

BOB CASEY

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House Committee on Judiciary
Oregon Legislature
900 Court St NE Rm 140A
Salem, OR 97301

Greetings:

Opposition to SB 15A

I oppose legislation known as SB 15A, for reasons stated below.

My Background

I am an attorney and member of the Oregon State Bar. I have practiced in Oregon, almost entirely in the area of estate law, since 1996. So, for the past 29 years. Moreover, I have been on the Executive Committee of the Oregon State Bar's Estate Planning & Administration Section. I have published several articles through the Oregon State Bar, on estate law topics. I have taught several continuing legal education on estate law.

Summary

This proposal is greatly out of step with inflation, and with how all neighboring states handle comparable procedures. It lacks safeguards against fraud and theft, which are well-established parts of ordinary probate procedure. It would deprive the State of Oregon of tax revenue, deplete funds for Oregon Department of Human Services, and throw additional burdens on the court system by encouraging a flood of litigation. The Legislature would face new pressure to increase funding for the courts, to keep up with this flood of litigation.

Inflation

109.8% has been the cumulative rate of inflation in the United States, during the past 30 years. By contrast, this proposal would increase filing limits for Simple Estate Affidavits by 500% (in case of personal property) and 833% (in case of real property).

That is spectacularly out of step with inflation.

Neighboring States

All neighboring states impose filing limits on comparable procedures, that are far more conservative and prudent. The following table compares SB 15A's filing limits, with current small estate affidavit filing limits in Washington, Idaho, Nevada, and California:

State	Filing Limits
Oregon (under SB 15A)	\$250,000 personal property ... \$750,000 real property
Washington	\$100,000 personal property ... real property not allowed
Idaho	\$100,000 personal property ... real property not allowed
Nevada	\$25,000 ... vehicles and real property not allowed
California	\$166,250 ... real property not allowed

Inadequate Safeguards

The Simple Estate Affidavit is not appropriate for anything except small estates, because it lacks procedural safeguards against fraud and theft. Here are some examples:

1. **Mailed Notice.** Ordinary probate requires mailed notices to heirs, devisees, creditors, and Oregon Dept. of Human Services dispenser of Medicaid benefits). The purpose is to alert them to a limited amount of time to take action to protect their interests. This is done through contests, filing of subsequent wills, or presentation of claims.

By contrast, the Simple Estate Affidavit does not require any such proof of notice. Moreover, the court system does not supervise or scrutinize this in any way.

2. **Published Notice.** Ordinary probate requires published notice in newspapers, to further alert all interested parties they have a limited amount of time to protect their interests. By contrast, the Simple Estate Affidavit does not.
3. **Accounting.** Ordinary probate requires accurate, honest account of an estate funds, by means of a court-audited filing made at least annually. By contrast, the Simple

Estate Affidavit does not. This might not matter, if someone mishandling funds were the only inheritor. But it would be terribly harmful to the interests of creditors, including Oregon Department of Revenue and Oregon Department of Human Services.

4. **Bond.** This protects all other interested parties, such as inheritors or creditors, against mishandling of an estate. Ordinary probate requires bond, unless the decedent chose in a will to waive bond. By contrast, the Simple Estate Affidavit Procedure never requires bond. Therefore, there is no insurance money to reimburse losses in event of malfeasance.

The safeguards listed above are extremely valuable. Without them, any individual could falsely file a Simple Estate Affidavit and abscond with all assets, before anyone else knew what happened.

Depleted Tax Revenue

Oregon Department of Revenue would lose tax revenue, if it never received notice of its opportunity to present a claim for unpaid taxes. Ordinary probate requires proven notice to creditors. By contrast, the Simple Estate Affidavit does not require proof that notices was sent.

Depleted Medicaid Funds

Oregon Department of Human Services would lose funds, through lost opportunity to be reimbursed for Medicaid benefits under its estate recovery program. This would happen, if anyone filing a Simple Estate Affidavit failed to send notice to DHS. Although ordinary probate requires proof of such notice, the Simple Estate Affidavit procedure does not.

Burden on Courts and Funding of Courts

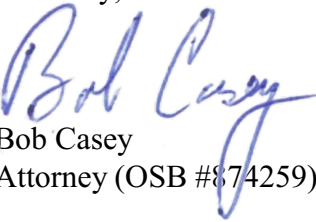
I frequently litigate cases, where individuals mishandle estates. Such cases are extremely burdensome for the Oregon court system. Moreover, such cases will explode in number, if procedures such as Simple Estate Affidavit are expanded. And that, in turn, will put increased strain on funding of Oregon government.

No Change Is Needed

Current probate administration in Oregon strikes a good balance, between expense of administration and protecting estates for malfeasance. In can verify this, from the viewpoint of deep background described above.

In 29 years of practicing estate law, I've become well aware of typical professional fees for regular probate. Although attorney fees are usually required to be computed on an hourly rate basis, the usual result is a fee of about 1% – 2% of the overall size of the estate. That is proportionate to the risks of mishandling or resultant litigation expense. Moreover, it protects funds of Oregon state government.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey". The signature is fluid and cursive, with the first name "Bob" and last name "Casey" clearly distinguishable.

Bob Casey
Attorney (OSB #874259)