

**SB 221 STAFF MEASURE SUMMARY**

**Carrier:** Rep. Dexter

**House Committee On Judiciary**

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**Action Date:** 05/24/21

**Action:** Do Pass.

**Vote:** 10-0-0-0

**Yeas:** 10 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Noble, Power, Wallan, Wilde

**Fiscal:** No fiscal impact

**Revenue:** No revenue impact

**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 5/3, 5/5, 5/24

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**WHAT THE MEASURE DOES:**

Corrects error in process to establish that a decedent's writing was intended to be a partial or complete revocation of the decedent's will. Declares emergency, effective on passage

**ISSUES DISCUSSED:**

- Technical issue of error
- Safe harbor for harmless error in will formality process
- Error in language confuses process between will and other writings
- Need for emergency clause

**EFFECT OF AMENDMENT:**

No amendment.

**BACKGROUND:**

Oregon statutes provide a process for courts to determine if a writing is intended to be a will or revocation of a will. ORS 112.238 (2) describes the process for determining that a writing is a will while subsection (3) provides the process to determine if a writing is a will, or a partial or complete revocation of a will. Because subsection (3) references determining if a writing is a will, it confuses the process outlined in subsection (2).

Senate Bill 221 removes language referencing the determination that a writing is a will from subsection (3) of ORS 112.238, thereby clarifying the process in both situations and makes this change effective on passage.

**CHAPTER 390**

AN ACT

SB 221

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

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

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

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

- (a) The decedent's will;
- (b) A partial or complete revocation of the decedent's will; or
- (c) An addition to or an alteration of the decedent's will.

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

(3) The proponent of a writing described in subsection (1) of this section may file a petition with the court to establish the decedent's intent that the writing was to be [*the decedent's will,*] a partial or complete revocation of the decedent's will[,] or an addition to or an alteration of the decedent's will.

The proponent shall give notice of the filing to any personal representative appointed by the court, the devisees named in any will admitted to probate and those persons identified in ORS 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

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

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

(B) Enter a limited judgment that admits the writing for probate as the decedent's will or otherwise acknowledges the validity and intent of the writing.

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

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

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

Approved by the Governor June 23, 2021

Filed in the office of Secretary of State June 23, 2021

Effective date June 23, 2021