

# Senate Bill 221

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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 court procedure for determining whether decedent intended writing to be decedent's will, partial or complete revocation of decedent's will or addition to or alteration of decedent's will. Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to wills; amending ORS 112.238; and declaring an emergency.

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

4 **SECTION 1.** ORS 112.238 is amended to read:

5 112.238. (1) Although a writing was not executed in compliance with ORS 112.235, the writing  
6 may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the  
7 writing establishes by clear and convincing evidence that the decedent intended the writing to  
8 constitute:

9 (a) The decedent's will;

10 (b) A partial or complete revocation of the decedent's will; or

11 (c) An addition to or an alteration of the decedent's will.

12 (2) A writing described in subsection (1) of this section may be filed with the court for admin-  
13 istration as the decedent's will pursuant to ORS 113.035. The proponent of the writing shall give  
14 notice of the filing of the petition under ORS 113.035 to those persons identified in ORS 113.035 (5),  
15 (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice  
16 was given to file written objections to the petition. The court may make a determination regarding  
17 the decedent's intent after a hearing or on the basis of affidavits.

18 (3) The proponent of a writing described in subsection (1) of this section may file a petition with  
19 the court to establish the decedent's intent that the writing was to be [*the decedent's will*,] a partial  
20 or complete revocation of the decedent's will[,] or an addition to or an alteration of the decedent's  
21 will. The proponent shall give notice of the filing to any personal representative appointed by the  
22 court, the devisees named in any will admitted to probate and those persons identified in ORS  
23 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the notice was  
24 given to file written objections to the petition. The court may make a determination regarding the  
25 decedent's intent after a hearing or on the basis of affidavits.

26 (4)(a) If the court determines that clear and convincing evidence exists showing that a writing  
27 described in subsection (1) of this section was intended by the decedent to accomplish one of the  
28 purposes set forth in subsection (1) of this section, the court shall:

29 (A) Prepare written findings of fact in support of the determination; and

30 (B) Enter a limited judgment that admits the writing for probate as the decedent's will or oth-

**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 erwise acknowledges the validity and intent of the writing.

2 (b) A determination under this subsection does not preclude the filing of a will contest under  
3 ORS 113.075, except that the will may not be contested on the grounds that the will was not exe-  
4 cuted in compliance with ORS 112.235.

5 (5) The fee imposed and collected by the court for the filing of a petition under this section shall  
6 be in accordance with ORS 21.135.

7 **SECTION 2. This 2021 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
9 **on its passage.**

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