

SB 309 STAFF MEASURE SUMMARY

Carrier: Rep. Wallan

House Committee On Judiciary

Action Date: 03/09/23

Action: Do Pass.

Vote: 9-0-1-0

Yeas: 9 - Andersen, Chaichi, Conrad, Kropf, Lewis, Morgan, Reynolds, Tran, Wallan

Exc: 1 - Bynum

Fiscal: No fiscal impact

Revenue: No revenue impact

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Meeting Dates: 3/2, 3/9

WHAT THE MEASURE DOES:

Modifies the notice requirements to interested parties for personal representatives of Oregon estates.

ISSUES DISCUSSED:

- Whether the notice required in newspapers is effective

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

A probate is required in Oregon when a decedent's estate exceeds a certain monetary threshold of personal and real property. However, most estates that are admitted to probate do not usually exceed that threshold by more than a minimal amount. To initiate probate, a personal representative of the estate must publish a notice in a local newspaper once a week for three weeks in a row. The costs of publication are taken out of the decedent's estate.

Senate Bill 309 would reduce the number of times publication of notice of a probate is required, from three times to one time, and also reduces the number of words required to be published.

CHAPTER 18

AN ACT

SB 309

Relating to publication of notice to interested persons; creating new provisions; and amending ORS 30.065, 93.985, 112.049, 113.075, 113.155, 113.225, 114.085, 115.005, 115.185 and 116.193.

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

SECTION 1. ORS 113.155 is amended to read:

113.155. (1) Except as provided in subsection (5) of this section, upon appointment a personal representative shall cause a notice to interested persons to be published once in [each of three consecutive weeks in]:

(a) A newspaper published in the county in which the estate proceeding is pending; or

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.

(2) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement requiring all persons having claims against the estate to present them, within four months after the date of [the first] publication of the notice to the personal representative at the address designated in the notice for the presentation of claims or they may be barred;

(e) The date of [the first] publication of the notice; and

(f) A statement advising all persons whose rights may be affected by the proceeding that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(3) The failure of the personal representative to cause a notice to be published under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) A personal representative shall file in the estate proceeding proof of the publication of notice required by this section. The proof shall include a copy of the published notice.

(5)(a) This section does not apply if the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative.

(b) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and assets of the estate later come into the possession or knowledge of the personal representative, the personal representative shall, within 30 days after the filing of the inventory or supplemental inventory first showing assets of the

estate, commence publication of notice to interested persons as provided in this section.

SECTION 2. ORS 30.065 is amended to read:

30.065. (1) A petition may be filed in probate proceedings to assert that the interest in damages distributable to a parent or stepparent under ORS 30.030 to 30.060 is subject to forfeiture under ORS 30.063. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's or stepparent's distribution.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:

(A) Four months after the [first] date of publication of notice to interested persons; or

(B) If notice to interested persons was not published, one year after the decedent's date of death.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by:

(a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

SECTION 3. ORS 93.985 is amended to read:

93.985. (1) A petition may be filed in probate proceedings to assert that the interest in property, as defined in ORS 93.949, transferred by a transfer on death deed to a parent of a deceased transferor is subject to forfeiture under ORS 93.983. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:

(A) Four months after the [first] date of publication of notice to interested persons; or

(B) If notice to interested persons was not published, one year after the decedent's date of death.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by:

(a) If the petitioner is a child or sibling of the transferor, a preponderance of evidence; or

(b) If the petitioner is not a child or sibling of the transferor, clear and convincing evidence.

SECTION 4. ORS 112.049 is amended to read:

112.049. (1) A petition may be filed in probate proceedings to assert that the intestate share of a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:

(A) Four months after the *[first]* date of publication of notice to interested persons; or

(B) If notice to interested persons was not published, one year after the decedent's date of death.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by:

(a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

SECTION 5. ORS 113.075 is amended to read:

113.075. (1) Any interested person may contest the probate of the will or the validity of the will or assert an interest in the estate for the reason that:

(a) The will alleged in the petition for probate to be the will of the decedent is ineffective in whole or part;

(b) There exists a will that has not been alleged in the petition to be the will of the decedent; or

(c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

(2) An action described in subsection (1) of this section must be commenced by the filing of a petition in the probate proceedings, except that an action described in subsection (1)(c) of this section may be commenced by the filing of a separate action in any court of competent jurisdiction.

(3) An action described in subsection (1) of this section must be commenced before the later of:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the action under subsection (1) of this section is filed; or

(b) Four months after the *[first]* date of publication of notice to interested persons if the person on whose behalf the action under subsection (1) of this section is filed was not required to be named in the petition for probate as an interested person.

(4)(a) A person who commences an action under subsection (1) of this section shall give notice of the action to heirs and devisees identified in the petition

for probate or amended petition for probate, and to the State Treasurer if the personal representative has delivered or mailed information to the State Treasurer under ORS 113.045.

