

House Bill 3238

Sponsored by Representative POST

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**.

Permits affiant of small estate affidavit to move court in motion to compel delivery of digital assets for order under Revised Uniform Fiduciary Access to Digital Assets Act (2015). Limits administrative charge for cost of disclosing digital assets.

A BILL FOR AN ACT

1
2 Relating to disclosure of decedent's digital assets; creating new provisions; and amending ORS
3 114.505, 114.525, 114.535, 119.006 and 119.011.

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

5 **SECTION 1.** ORS 114.505, as amended by section 40, chapter 678, Oregon Laws 2019, is
6 amended to read:

7 114.505. As used in ORS 114.505 to 114.560:

8 (1) "Affiant" means the person or persons signing a small estate affidavit.

9 (2) "Claiming successors" means:

10 (a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an
11 estate administrator of the State Treasurer appointed under ORS 113.235;

12 (b) If the decedent died testate, the devisee or devisees of the decedent; and

13 (c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS
14 114.545 (1)(f) who has not been paid or reimbursed the full amount owed such creditor within 60 days
15 after the date of the decedent's death.

16 **(3) "Digital asset" has the meaning given that term in ORS 119.006.**

17 [(3)] **(4)** "Small estate affidavit" means an affidavit or amended affidavit filed under ORS 114.515.

18 **SECTION 2.** ORS 114.525 is amended to read:

19 114.525. (1) A small estate affidavit must:

20 (a) Contain a notice in substantially the following form, printed in at least 14-point bold type
21 immediately below the caption on the first page of the small estate affidavit:

NOTICE OF DUTY TO PAY DEBT OR TURN OVER PROPERTY

22
23
24
25
26
27 To: Any person to whom a copy of this small estate affidavit is mailed or delivered.

28 Under ORS 114.535, if you owe a debt to the decedent or have personal property of the decedent,
29 you must pay the debt or turn over the property to the affiant. If you refuse, the affiant may ask
30 the court to compel you to pay the debt or turn over the property and you could be responsible for
31 the affiant's attorney fees.

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

(b) State the name and post-office address of the affiant.

(c) State the authority under which the affiant is filing the small estate affidavit, as provided in ORS 114.515.

(d) State that the small estate affidavit is made under ORS 114.505 to 114.560.

(e) State the name, age, domicile and post-office address and last four digits of the Social Security number of the decedent.

(f) State the date and place of the decedent's death.

(g) Describe and state the fair market value of all property in the estate, valued as provided in ORS 114.510, including a legal description of any real property **and a description of the decedent's digital assets.**

(h) State that no personal representative of the estate has been appointed in Oregon, that there is no pending petition for appointment of a personal representative of the estate in Oregon and that the estate is not currently being administered in Oregon.

(i) State whether the decedent died testate or intestate.

(j) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address.

(k) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address.

(L) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat.

(m) State that reasonable efforts have been made to ascertain creditors of the estate.

(n) List the claims against the estate that are undisputed by the affiant and that remain unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts of the claims and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address.

(o) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount of the claims disputed by the affiant and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address.

(p)(A) State the mailing address for presentment of claims; and

(B) If the affiant wishes to authorize creditors to present claims by electronic mail or facsimile communication, state the electronic mail address or facsimile number for presentment of claims.

(q) List anticipated administrative expenses and attorney fees, if any.

(r) State that the affiant is not disqualified from acting as an affiant under ORS 114.515 (2).

(s) State that a copy of the affidavit showing the date of filing and a copy of the death record will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the department or authority.

(t) State, to the best of the affiant's knowledge, whether the decedent was incarcerated in a

1 correctional facility in this state at any time in the 15 years before the decedent's death and, if the
 2 decedent was incarcerated in a correctional facility in this state at any time in the 15 years before
 3 the decedent's death, state that a copy of the affidavit showing the date of filing and a copy of the
 4 death record will be mailed or delivered to the Department of Corrections.

5 (u) State that undisputed claims against the estate will be paid as provided in ORS 114.545.

6 (v) State that claims against the estate not listed in the affidavit or in amounts larger than those
 7 listed in the affidavit may be barred unless:

8 (A) A claim is presented to the affiant within four months of the filing of the affidavit or
 9 amended affidavit at the address, electronic mail address or facsimile number stated in the affidavit
 10 for presentation of claims; or

11 (B) A petition for appointment of a personal representative of the estate is filed within the time
 12 allowed under ORS 114.555.

13 (w) If the affidavit lists one or more claims that the affiant disputes, state that any such claim
 14 may be barred unless:

15 (A) A petition for summary determination is filed within four months of the filing of the affidavit;
 16 or

17 (B) A petition for appointment of a personal representative of the estate is filed within the time
 18 allowed under ORS 114.555.

