

SB 15 A -A6, -A7 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/7, 5/19

WHAT THE MEASURE DOES:

The measure increases the limits on the fair market value of a deceased person's assets for purpose of qualifying for a simple estate affidavit process. It also requires the State Court Administrator to annually calculate and apply cost of living adjustments to the limits.

Detailed Summary

- Clarifies that the existing limitation in ORS 114.510 (1)(a) -- that fair market value (FMV) not exceed \$75,000 attributable to personal property and \$200,000 attributable real property -- applies to estates of decedents who died testate (with a will) or intestate (without a will) and the total estate FMV is \$275,000 or less.
- Defines "manufactured home" and excludes manufactured homes from the FMV of personal property and includes it in the FMV of real property, for the existing \$275,000 limit.
- Adds the ability to use a simple estate affidavit when
 - the decedent died testate;
 - the estate FMV is greater than \$275,000 but less than \$1 million, of which not more than \$250,000 is attributable to personal property and not more than \$750,000 is attributable to real property; and
 - the estate would distribute all assets to one distributee (recipient) who is the sole devisee named in the will
- Continues the filing fee of \$145 in ORS 21.145 for simple estate affidavits filed under current limitations.
- Applies the filing fees for regular probate cases in ORS 21.170 to simple estate affidavits filed for estates with FMV over \$250,000 but less than \$1 million.
- Requires the State Court Administrator to annually calculate the cost of living increases or decreases and administratively adjust the limits by July 1 each year for the following calendar year and apply it to simple estate affidavits filed after July 1 of year in which an adjustment is made.
- Makes conforming amendments to applicable laws.
- Applies changes in value limits to estates of decedents dying after the measure's effective date.

FISCAL: Has minimal fiscal impact

REVENUE: No revenue impact

SENATE VOTE: Ayes, 28; Nays, 0

ISSUES DISCUSSED:

- Bills that result from workgroups versus other origins
- Personal property is rarely recovered from fraudulent or negligently administered small estates
- Self-represented affiants' lack of adherence to notice and tax obligations
- Limitations to Oregon Judicial Department's participation in amendments

EFFECT OF AMENDMENT:

-A6 The amendment changes the dollar limits and qualifications for estates to use the small estate affidavit when the estate fair market value is over \$275,000.

Detailed Summary

- Revises what estates may qualify for the small estate affidavit when the estate fair market value is over \$275,000.

This summary has not been adopted or officially endorsed by action of the committee.

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- Changes the upper FMV limit to \$550,000 instead of \$1 million.
- Reduces limits of FMV attributable to personal property to \$150,000, and limits the FMV attributable to real property to \$400,000.
- Requires the sole distributee of the estate to be the sole heir, instead of any sole distributee.
- Provides language for a sole heir to declare sole heirship when filing a simple estate affidavit.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

-A7 The amendment changes the sole distributee requirement for the measure's small estate affidavit category for estates with a FMV over \$275,000 and below \$1 million, by requiring the sole distributee of the estate to be the sole heir. The amendment also provides language that a sole heir must use when declaring sole heirship in a simple estate affidavit filing.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

BACKGROUND:

A full probate is the most common form of estate administration. Probate is a court-supervised process that may take from four months to a year or longer and it frequently involves the cost of hiring legal counsel. The simple estate affidavit is a streamlined option for transferring personal and real property of a deceased person if the property is below a specified value, unless anything over the limit is devised to the trustee of a trust created by the decedent. The person who submits the affidavit (the affiant) has duties and powers similar to a personal representative and has a fiduciary's duty of care. Creditors have rights to present claims to the affiant within four months of an original, amended, or supplemental affidavit filing, and can request a summary determination from the court. A creditor can itself initiate the simple estate affidavit process as a "claiming successor" to the estate, if not fully paid within 60 days of the person's death, so long as the simple estate affidavit criteria are met, and after notice to and authorization from the State Treasurer.