LC 0001
2027 Regular Session
OLC00-001
11/09/26 (LAS/ps)

D R A F T

SUMMARY

Digest: The Act allows a person to sign a will electronically if certain things are done. (Flesch Readability Score: 61.8).

Incorporates provisions of the Uniform Electronic Wills Act into the laws of this state to allow courts to recognize electronic wills.

A BILL FOR AN ACT

Relating to electronic wills; creating new provisions; and amending ORS 9.757, 111.005, 111.245, 112.235, 112.238, 112.255, 112.285, 112.800, 112.810, 112.820, 113.035, 113.055, 114.525 and 119.006.

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

ELECTRONIC WILLS

SECTION 1. ORS 112.235 is amended to read:

112.235. (1) Except as provided in ORS 112.238, a will [*shall*]**that is not an electronic will must** be in writing and [*shall*] be executed in accordance with the following formalities:

(a) The testator, in the presence of each of the witnesses, shall:

(A) Sign the will;

(B) Direct one of the witnesses or some other person to sign the name of the testator and the signer's own name on the will; or

(C) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

(b) At least two witnesses shall each:

NOTE: Matter in **boldfaced** type in amended text is new; matter [*italicized and bracketed*] is existing text to be omitted. New sections are in **boldfaced** type.

(A)(i) See the testator sign the will;

(ii) Hear the testator acknowledge the signature on the will; or

(iii) Hear or observe the testator direct some other person to sign the name of the testator; and

(B) Attest the will by signing the witness' name to the will within a reasonable time before the testator's death.

(2) The signature by a witness on an affidavit executed contemporaneously with execution of a will is considered a signature by the witness on the will in compliance with subsection (1)(b)(A)(iii) of this section if necessary to prove the will was duly executed in compliance with this section.

(3) A will executed in compliance with the Uniform International Wills Act shall be deemed to have complied with the formalities of **subsections (1) and (2) of** this section.

(4) An electronic will must be:

(a) A record that is readable as text at the time of signing under paragraph (b) of this subsection;

(b) Signed by:

(A) The testator; or

(B) Another individual in the testator's name, in the testator's physical presence and by the testator's direction; and

(c) Signed by at least two witnesses in the physical or electronic presence of the testator within a reasonable time after witnessing the signing of the will under paragraph (b) of this subsection.

(5) At the time of witnessing and signing the electronic will under subsection (4) of this section, each witness must be a resident of the United States or a federally recognized Indian tribe and be physically present in the United States or on the land of a federally recognized Indian tribe.

[*(4)*]**(6)** As used in this section [*and ORS 112.238,*]**:**

(a) "Electronic presence" means the relationship of two or more individuals in different locations communicating simultaneously by sight and sound to the same extent as if the individuals were physically present in the same location.

(b) "Record" means information that is inscribed on a tangible medium or that is

stored in an electronic or other medium and is retrievable in perceivable form.

(c) "Sign" with respect to an electronic will means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To affix to or logically associate with the record an electronic symbol or process.

(d) [*"writing"*]**"Writing"** does not include an electronic record, document or image**, including an electronic will**.

SECTION 2. ORS 113.055 is amended to read:

113.055. [*(1)*]**(1)(a)** Upon the ex parte review of a petition for the probate of a will, an affidavit of an attesting witness **described in this subsection** may be used instead of the personal presence of the witness in court. **The affidavit shall be received in evidence by the court and have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court.**

(b) [*The*]**A** witness **to a will that is not an electronic will** may give evidence of the execution of the will by attaching the affidavit to the will or to a photographic or other facsimile copy of the will and may identify the signature of the testator and witnesses to the will by use of the will or the copy. [*The affidavit shall be received in evidence by the court and have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court.*] The affidavit [*of the attesting witness*] may be made at or after the time of execution of the will.

(c) A witness to an electronic will may give evidence of the execution of the will by, contemporaneously with the signing of the will, signing an affidavit of attesting witnesses that is accompanied by the testator's declaration. The affidavit and declaration must:

(A) Be made before an officer authorized to administer oaths under law of the state in which execution occurs or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing, before an officer authorized under ORS 194.277;

(B) Be evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will; and

(C) Be in substantially the following form:

I, _____ (name), the testator, and, being sworn, declare to the undersigned officer that I signed the foregoing instrument on _____, 2_____, at (include time of signing, if known) _____ a.m./p.m., as my electronic will, I willingly signed it or willingly directed another individual to sign it for me, I executed it as my voluntary act for the purposes expressed in the instrument, and at the time I signed it I was 18 years of age or older or had been emancipated or lawfully married, was of sound mind, and was under no constraint or undue influence.