19 (2) The affiant shall file a certified copy of the death record of the decedent as a confidential
 20 document.

21 (3) If the decedent died testate, the affiant shall file simultaneously with the small estate affi-
 22 davit:

23 (a)(A) The original will; or

24 (B) If the original will is filed in an estate proceeding in another jurisdiction, a certified copy
 25 of the original will; and

26 (b) Proof of the will meeting the requirements of ORS 113.055.

27 **SECTION 3.** ORS 114.535, as amended by section 42, chapter 678, Oregon Laws 2019, is
 28 amended to read:

29 114.535. (1) The affiant may deliver a certified copy of a small estate affidavit to any person who
 30 has possession of personal property belonging to the estate or who was indebted to the decedent.
 31 Except as provided in this section, upon receipt of the certified copy, the person shall pay the debt
 32 or transfer, deliver, provide access to and allow possession of the personal property to the affiant.

33 (2) Subject to ORS 114.537, if a certified copy of a small estate affidavit is delivered under sub-
 34 section (1) of this section to a person that controls access to personal property belonging to the
 35 estate of the decedent, including personal property held in a safe deposit box for which the decedent
 36 was the sole lessee or the last surviving lessee **or digital assets in the possession of a custodian,**
 37 **as defined in ORS 119.006,** the person shall:

38 (a) Provide the affiant with access to the decedent's personal property; and

39 (b) Allow the affiant to take possession of the personal property.

40 (3) Subject to ORS 114.537, if a certified copy of a small estate affidavit is delivered under sub-
 41 section (1) of this section to a person who owes a debt to the decedent or has received property of
 42 the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the
 43 transfer of property of an estate that is not being probated, the person shall pay the debt or transfer,
 44 deliver, provide access to or allow possession of the property to the affiant if the person would be
 45 required to pay the debt or transfer, deliver, provide access to or allow possession of the property

1 to a personal representative of the estate.

2 (4) Any person that pays a debt owing to the decedent or transfers, delivers, provides access to
 3 or allows possession of property of a decedent in the manner provided by this section is discharged
 4 and released from any liability or responsibility for the debt or property in the same manner and
 5 with the same effect as if the debt had been paid or the property had been transferred or delivered
 6 to a personal representative of the estate of the decedent.

7 (5) The affiant may deliver a certified copy of a small estate affidavit to a transfer agent of any
 8 corporate security registered in the name of the decedent. The transfer agent shall change the reg-
 9 istered ownership on the books of the corporation to the affiant or the person named in the affidavit
 10 entitled to it, as directed by the affiant.

11 (6)(a) If a person to whom a certified copy of a small estate affidavit is delivered under this
 12 section refuses to pay a debt or deliver, transfer, provide access to or allow possession of personal
 13 property as required by this section, the affiant may serve a written demand by certified mail on the
 14 person to pay the debt or deliver, transfer, provide access to or allow possession of the personal
 15 property, **including digital assets**. The demand must state that, if the person fails to pay the debt
 16 or deliver, transfer, provide access to or allow possession of the personal property, the affiant may
 17 file a motion to compel payment of the debt or delivery of, transfer of or access to the personal
 18 property.

19 (b) If the person fails to pay the debt or deliver, transfer, provide access to or allow possession
 20 of the personal property within 30 days after service of a demand under paragraph (a) of this sub-
 21 section, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or
 22 access to the personal property.

23 **(c) If the motion filed under paragraph (b) of this subsection is to compel the person to**
 24 **deliver, transfer, provide access to or allow possession of digital assets, the affiant may move**
 25 **the court for an order directing the disclosure of the decedent’s digital assets under ORS**
 26 **119.006 to 119.081. The court’s order may include the findings described in ORS 119.021 (5)(c)**
 27 **or 119.026 (4)(d), if applicable.**

28 (d) The court may enter a judgment awarding reasonable attorney fees to the prevailing party
 29 if the court finds that the affiant filed the motion without an objectively reasonable basis or the
 30 person refused to pay the debt or deliver, transfer, provide access to or allow possession of any
 31 personal property without an objectively reasonable basis.

32 (7) If a small estate affidavit was signed by the Director of Human Services, the Director of the
 33 Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Ser-
 34 vices, the Director of the Oregon Health Authority or the attorney may certify a copy of the affi-
 35 davit for the purposes described in this section.

36 (8) Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treas-
 37 urer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon
 38 Health Authority serving as an affiant may deal with property of the estate as an affiant under this
 39 section.

40 **SECTION 4.** ORS 119.006 is amended to read:

41 119.006. As used in ORS 119.006 to 119.081:

42 (1) “Account” means an arrangement under a terms-of-service agreement in which a custodian
 43 carries, maintains, processes, receives or stores a digital asset of the user or provides goods or
 44 services to the user.

