

House Bill 3008

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission Probate Modernization Work Group)

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**.

Requires approval by probate court of settlement of personal injury claim or wrongful death claim arising out of injuries to decedent.

Modifies provisions relating to probate proceedings related to personal injury claims and wrongful death claims.

Modifies provisions relating to misstatement of value of asset in certain probate inventories and accounts.

A BILL FOR AN ACT

1
2 Relating to estates; creating new provisions; and amending ORS 30.030, 113.015 and 116.173.

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

DEFINITIONS

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7 **SECTION 1. Definitions for sections 1 to 8 of this 2019 Act. As used in sections 1 to 8**
8 **of this 2019 Act:**

9 (1) **“Beneficiary” means a person for whose benefit an action against a wrongdoer may**
10 **be brought under ORS 30.020.**

11 (2) **“Interested person” has the meaning given that term in ORS 111.005.**

12 (3) **“Personal injury claim” means a cause of action arising out of injuries to a decedent,**
13 **caused by the wrongful act or omission of another, that do not result in the death of the**
14 **decedent.**

15 (4) **“Wrongful death claim” means a cause of action arising out of injuries to a decedent,**
16 **caused by the wrongful act or omission of another, that result in the death of the decedent.**

APPLICATION

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20 **SECTION 2. Application. Except as specifically provided in sections 1 to 8 of this 2019**
21 **Act, ORS 30.010 to 30.100 and 119.006 to 119.081 and ORS chapters 111, 112, 113, 114, 115, 116,**
22 **117 and 118 apply to wrongful death claims and estates with personal injury claims.**

PERSONAL INJURY CLAIMS AND WRONGFUL DEATH CLAIMS

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26 **SECTION 3. Court approval of settlement of personal injury claim or wrongful death**
27 **claim.** (1) **Notwithstanding ORS 114.305, the parties to a personal injury claim or a wrongful**
28 **death claim may not enter into a settlement agreement without the approval of the probate**

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 court, whether or not an action asserting the personal injury claim or wrongful death claim
2 has been commenced. The personal representative shall petition the probate court for ap-
3 proval of the proposed settlement, and the probate court shall determine the adequacy of the
4 proposed settlement. The petition need not state the amount of the proposed settlement.

5 (2) A petition to approve a settlement under this section must be accompanied by a dec-
6 laration under penalty of perjury of the attorney for the personal representative in the per-
7 sonal injury claim or the wrongful death claim:

8 (a) Stating whether the claim being settled is a personal injury claim or a wrongful death
9 claim;

10 (b) Describing the incident causing the injury or death;

11 (c) Describing the injuries;

12 (d) Stating the amount of the claim;

13 (e) Stating the amount of the settlement;

14 (f) Stating the amount of attorney fees and costs;

15 (g) Stating the amount of payments or reimbursements owed under ORS 30.030 (3);

16 (h) Stating the amount of any personal representative fee attributable to a wrongful
17 death claim;

18 (i) Stating the reasons for the settlement and the efforts to maximize recovery;

19 (j) Stating that the attorney has independently evaluated the interests of the estate and
20 beneficiaries;

21 (k) Stating that the attorney has examined the applicable medical records;

22 (L) Stating whether the attorney has consulted with the Department of Human Services
23 to determine if any lien exists under ORS 416.540; and

24 (m) Explaining why it is appropriate to settle the case.

25 **SECTION 4. Deferral of requirements in certain cases.** If the only asset of an estate is
26 a personal injury cause of action that has not been adjudicated or settled, the court shall:

27 (1) Defer bond requirements until a settlement of the personal injury claim is approved
28 under section 3 of this 2019 Act; and

29 (2) Accept an annual report on the status of the personal injury claim in lieu of the an-
30 nual account required under ORS 116.083.