_____

Testator

We, _____(name) and _____ (name), witnesses, being sworn, declare to the undersigned officer that the testator signed the foregoing instrument dated _____, 2____, as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical presence or electronic presence of the testator, signed the instrument on _____, 2_____, at (include time of signing, if known) _____ a.m./p.m., as witness to the testator's signing, and to the best of our knowledge at the time of signing the testator was 18 years of age or older or had been emancipated or lawfully married, was of sound mind, and was under no constraint or undue influence.

_____

Witness

_____

Witness

Certificate of officer:

State of _____

County of _____

Subscribed, sworn to, and acknowledged before me by _____(testator name), the testator, and subscribed and sworn to before me by _____ (witness name) and _____(witness

name), witnesses, this _____ day of _____, 2____, at _____ a.m./p.m..

_____

(name)

(Seal)

---

(2) Notwithstanding subsection (1)(c) of this section, the court may receive an affidavit of attesting witnesses to an electronic will in evidence and the affidavit shall have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court if:

(a)(A) The witnesses signed the affidavit contemporaneously with the signing of the electronic will but the affidavit is not accompanied by a declaration of the testator or otherwise does not meet the requirements under subsection (1)(c) of this section; or

(B) The witnesses did not sign the affidavit contemporaneously with the signing of the electronic will;

(b) The proponent of the electronic will gives notice of the filing under ORS 113.035 of the petition together with a copy of the petition and a certified paper copy of the electronic will, including the affidavit of attesting witnesses, to those persons identified in ORS 113.035 (5), (7), (8) and (9); and

(c)(A) No person receiving notice files a written objection within 20 days following the date of the notice; or

(B) The court, after hearing or on the basis of affidavits, determines that clear and convincing evidence exists proving the validity of the matters contained in the affidavit, prepares written findings of fact supporting the determination and enters a limited judgment admitting the electronic will to probate as the decedent's last will and testament.

[*(2)*]**(3)** [*However*]**Notwithstanding subsections (1) and (2) of this section**, upon motion of any person interested in the estate filed within 30 days from the date the personal representative first delivers or mails information under ORS 113.145 (1), the court may require that the witness making the affidavit be brought before the court. If the witness is outside the reach of a subpoena, the court may order that the deposition of the witness be taken.

[*(3)*]**(4)** If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

[*(4)*]**(5)** In the event of contest of the will or of probate of the will in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury.

(6) As used in this section with respect to an electronic will, "electronic presence" and "sign" have the meanings given those terms in ORS 112.235.

SECTION 3. ORS 111.005 is amended to read:

111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires otherwise:

(1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all claims, expenses and devises in full.

(2) "Action" includes suits and legal proceedings.

(3) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(4) "Advancement" means a gift by a decedent to an heir or devisee with the intent that the gift satisfy in whole or in part the heir's share of an intestate estate or the devisee's share of a testate estate.

(5) "Assets" includes real, personal and intangible property.

(6) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(7) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(8) "Decedent" means a person who has died.

(9)(a) "Descendant" means a person who is descended from a specific ancestor and includes an adopted child and the adopted child's descendants.

(b) When used to refer to persons who take by intestate succession, "descendant" does not include a person who is the descendant of a living descendant.

(10) "Devise," when used as a noun, means property disposed of by a will.

(11) "Devise," when used as a verb, means to dispose of property by a will.

(12) "Devisee" means a person designated in a will to receive a devise.

(13) "Distributee" means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(14) "Domicile" means the place of abode of a person, where the person intends to remain and to which, if absent, the person intends to return.

(15) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(16) "Electronic will" means a will executed electronically in compliance with ORS 112.235 (4).

[*(15)*] **(17)**(a) "Estate" means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment, substitutions or otherwise, augmented by any accretions or additions or diminished by any decreases or distributions.

(b) "Estate" includes tangible and intangible personal property of a decedent domiciled in Oregon, wherever the property is situated.

[*(16)*] **(18)** "Funeral" includes the burial or other disposition of the remains of a decedent, any plot or tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or other observance and related expenses.