45 (2) “Agent” means a person designated as an agent under a power of attorney in accordance

1 with ORS 127.005 to 127.045.

2 (3) “Carries” means engages in the transmission of an electronic communication.

3 (4) “Catalog of electronic communications” means information that identifies each person with
4 which a user has had an electronic communication, the time and date of the communication and the
5 electronic address of the person.

6 (5) “Conservator” has the meaning given that term in ORS 125.005.

7 (6) “Content of an electronic communication” means information concerning the substance or
8 meaning of the communication that:

9 (a) Has been sent or received by a user;

10 (b) Is in electronic storage by a custodian providing an electronic communication service to the
11 public or is carried or maintained by a custodian providing a remote computing service to the pub-
12 lic; and

13 (c) Is not readily accessible to the public.

14 (7) “Court” means a circuit court in this state.

15 (8) “Custodian” means a person that carries, maintains, processes, receives or stores a digital
16 asset of a user.

17 (9) “Designated recipient” means a person chosen by a user using an online tool to administer
18 digital assets of the user.

19 (10) “Digital asset” means an electronic record in which an individual has a right or interest.
20 “Digital asset” does not include an underlying asset or liability unless the asset or liability is itself
21 an electronic record.

22 (11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, op-
23 tical, electromagnetic or similar capabilities.

24 (12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12).

25 (13) “Electronic communication service” means a custodian that provides to a user the ability
26 to send or receive an electronic communication.

27 (14) “Fiduciary” means a person that is an original, additional or successor personal represen-
28 tative, conservator, agent or trustee.

29 (15) “Information” means data, text, images, videos, sounds, codes, computer programs, software,
30 databases and similar intelligence of any nature.

31 (16) “Online tool” means an electronic service provided by a custodian that allows the user, in
32 an agreement distinct from the terms-of-service agreement between the custodian and the user, to
33 provide directions for disclosure or nondisclosure of digital assets to a third person.

34 (17) “Person” means an individual, estate, business or nonprofit entity, public corporation, gov-
35 ernment or governmental subdivision, agency or instrumentality or other legal entity.

36 (18) “Personal representative” means an executor, administrator or special administrator,
37 **affiant as defined in ORS 114.505**, or a person legally authorized to perform substantially the same
38 functions.

39 (19) “Power of attorney” means a record that grants an agent authority to act in the place of
40 a principal.

41 (20) “Principal” means an individual who grants authority to an agent in a power of attorney.

42 (21) “Protected person” means an individual for whom a conservator has been appointed. “Pro-
43 tected person” includes an individual for whom an application for the appointment of a conservator
44 is pending.

45 (22) “Record” means information that is inscribed on a tangible medium or that is stored in an

1 electronic or other medium and is retrievable in perceivable form.

2 (23) "Remote computing service" means a custodian that provides to a user computer processing
3 services or the storage of digital assets by means of an electronic communications system as defined
4 in 18 U.S.C. 2510(14).

5 (24) "Terms-of-service agreement" means an agreement that controls the relationship between
6 a user and a custodian.

7 (25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration
8 that creates a beneficial interest in another person. "Trustee" includes a successor trustee.

9 (26) "User" means a person that has an account with a custodian.

10 (27) "Will" includes a codicil, testamentary instrument that only appoints an executor and in-
11 strument that revokes or revises a testamentary instrument.

12 **SECTION 5.** ORS 119.011 is amended to read:

13 119.011. (1) When disclosing digital assets of a user under ORS 119.006 to 119.081, the custodian
14 may, in the custodian's sole discretion:

15 (a) Grant a fiduciary or designated recipient full access to the user's account;

16 (b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to
17 perform the tasks with which the fiduciary or designated recipient is charged; or

18 (c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on
19 the date the custodian received the request for disclosure, the user could have accessed if the user
20 were alive and had full capacity and access to the account.

21 (2) A custodian may assess a reasonable administrative charge **not to exceed \$100** for the cost
22 of disclosing digital assets under ORS 119.006 to 119.081.

23 (3) A custodian need not disclose under ORS 119.006 to 119.081 a digital asset deleted by a user.

24 (4) If a user directs, or a fiduciary requests, a custodian to disclose some, but not all, of the
25 user's digital assets under ORS 119.006 to 119.081, the custodian need not disclose the digital assets
26 if segregation of the digital assets would impose an undue burden on the custodian. If the custodian
27 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an
28 order from the court to disclose:

29 (a) A subset limited by date of the user's digital assets;

30 (b) All of the user's digital assets to the fiduciary or designated recipient;

31 (c) None of the user's digital assets; or

32 (d) All of the user's digital assets to the court for review in camera.

33 **SECTION 6. The amendments to ORS 114.505, 114.525, 114.535, 119.006 and 119.011 by**
34 **sections 1 to 5 of this 2021 Act become operative on January 1, 2022.**

35