

House Bill 2950

Sponsored by Representative MORGAN; Representative WRIGHT, Senator HANSELL (Pre-session filed.)

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**.

Bars creditors' claims against decedents' estates if no petition for appointment of personal representative or small estate affidavit is filed within 18 months following decedent's date of death.

Permits certain interested persons to petition probate court for determination of descent if no petition for appointment of personal representative or small estate affidavit is filed within 18 months following decedent's date of death and decedent's estate meets specified criteria.

A BILL FOR AN ACT

1
2 Relating to decedents' estates; creating new provisions; and amending ORS 111.085 and 111.205.

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

4 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 115.**

5 **SECTION 2. (1) A claim against the estate of a decedent is barred from payment from**
6 **the estate if neither of the following is filed within 18 months following the decedent's date**
7 **of death:**

8 (a) A small estate affidavit under ORS 114.515; or

9 (b) A petition for appointment of a personal representative under ORS 113.035.

10 (2) This section does not apply to:

11 (a) Any proceeding to enforce a mortgage, pledge or other lien upon property of the es-
12 tate, or to quiet title or reform any instrument with respect to title to property; or

13 (b) To the limits of the insurance protection only, any proceeding to establish liability
14 of the decedent or the personal representative for which the decedent or personal represen-
15 tative is protected by liability insurance at the time the proceeding is commenced.

16 **SECTION 3. Section 4 of this 2023 Act is added to and made a part of ORS chapter 114.**

17 **SECTION 4. (1) An interested person, other than a person having a claim against the**
18 **estate of a decedent, may petition the probate court for a determination of descent of the**
19 **decedent's property or any interest in property under the laws of intestate succession if:**

20 (a) No petition for appointment of personal representative has been filed within 18
21 months following the date of the decedent's death;

22 (b) No small estate affidavit has been filed within 18 months of the decedent's date of
23 death; and

24 (c) The decedent died intestate or the decedent died testate and each devisee's interest
25 in the estate is the same as if the decedent had died intestate.

26 (2) The petition may be filed in any county where there is venue for a proceeding seeking
27 the appointment of a personal representative for the estate.

28 (3) The petition must include the information required in a petition for appointment of
29 a personal representative under ORS 113.035.

30 (4) Upon the filing of a petition for determination of descent, the petitioner shall set a

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 time for filing objections to the petition. Not less than 20 days before the time set, the
 2 petitioner shall provide notice of the petition and the time set for objections as provided
 3 under ORS 111.215.

4 (5) Any person entitled to notice under this section may, within the time fixed for the
 5 filing, file objections to the petition, specifying the particulars of the objections. Upon the
 6 filing of objections the court shall fix the time for hearing thereon.

7 (6) If no objections to the petition for determination of descent are filed, or if objections
 8 are filed, upon the hearing, the court may enter a general judgment of determination of de-
 9 scent. In the judgment, the court shall designate the persons in whom title to the estate
 10 available for distribution is vested and the portion of the estate or property to which each
 11 is entitled as provided in ORS 112.025 to 112.055.

12 (7) The judgment of determination of descent is a conclusive determination of the per-
 13 sons who are the successors in interest to the estate and of the extent and character of their
 14 interest, subject only to the right of appeal and the power of the court to vacate the judg-
 15 ment.

16 **SECTION 5.** ORS 111.085 is amended to read:

17 111.085. (1) The jurisdiction of the probate court includes, but is not limited to:

18 (a) Appointment and qualification of personal representatives.

19 (b) Probate and contest of wills.

20 (c) Determination of heirship.

21 (d) Determination of title to, rights in and possession of property claimed by or against personal
 22 representatives, guardians and conservators.

23 (e) Administration, settlement and distribution of estates of decedents.

24 (f) Construction of wills, whether incident to the administration or distribution of an estate or
 25 as a separate proceeding.

26 (g) Guardianships and conservatorships, including the appointment and qualification of guardi-
 27 ans and conservators and the administration, settlement and closing of guardianships and conser-
 28 vatorships.

29 (h) Supervision and disciplining of personal representatives, guardians and conservators.

30 (i) If a testamentary trustee vacancy occurs during a probate proceeding and the will does not
 31 name a trustee or successor trustee who is able to serve, appointment of a testamentary trustee or
 32 successor testamentary trustee.

33 **(j) Determination of descent.**

34 (2) The distributees of an estate administered in Oregon are subject to the jurisdiction of the
 35 courts of Oregon regarding any matter involving the distributees' interests in the estate. By ac-
 36 cepting a distribution from an estate, the distributee submits personally to the jurisdiction of the
 37 courts of this state regarding any matter involving the estate.

38 (3) This section does not preclude other methods of obtaining jurisdiction over a person to whom
 39 assets are distributed from an estate.

40 **SECTION 6.** ORS 111.205 is amended to read:

41 111.205. (1) A probate proceeding is commenced by the filing of a petition in a court with ju-
 42 risdiction over probate proceedings. Petitions to commence probate proceedings are authorized in
 43 ORS chapters 113, 114 and 117.

44 (2) No particular pleadings or forms of pleadings are required in the exercise of jurisdiction of
 45 probate courts. All petitions, inventories, reports and accountings in a probate proceeding must be

1 in writing and include a declaration under penalty of perjury in the form required by ORCP 1 E.
2 The declaration must be made by at least one of the persons making the pleading or by the attorney
3 for the person, or in the case of a business entity by an authorized agent. A declarant who is
4 physically outside the boundaries of the United States must make an unsworn declaration under
5 ORS 194.800 to 194.835.

6 (3) Actions in a probate proceeding are not triable by a jury except as otherwise provided by
7 law.

8 **SECTION 7. Sections 2 and 4 of this 2023 Act and the amendments to ORS 111.085 and**
9 **111.205 by sections 5 and 6 of this 2023 Act apply to estates of decedents dying on or after**
10 **the effective date of this 2023 Act.**

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