[*(17)*] **(19)** "General devise" means a devise chargeable generally on the estate of a testator so that the devise is not distinguishable from other parts of the estate and does not constitute a specific devise.

[*(18)*] **(20)** "Heir" means any person who is or would be entitled under intestate succession to property of a person upon that person's death.

[*(19)*] **(21)**(a) "Interested person" means any person having a property right in or claim against the estate of a decedent that may be affected by the proceeding.

(b) "Interested person" includes a decedent's heir, devisee, child, spouse or creditor if the heir, devisee, child, spouse or creditor has a property right in or claim against the decedent's estate.

(c) "Interested person" also includes:

(A) A fiduciary representing a person described in paragraph (a) or (b) of this subsection; and

(B) A person designated in writing by the decedent to control the use of the decedent's gametes or embryos after the decedent's death.

[*(20)*] **(22)** "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.

[*(21)*] **(23)** "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

[*(22)*] **(24)** "Issue" means a descendant or descendants.

[*(23)*] **(25)** "Net estate" means the real and personal property of a decedent, except property used for the support of the surviving spouse and children and for the payment of expenses of administration, funeral expenses, claims and taxes.

[*(24)*] **(26)** "Net intestate estate" means any part of the net estate of a decedent not effectively disposed of by the will.

[*(25)*] **(27)** "Personal property" includes all property other than real property.

[*(26)*] **(28)** "Personal representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

[*(27)*] **(29)** "Property" includes both real and personal property.

[*(28)*] **(30)** "Real property" includes all legal and equitable interests in land, in fee and for life.

[*(29)*] **(31)** "Settlement" includes, as to the estate of a decedent, the full process of administration, distribution and closing.

[*(30)*] **(32)** "Specific devise" means a devise of a specific thing or specified part of the estate of a testator that is so described as to be capable of identification. A specific devise is a gift of a part of the estate identified and differentiated from all other parts.

[*(31)*] **(33)** "Will" includes codicil and also includes a testamentary instrument that merely appoints a personal representative or that merely revokes or revives another will.

SECTION 4. ORS 111.245 is amended to read:

111.245. (1) Proof of documents pursuant to ORS chapter 111, 112, 113, 114, 115, 116 or 117 may be made as follows:

(a) Of a will **that is not an electronic will**, by a certified copy of the will.

(b) Of an electronic will, by certified paper copy of the electronic will. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true and accurate copy of the electronic will. If the electronic will includes a declaration of the testator

and affidavit of attesting witnesses, the certified paper copy of the will must include the declaration and affidavit.

[*(b)*] **(c)** That a will has been probated or established in a foreign jurisdiction, by a certified copy of the document entered in the foreign jurisdiction admitting the will to probate or recognizing the validity of the will.

[*(c)*] **(d)** Of letters testamentary or letters of administration, by a certified copy of the letters. The certification may include a statement that the letters have not been revoked.

(2) A document filed or entered in a foreign jurisdiction may be proved by a copy of the document, certified by a clerk of the court in which the document was filed or entered or by any other official having legal custody of the original document.

SECTION 5. ORS 112.255 is amended to read:

112.255. (1) A will is lawfully executed if it is**:**

(a) [*in*]**In** writing **or, if the will is an electronic will, is a record that is readable as text at the time of signing**[**,**]**;**

(b) [*signed*]**Signed** by or at the direction of the testator**;** and

(c) [*otherwise*]**Otherwise** executed in accordance with the law of:

[*(a)*]**(A)** This state at the time of execution or at the time of death of the testator;

[*(b)*]**(B)** The domicile of the testator at the time of execution or at the time of the testator's death; or

[*(c)*]**(C)** The place of execution at the time of execution.

(2) A will **that is not an electronic will** is lawfully executed if it complies with the Uniform International Wills Act.

(3) A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

(4) A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

(5) As used in this section with respect to electronic wills, "record" and "sign" have the meanings given those terms in ORS 112.235.

SECTION 6. ORS 112.285 is amended to read:

112.285. (1) A will may be revoked or altered by another will.

(2) A will may be revoked by one or more physical acts by being burned, torn, canceled, obliterated**, deleted** or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction of the will by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two witnesses.

(3) A partial revocation of a provision in a will by one or more physical acts as described in subsection (2) of this section is not a valid revocation. One or more physical acts that affect one or more provisions of a will but not the entirety of the will are not effective to revoke those provisions, but clear and convincing evidence may show that the testator intended by the physical act or acts to revoke the entirety of the will.