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32 **PROBATE FOR SOLE PURPOSE OF PURSUING WRONGFUL DEATH CLAIM**

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34 **SECTION 5. Petition for appointment of personal representative.** Any beneficiary, any
35 interested person or the person nominated as personal representative named in the will may
36 petition for the appointment of a personal representative for the sole purpose of pursuing a
37 claim for the wrongful death of the decedent. Except as provided in section 7 of this 2019
38 Act, a personal representative appointed under this section has all the duties of a personal
39 representative under ORS 119.006 to 119.081 and ORS chapters 113, 114, 115, 116, 117 and 118.
40 In addition to the information required under ORS 113.035, a petition filed under this section
41 must include the following information, so far as known:

42 (1) A statement that the petitioner is filing the petition for the sole purpose of pursuing
43 a wrongful death claim;

44 (2) The names, relationship to the decedent and post-office addresses of beneficiaries, and
45 the ages of any beneficiaries who are minors; and

1 (3) A statement that reasonable efforts have been made to identify and locate all benefi-
2 ciaries. If the petitioner knows of any actual or possible omissions from the list of benefi-
3 ciaries, the petition must include a statement indicating that there are omissions from the
4 information relating to beneficiaries.

5 **SECTION 6. Information to beneficiaries and Department of Human Services and Oregon**
6 **Health Authority.** (1) A personal representative appointed under section 5 of this 2019 Act
7 shall deliver or mail to the beneficiaries at their last-known address information that must
8 include:

9 (a) The title of the court in which the estate proceeding is pending and the case number;

10 (b) The name of the decedent and the place and date of the death of the decedent;

11 (c) The name and address of the personal representative, the attorney representing the
12 personal representative in the wrongful death action and the attorney representing the per-
13 sonal representative in the probate proceeding;

14 (d) The date of the appointment of the personal representative; and

15 (e) A statement advising the beneficiaries that the rights of the beneficiaries may be af-
16 fected by the proceeding and that additional information may be obtained from the records
17 of the court, the personal representative or the attorney for the personal representative.

18 (2) If the personal representative is a beneficiary named in the petition, the personal
19 representative is not required to deliver or mail the information under this section to the
20 personal representative.

21 (3) Within 30 days after the date of appointment the personal representative shall cause
22 to be filed in the estate proceeding proof of the delivery or mailing required by this section
23 or a waiver of notice as provided under ORS 111.225. The proof must include a copy of the
24 information delivered or mailed and the names of the persons to whom it was delivered or
25 mailed.

26 (4) If before the filing of the motion to close the estate under section 8 of this 2019 Act
27 the personal representative has actual knowledge that the petition did not include the name
28 and address of any beneficiary, the personal representative shall:

29 (a) Make reasonable efforts under the circumstances to ascertain the names and ad-
30 dresses of the beneficiaries that were not included;

31 (b) Promptly deliver or mail information specified in subsection (1) of this section to each
32 beneficiary located after the filing of the petition and before the filing of the motion to close
33 the estate under section 8 of this 2019 Act and to the Department of State Lands; and

34 (c) File in the estate proceeding, on or before filing the motion to close the estate under
35 section 8 of this 2019 Act, proof of compliance with this subsection or a waiver of notice as
36 provided under ORS 111.225.

37 (5) Within 30 days after the appointment of the personal representative, the personal
38 representative must mail or deliver the following information to the Department of Human
39 Services and the Oregon Health Authority:

40 (a) The title of the court in which the estate proceeding is pending and the case number;

41 (b) The name of the decedent and the place and date of the death of the decedent;

42 (c) The name and address of the personal representative, the attorney representing the
43 personal representative in the wrongful death action and the attorney representing the per-
44 sonal representative in the probate proceeding;

45 (d) The date of the appointment of the personal representative; and

1 (e) Any other information required by rule of the department or the authority.

2 **SECTION 7. Waiver of requirements.** (1) When a personal representative is appointed
3 under section 5 of this 2019 Act and no assets of the estate have been discovered:

4 (a) The following requirements are waived:

5 (A) Information to devisees, heirs and interested persons of appointment of personal
6 representative under ORS 113.145;

7 (B) Publication of notice under ORS 113.155;

8 (C) The bond required under ORS 113.105;

9 (D) Proof of compliance of diligent search for claimants under ORS 115.003; and

10 (E) The inventory required under ORS 113.165.

11 (b) The personal representative may file an annual report on the status of the wrongful
12 death claim in lieu of the annual account required under ORS 116.083.

13 (c) In lieu of filing a final account under ORS 116.083 (3), the personal representative may
14 file a motion to close the estate under section 8 of this 2019 Act.

15 (2) This section does not limit or modify the provisions of ORS 30.030 (3).