(b) If any devisee under the contested will is a charitable trust as described in ORS 130.170, a public benefit corporation as defined in ORS 65.001 or a religious organization, a person who commences an action under subsection (1) of this section shall give notice to the Attorney General of the action.

(5) A cause of action described in subsection (1)(c) of this section may not be presented as a claim under ORS chapter 115.

SECTION 6. ORS 113.225 is amended to read:

113.225. (1) If the personal representative dies, is removed by the court or resigns after the notice to interested persons required by ORS 113.155 has been published but before the expiration of four months from the date of *[first]* publication, the successor personal representative shall cause notice to interested persons to be published as if the successor were the original personal representative. The republished notice shall state:

(a) That the original personal representative died, was removed by the court or resigned.

(b) The date of death, removal or resignation and the date of appointment of the new personal representative.

(c) That all persons having claims against the estate shall present the claims to the new personal representative as provided in ORS 115.005 within four months after the date of *[the first]* publication of the republished notice, or the claims may be barred.

(2) Notice by the successor personal representative is not required under subsection (1) of this section if the original personal representative dies, is removed by the court, or resigns after the expiration of four months from the date of *[the first]* publication of the notice to interested persons.

SECTION 7. ORS 114.085 is amended to read:

114.085. If it appears, after the expiration of four months after the date of *[the first]* publication of notice to interested persons, that reasonable provision for support of the spouse and dependent children of the decedent, or any of them, warrants that the whole of the estate, after payment of claims, taxes and expenses of administration, be set apart for such support, the court may so order. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed.

SECTION 8. ORS 115.005 is amended to read:

115.005. (1)(a) Claims against the estate of a decedent, other than claims of the personal representative as a creditor of the decedent, shall be presented to the personal representative. Filing a claim with the court does not constitute presentation to the personal representative. Except as provided in paragraph (b) of this subsection, a claim is presented to the personal representative when the

claim is mailed or personally delivered to the personal representative at:

(A) The address for the personal representative included in the petition for appointment of the personal representative under ORS 113.035;

(B) The address provided for presentation of claims under ORS 115.003; or

(C) The address provided for presentation of claims in the published notice under ORS 113.155 or 113.225.

(b) In addition to the addresses for the presentation of claims under paragraph (a) of this subsection, the personal representative may authorize creditors to present claims by electronic mail or facsimile communication to a designated electronic mail address or facsimile number. If the personal representative authorizes alternative methods of presentation under this subsection, a claim is presented to the personal representative when it is sent to the electronic mail address or the facsimile number designated by the personal representative for the presentation of claims, unless the sender receives a notice that the electronic mail was not delivered or the facsimile communication was not successful. If the personal representative denies receiving the electronic mail or facsimile communication, the burden of proof is on the creditor to demonstrate that the electronic mail was properly addressed and sent or that the facsimile communication was properly addressed and successfully delivered or transmitted.

(2) Except as provided in subsection (3) of this section, a claim is barred from payment from the estate if not presented within the statute of limitations applicable to the claim and before the later of:

(a) Four months after the date of [*first*] publication of notice to interested persons; or

(b) If the claim was one with respect to which the personal representative was required to deliver or mail a notice under ORS 115.003 (2), 45 days after a notice meeting the requirements of ORS 115.003 (3) is delivered or mailed to the last-known address of the person asserting the claim.

(3) A claim against the estate presented after claims are barred under subsection (2) of this section shall be paid from the estate if the claim:

(a) Is presented before the expiration of the statute of limitations applicable to the claim and before the personal representative files the final account;

(b) Is presented by a person who did not receive a notice under ORS 115.003 mailed or delivered more than 30 days prior to the date on which the claim is

presented and who is not an assignee of a person who received such notice; and

(c) Would be allowable but for the time at which the claim is presented.

(4) A claim against an estate may be paid under subsection (3) of this section only after payment of all expenses having priority over claims under ORS 115.125 and payment of all previously presented claims.

(5) This section does not affect or prevent:

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

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

SECTION 9. ORS 115.185 is amended to read:

115.185. A creditor whose claim has been allowed or established by summary determination or separate action, and who has not received payment within six months after the date of [*the first*] publication of notice to interested persons, may apply to the court for an order directing the personal representative to pay the claim to the extent that funds of the estate are available for that payment.

SECTION 10. ORS 116.193 is amended to read:

116.193. If it appears to the court, at any time after the expiration of four months after the date of [*the first*] publication of notice to interested persons, that there is no known person to take by descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon and that the whole of the estate, after payment of claims, taxes and expenses of administration, be distributed to the State Treasurer for deposit into the Unclaimed Property and Estates Fund. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed.

SECTION 11. The amendments to statutes by sections 1 to 10 of this 2023 Act apply to probate proceedings commenced on or after the effective date of this 2023 Act.

Approved by the Governor March 29, 2023
Filed in the office of Secretary of State March 29, 2023
Effective date January 1, 2024