SECTION 7. ORS 113.035 is amended to read:

113.035. Any interested person or the person nominated as personal representative named in the will may petition for the appointment of a personal representative and for the probate of a will. The petition must include the following information, so far as known:

(1) The name, age, domicile, post-office address and date and place of death of the decedent.

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

(4) The name and post-office address of the person nominated as personal representative and the facts that show the person is qualified to act.

(5) The names, relationship to the decedent and post-office addresses of persons who are or would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors.

(6) A statement that reasonable efforts have been made to identify and locate all heirs of the decedent. If the petitioner knows of any actual or possible omissions from the list of heirs, the petition must include a statement indicating that there are omissions from the information relating to heirs.

(7) If the decedent died testate, the names and post-office addresses of the devisees, and the ages of any who are minors. If the will devises property to a person who did not survive

the decedent or who is otherwise not entitled to receive the devise, the petition must include a statement explaining why the devise failed. If the petitioner knows of any actual or possible omissions from the list of devisees, the petition must include a statement indicating that there are omissions from the information relating to devisees.

(8) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that:

(a) The will alleged in the petition 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.

(9) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that a parent of the decedent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, as provided by ORS 112.047.

(10) **If the last will of the decedent is an electronic will, whether the electronic will is in the possession of the court or accompanies the petition.**

(11) If the will is not an electronic will, [*Whether*]**whether** the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or accompanying the petition and an authenticated copy of the will probated in another jurisdiction does not accompany the petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

[*(11)*] **(12)** A statement of the extent and nature of assets of the estate, if any, to enable the court to set the amount of bond of the personal representative.

[*(12)*] **(13)** If the petition states that no assets of the estate are known to the petitioner under subsection (11) of this section and the petition is not filed under ORS 114.453, a statement of the purpose for filing the petition.

[*(13)*] **(14)** If the petition is filed under ORS 114.453, a statement that the petitioner is filing the petition for the sole purpose of pursuing a wrongful death claim, and the other

information required under ORS 114.453.

SECTION 8. ORS 114.525 is amended to read:

114.525. (1) A simple estate affidavit must:

(a) Contain a notice in substantially the following form, printed in at least 14-point bold type immediately below the caption on the first page of the simple estate affidavit:

NOTICE OF DUTY TO PAY DEBT OR
TURN OVER PROPERTY

To: Any person to whom a copy of this simple estate affidavit is mailed or delivered.

Under ORS 114.535, if you owe a debt to the decedent or have personal property of the decedent, you must pay the debt or turn over the property to the affiant. If you refuse, the affiant may ask the court to compel you to pay the debt or turn over the property and you could be responsible for the affiant's attorney fees.

(b) State the name and post-office address of the affiant.

(c) State the authority under which the affiant is filing the simple estate affidavit, as provided in ORS 114.515.

(d) State that the simple estate affidavit is made under ORS 114.505 to 114.560.

(e) State the name, age, domicile and post-office address and last four digits of the Social Security number of the decedent.

(f) State the date and place of the decedent's death.

(g) Describe and state the fair market value of all property in the estate, valued as provided in ORS 114.510, including a legal description of any real property.

(h) State that no personal representative of the estate has been appointed in Oregon, that there is no pending petition for appointment of a personal representative of the estate in Oregon and that the estate is not currently being administered in Oregon.

(i) State whether the decedent died testate or intestate.

(j) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known

address.

(k) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address.

(L) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat.

(m) State that reasonable efforts have been made to ascertain creditors of the estate.

(n) List the claims against the estate that are undisputed by the affiant and that remain unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts of the claims and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address.

(o) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount of the claims disputed by the affiant and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address.

(p)(A) State the mailing address for presentment of claims; and

(B) If the affiant wishes to authorize creditors to present claims by electronic mail or facsimile communication, state the electronic mail address or facsimile number for presentment of claims.

(q) List anticipated administrative expenses and attorney fees, if any.

(r) State that the affiant is not disqualified from acting as an affiant under ORS 114.515 (2).

(s) State that a copy of the affidavit showing the date of filing and a copy of the death record will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the department or authority.