16 **SECTION 8.** (1) When a personal representative is appointed under section 5 of this 2019
17 Act and no assets of the estate have been discovered, the personal representative may move
18 to close the estate after resolution of the wrongful death claim and distribution of any funds
19 recovered in the wrongful death claim, but no earlier than four months after the latest date
20 of delivery or mailing of the information described in section 6 of this 2019 Act.

21 (2) The motion must state that no assets of the estate have been discovered and that the
22 wrongful death claim has been resolved.

23 (3) The motion must be accompanied by receipts or other evidence satisfactory to the
24 court showing that the damages accepted or recovered in the wrongful death claim have been
25 distributed as provided in ORS 30.030.

26 (4) The personal representative shall set a time for filing objections to the motion to
27 close the estate. Not less than 20 days before the time set, the personal representative shall
28 mail a copy of the motion to close the estate to each beneficiary.

29 (5) If the court grants the motion, the court shall enter a general judgment closing the
30 estate and discharging the personal representative. The discharge so entered operates as a
31 release of the personal representative from further duties and as a bar to any action against
32 the personal representative. The court may, in its discretion and upon such terms as may
33 be just, within one year after entry of the judgment of discharge, permit an action to be
34 brought against the personal representative if the judgment of discharge was taken through
35 fraud or misrepresentation of the personal representative or through the mistake,
36 inadvertence, surprise or excusable neglect of the claimant.

37 **SECTION 9.** When damages for wrongful death are accepted or recovered in an action
38 filed under ORS 30.020, the damages must be placed in the lawyer trust account for an at-
39 torney representing the personal representative in the estate or in the wrongful death claim
40 or, upon order of the court, in an account subject to withdrawal only on order of the court,
41 before being distributed under ORS 30.030.

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43 **PERSONAL REPRESENTATIVE FEES**

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45 **SECTION 10.** ORS 116.173 is amended to read:

1 116.173. (1) As used in this section, “property subject to the jurisdiction of the court” means:

2 (a) All property owned by the decedent at the time of death that is subject to administration,
 3 **including but not limited to amounts recovered on a personal injury claim, as defined in**
 4 **section 1 of this 2019 Act;**

5 (b) All income received during the course of the administration of the estate;

6 (c) All gains realized on the sale or disposition of assets during the course of the administration
 7 of the estate, to the extent that the gain realized on each asset sold or disposed of exceeds the value
 8 of the asset as provided in subsection (2) of this section; *[and]*

9 (d) All unrealized gains on assets acquired during the course of administration of the estate;
 10 **and**

11 **(e) Proceeds recovered in a wrongful death claim, as defined in section 1 of this 2019 Act,**
 12 **by judgment or settlement.**

13 (2)(a) For purposes of this section, each asset shall be valued at its highest value as *[reported]*
 14 **shown** in the inventory, any amended or supplemental inventory, any interim account or the final
 15 account or statement in lieu of the final account filed under ORS 116.083, which may be based upon
 16 revaluation of the asset to reflect its then current fair market value.

17 **(b) If the highest value of an asset as shown in the inventory, any amended or supple-**
 18 **mental inventory, any interim account or the final account or statement in lieu of the final**
 19 **account filed under ORS 116.083 was materially misstated at the time of filing of the docu-**
 20 **ment, the value of the asset is the highest correctly stated value of the asset as shown in**
 21 **the inventory, any amended or supplemental inventory, any interim account or the final ac-**
 22 **count or statement in lieu of the final account filed under ORS 116.083.**

23 (3) Unless the court has granted a request for a different determination of the compensation of
 24 the personal representative under ORS 113.038, upon application to the court a personal represen-
 25 tative is entitled to receive compensation for services as provided in this section. If there is more
 26 than one personal representative acting concurrently or consecutively, the compensation may not
 27 be increased, but may be divided among the personal representatives as they agree or as the court
 28 may order. The compensation is a commission upon the whole estate, as follows:

29 (a) Upon the property subject to the jurisdiction of the court:

30 (A) Seven percent of any sum not exceeding \$1,000.

31 (B) Four percent of all above \$1,000 and not exceeding \$10,000.

32 (C) Three percent of all above \$10,000 and not exceeding \$50,000.

33 (D) Two percent of all above \$50,000.

