

SB 308 -3, -4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 1/24, 1/31

WHAT THE MEASURE DOES:

Modifies small estate affidavit procedure to allow the procedure to be used in circumstances where a decedent created a trust before death but did not fully fund the trust; modifies probate code provisions governing determination of parentage.

ISSUES DISCUSSED:

- Changing name of "small estate" to "simple estate"
- Scenarios when a person dies with assets in their name when those assets were intended to be in a trust to avoid probate
- The current monetary threshold to qualify for the small estate procedure

EFFECT OF AMENDMENT:

-3 Removes requirement that the copy of the trust instrument or certification of a trust, which must be filed simultaneously with the simple estate affidavit, be a "certified" copy.

-4 Removes all modifications to ORS 112.105.

BACKGROUND:

SB 308 is brought by the Oregon State Bar Estate Planning and Administration Section. Oregon's probate code provides a streamlined procedure for transferring the personal and real property of a deceased person when the value of that property falls within specified monetary limits. This avoids the necessity of going through the full probate process, which requires, among other things, the appointment of a personal representative. To initiate the streamlined procedure, a person who claims a right to the property files a "small estate affidavit," pursuant to ORS 114.515, with the probate clerk. Currently, this process often cannot be used when a decedent had created a trust prior to their death but did not fund or fully fund the trust. A probate is frequently required to transfer ownership of the decedent's assets to the trust.

Senate Bill 308 would modify the small estate affidavit procedure to allow the procedure to be used to transfer assets from a decedent's name to a trust created by the decedent and would change the name of the procedure from "small estate affidavit" to "simple estate affidavit." SB 308 would also modify ORS 112.105 (Intestate Succession and Wills; Succession where parents not married).