(t) State, to the best of the affiant's knowledge, whether the decedent was incarcerated in a correctional facility in this state at any time in the 15 years before the decedent's death and, if the decedent was incarcerated in a correctional facility in this state at any time in the 15

years before the decedent's death, state that a copy of the affidavit showing the date of filing and a copy of the death record will be mailed or delivered to the Department of Corrections.

(u) State that undisputed claims against the estate will be paid as provided in ORS 114.545.

(v) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(A) A claim is presented to the affiant within four months of the filing of the affidavit or amended affidavit at the address, electronic mail address or facsimile number stated in the affidavit for presentation of claims; or

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

(w) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(A) A petition for summary determination is filed within four months of the filing of the affidavit; or

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

(2) The affiant shall file a certified copy of the death record of the decedent as a confidential document.

(3) If the decedent died testate **and the decedent's last will is not an electronic will**, the affiant shall file simultaneously with the simple estate affidavit:

(a)(A) The original will; or

(B) If the original will is filed in an estate proceeding in another jurisdiction, a certified copy of the original will; and

(b) Proof of the will meeting the requirements of ORS 113.055.

(4) If the decedent died testate and the decedent's last will is an electronic will, the affiant shall file simultaneously with the simple estate affidavit:

(a) The electronic will; and

(b) Proof of the will meeting the requirements of ORS 113.055 (1)(c).

[*(4)*]**(5)** If the simple estate affidavit is filed under ORS 114.510 (1)(b), the affiant shall also file simultaneously with the simple estate affidavit a copy of the trust instrument or a

certification of the trust under ORS 130.860.

CONFORMING AMENDMENTS

SECTION 9. ORS 9.757 is amended to read:

9.757. (1) Except as provided in subsection (2) of this section or by court order, the Oregon State Bar may dispose of client papers and files that have not been claimed by a client of an affected licensee within six months after written notice to the client from the bar. The bar must dispose of the papers and files in a manner reasonably calculated to protect the confidentiality of the information contained in the papers and files.

(2) The bar may dispose of an unclaimed original will as provided in ORS 112.815 and 112.820.

(3) The bar shall maintain a log of all retained wills that is accessible to the public.

(4) Upon receipt of satisfactory proof of identity, the bar shall release a will belonging to a client to the client or to a duly appointed personal representative or conservator of the client.

(5) The bar may retain wills in digitized form, **including electronic wills as defined in ORS 111.005,** and a digitized copy, certified by the bar as a true copy of the digital document retained by the bar, shall be admissible in evidence to the same extent as the original.

SECTION 10. ORS 112.238 is amended to read:

112.238. (1) Although a writing was not executed in compliance with ORS 112.235 **(1) or (2)**, the writing may be treated as if it had been executed in compliance with ORS 112.235 **(1) or (2)** if:

(a) The writing was executed before the decedent's death;

(b)(A) The decedent signed the writing; or

(B) At the direction of the decedent, another person signed the name of the decedent and the signer's own name on the writing; and

(c) 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 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.

(6) As used in this section, "writing" does not include an electronic record, document or image, including an electronic will.

SECTION 11. ORS 112.800 is amended to read:

112.800. As used in ORS 112.800 to 112.830, unless the context requires otherwise[*, "person"*]**:**

(1) "Person" means a natural person, a partnership, a corporation, a bank, a trust company and any other organization or legal entity.

(2) "Will" includes an electronic will, as defined in ORS 111.005.

SECTION 12. ORS 112.810 is amended to read:

112.810. (1) Any person having custody of a will:

(a) Shall deliver the will to the testator upon demand from the testator, unless the person having custody of the will is an attorney and is entitled to retain the will pursuant to ORS 87.430;

(b) May at any time deliver the will to the testator;

(c) Upon demand from the conservator, shall deliver the will to a conservator for the testator;

(d) Upon demand from the attorney-in-fact, shall deliver the will to an attorney-in-fact acting under a durable power of attorney signed by the testator expressly authorizing the attorney-in-fact to demand custody of the will;

(e) May deliver the will to any attorney licensed to practice law in Oregon willing to accept delivery of the will if the person does not know or cannot ascertain, upon diligent inquiry, the address of the testator; or

(f) Shall deliver the will to a court having jurisdiction of the estate of the testator or to a personal representative named in the will within 30 days after the date of receiving information that the testator is dead.

(2) With respect to a will held in a safe deposit box, compliance with ORS 708A.655 or 723.844 by the financial institution, trust company, savings association or credit union within which the box is located shall be deemed to be compliance with the requirements of this section.