34 (b) One percent of the property, exclusive of life insurance proceeds, not subject to the juris-
 35 diction of the court but reportable for Oregon estate tax or federal estate tax purposes.

36 (4) In all cases, further compensation as is just and reasonable may be allowed by the court for
 37 any extraordinary and unusual services, including services not ordinarily required of a personal
 38 representative in the performance of duties as a personal representative.

39 (5) When a decedent by will has made special provision for the compensation of a personal
 40 representative:

41 (a) The personal representative is not entitled to any other compensation for services unless
 42 prior to appointment the personal representative signs and files with the clerk of the court a written
 43 renunciation of the compensation provided by the will.

44 (b) If the assets of the estate are insufficient to pay in full all expenses or claims of the estate,
 45 the compensation of the personal representative may not exceed the compensation provided by sub-

1 sections (3) and (4) of this section.

2 **SECTION 11.** ORS 30.030 is amended to read:

3 30.030. (1) Upon settlement of a claim, or recovery of judgment in an action, for damages for
4 wrongful death, by the personal representative of a decedent under ORS 30.020, the amount of
5 damages so accepted or recovered shall be distributed in the manner prescribed in this section.

6 (2) The personal representative shall make payment or reimbursement for costs, expenses and
7 fees incurred in prosecution or enforcement of the claim, action or judgment, **including fees paid**
8 **to the personal representative of the decedent attributable to the wrongful death claim under**
9 **ORS 116.173 (1)(e).**

10 (3) The personal representative shall make payment or reimbursement for reasonable charges
11 necessarily incurred for doctors' services, hospital services, nursing services or other medical ser-
12 vices, burial services and memorial services rendered for the decedent.

13 (4) If under ORS 30.040 or 30.050 or by agreement of the beneficiaries a portion of the damages
14 so accepted or recovered is apportioned to a beneficiary as recovery for loss described in ORS
15 30.020 (2)(d), the personal representative shall distribute that portion to the beneficiary.

16 (5) The remainder of damages accepted or recovered shall be distributed to the beneficiaries in
17 the proportions prescribed under the laws of intestate succession of the state of decedent's domicile,
18 or as agreed by the beneficiaries, but no such damages shall be subject to payment of taxes or
19 claims against the decedent's estate.

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21 **VENUE**

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23 **SECTION 12.** ORS 113.015 is amended to read:

24 113.015. (1) The venue for a proceeding seeking the appointment of a personal representative
25 and for a proceeding to probate a will is:

26 (a) In the county where the decedent had a domicile or where the decedent had a place of abode
27 at the time of death;

28 (b) In any county where property of the decedent was located at the time of death or is located
29 at the time the proceeding is commenced; *[or]*

30 (c) In the county in which the decedent died; **or**

31 **(d) In the county where a personal injury claim or wrongful death claim, as those terms**
32 **are defined in section 1 of this 2019 Act, could be maintained.**

33 (2) Filing a proceeding in a county other than specified in subsection (1) of this section does not
34 constitute a jurisdictional defect.

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36 **APPLICABILITY**

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38 **SECTION 13.** (1) **Section 3 of this 2019 Act applies to settlement agreements entered into**
39 **on or after the effective date of this 2019 Act.**

40 (2) **Sections 1, 2 and 4 to 8 of this 2019 Act and the amendments to ORS 30.030 and 113.015**
41 **by sections 11 and 12 of this 2019 Act apply to estates in which a petition for the appointment**
42 **of a personal representative is filed on or after the effective date of this 2019 Act.**

43 (3) **Section 9 of this 2019 Act applies to damages accepted or recovered on or after the**
44 **effective date of this 2019 Act.**

45 (4)(a) **Except as provided in paragraph (b) of this subsection, the amendments to ORS**

1 116.173 by section 10 of this 2019 Act apply to estates in which a petition for the appointment
2 of a personal representative is filed on or after the effective date of this 2019 Act.

3 (b) The amendments to ORS 116.173 (2) by section 10 of this 2019 Act apply to applications
4 for compensation of a personal representative filed on or after the effective date of this 2019
5 Act.

6
7 CAPTIONS

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9 SECTION 14. The unit and section captions used in this 2019 Act are provided only for
10 the convenience of the reader and do not become part of the statutory law of this state or
11 express any legislative intent in the enactment of this 2019 Act.
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