person has been convicted of a felony in Oregon or other jurisdiction. Provides process for filing amended affidavit; requires affidavit be filed no sooner than 30 days after death. Specifies that if the value of the property of the estate exceeds the limitations for a small estate, the authority of the affiant is terminated and a personal representative must be appointed. Increases information that must be disclosed in a small estate affidavit. Allows attorney fees to a prevailing party in cases in which a court finds an affiant filed a motion to compel payment of a debt or delivery of property without an objectively reasonable basis, or the party refused to deliver the property or pay the debt without an objectively reasonable basis. Specifies procedure for claims against small estate. Allows court to make summary determination of claim against small estate; specifies process. Affirms that affiant is a fiduciary with a general duty to administer, preserve, settle, and distribute the estate and prohibits commingling of property of estate with that of affiant or any other person. Updates rules on selling or transferring property of the estate. Details liability of affiant, including liability for losses due to neglect, commingling, self-dealing, or negligence in administration of the estate. Removes automatic transfer provisions. Specifies process for heir, beneficiary, or creditor to obtain amounts owed from estate through summary review.

#### **ISSUES DISCUSSED:**

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

-4 Provides notice of duty to pay debt or turn over property. Requires notice be included on first page of small estate affidavit sent to potential debtors and creditors. Updates process for compelling payment of debt or transfer of property. Prohibits creditor from using summary review provisions if claim was properly presented, disallowed, and summary review not sought within time required. Modifies ORS 112.238 to allow a petition to show that a writing was intended to be a decedent's will, even if not properly executed.

##### **BACKGROUND:**

The Oregon Law Commission's Probate Modernization Work Group has been reviewing the probate statutes since 2013. Their efforts have resulted in enacted legislation in the 2015, 2016, and 2017 sessions. During the 2017-2018 interim, the Work Group undertook changes to the probate statutes in three areas: estates in which no assets are known to exist; small estates; and estates in which the personal representative is pursuing a wrongful death claim.

House Bill 3007 modifies the process for probate of small estates.