(3) As used in this section, "will" includes a certified paper copy of an electronic will, as described in ORS 111.245.

SECTION 13. ORS 112.820 is amended to read:

112.820. (1) An attorney who intends to destroy a will as authorized under ORS 112.815 must:

(a) Provide notice of the attorney's intent to destroy the will to the testator or, if the attorney knows the testator is deceased, to the personal representative and to each successor

personal representative named in the will; and

(b) Deliver the notice by mail, electronic mail, telephone and any other method reasonably calculated to convey the notice to the mailing addresses, electronic mail addresses and telephone numbers known to the attorney or reasonably ascertainable through public records or other searches.

(2) The notice under subsection (1) of this section must state the name of the testator, the date of the will and the intent of the attorney to destroy the will if, within 90 days after the date of the notice, the testator does not contact the attorney or, if the testator is deceased, the personal representative and each successor personal representative fail to accept delivery of the will.

(3) If the testator fails to contact the attorney within 90 days after the date of the notice or, if the testator is deceased, the personal representative and any successor personal representative fail to accept delivery of the will within 90 days of the date of the notice, the attorney may destroy the will.

(4)(a) At the time the attorney destroys a will under this section, the attorney shall sign an affidavit affirming:

(A) That despite diligent inquiry, the attorney was unable to locate the testator or, if the testator is deceased, that the attorney has knowledge of the testator's death and, despite diligent inquiry, the attorney was unable to locate the personal representative and successor personal representatives named in the testator's will or, if the attorney was able to locate the personal representative or any successor personal representative, that none would accept delivery of the will;

(B) That the attorney has created a complete digital copy of the testator's will, including any affidavit of attesting witnesses and codicils to the will; and

(C) That the attorney will retain a digital copy of the affidavit, the testator's will and any affidavit of attesting witnesses and codicils to the will for a period of no fewer than 20 years from the date of the affidavit.

(b) The affidavit must include documentation of the attorney's diligent efforts to provide notice to the testator or, if the attorney knows the testator is deceased, the personal representative and successor personal representatives, including but not limited to public records search results, the addresses, electronic mail addresses, telephone numbers or any other

methods of contact the attorney used to provide notice of the attorney's intent to destroy the will, a copy of the notice and any other documentation of the attorney's attempts to provide notice to the testator or, if the testator is deceased, to the personal representative and successor personal representatives.

(c) No earlier than 20 years following the date of the affidavit, the attorney may destroy the [*electronic*]**digitized** copies of the affidavit and the will and any affidavit of attesting witnesses or codicils to the will without notice of the destruction to any person or court.

SECTION 14. ORS 119.006 is amended to read:

119.006. As used in ORS 119.006 to 119.081:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means a person designated as an agent under a power of attorney in accordance with ORS 127.005 to 127.045.

(3) "Carries" means engages in the transmission of an electronic communication.

(4) "Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.

(5) "Conservator" has the meaning given that term in ORS 125.005.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication that:

(a) Has been sent or received by a user;

(b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(c) Is not readily accessible to the public.

(7) "Court" means a circuit court in this state.

(8) "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(10) “Digital asset” means an electronic record in which an individual has a right or interest. “Digital asset” does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12).

(13) “Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means a person that is an original, additional or successor personal representative, conservator, agent or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases and similar intelligence of any nature.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

(18) “Personal representative” means an executor, administrator or special administrator, or a person legally authorized to perform substantially the same functions.

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Protected person” means an individual for whom a conservator has been appointed. “Protected person” includes an individual for whom an application for the appointment of a conservator is pending.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Remote computing service” means a custodian that provides to a user computer

processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. 2510(14).

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another person. "Trustee" includes a successor trustee.

(26) "User" means a person that has an account with a custodian.

(27) "Will" includes [*a codicil,*]**:**

(a) A testamentary instrument that only appoints an executor [*and instrument that*]**or that only** revokes or revises a testamentary instrument**;**

(b) A codicil; or

(c) An electronic will, as defined in ORS 111.005.

CAPTIONS

SECTION 15. Captions. The unit and section captions used in this 2027 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2027 Act.

APPLICABILITY

SECTION 16. Transitional provision. The amendments to statutes by sections 1 to 14 of this 2027 Act apply to the will of a decedent who dies on or after the effective date of this 2027 Act.
