



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: March 13, 2019
TO: Honorable Jennifer Williamson, Chair of the House Judiciary Committee
FROM: Aaron Knott, Legislative Director
SUBJECT: HB 3006, HB 3007, HB 3008 – Probate Code Modernization

This testimony is presented in support of HB 3006, HB 3007, HB 3008.

Background: The Oregon Law Commission formed the Probate Modernization Work Group in 2012 for the purpose of reviewing and proposing updates to the probate code set forth in Oregon Revised Statutes Chapters 111 – 118. The Work Group produced bills enacted in 2015 (SB 379) and 2017 (HB 2986) with regard to certain portions of the code, and has also produced three bills introduced in 2019 (HB 3006, HB 3007, and HB 3008). Two Department of Justice attorneys participated in the Work Group, along with private attorneys experienced in estate planning, elder law, and wrongful death, and representatives of the Oregon Bankers Association, the Oregon Land Title Association, and judges and staff from several Circuit Courts and the Judiciary Department. The Department of Justice supports the results of the Work Group’s efforts.

Concept: HB 3006, HB 3007, and HB 3008 will each update separate portions of the probate code to improve clarity, promote statewide uniformity, streamline administration, and address problems identified by practitioners on the Work Group. The bills include updates to statutes governing small estates, as well as estates not eligible for the small estate procedures, colloquially known as “full probates,” and also estates opened solely to pursue a wrongful death claim.

- HB 3006 streamlines the full probate administration of an estate with no known assets by deferring the certain requirements such as obtaining a bond, publishing notice of the estate proceeding, identifying and notifying creditors of the estate, and delaying the deadlines for handling claims. If assets are subsequently discovered, the estate would at that time have to complete the deferred actions. If no assets are discovered, the bill provides a streamlined mechanism to close the estate. This bill is intended to avoid costs that are unnecessary when the estate has no assets to distribute, such as where the estate is needed only to prove the validity of a will in which the decedent may have made a declaration related to a pre-existing trust, or such as where the estate is needed only to serve as defendant for the purpose of reaching insurance policy proceeds.

- HB 3006 also streamlines the full probate administration of an estate (with or without assets) by allowing a personal representative to file a statement in lieu of an annual accounting in the same manner as a personal representative may file a statement in lieu of a final accounting, that is, only with the consent of all heirs or devisees of the estate. An unpaid creditor may require an annual accounting by notifying the personal representative, and a court may order an annual accounting. This provision is intended to reduce the costs of administering an estate by avoiding the time consuming task of an annual accounting in cases where the interested parties consent to the streamlined approach.
- HB 3007 provides a comprehensive update to the laws governing small estates. In addition to clarifying and updating the small estate provisions in ways similar to legislation enacted in 2017 regarding full probates, the bill also attempts to address concerns of abuse of the small estate procedure, raised by practitioners on the Work Group, while crediting information provided by representatives of the courts who participated in the Work Group and who reported that most estates administered under the small estate statutes do not appear to raise problems. Changes to the small estate statutes were excluded from HB 2986 in 2017 as the Work Group recognized the complexity of balancing these competing concerns, considered options, and ultimately agreed upon the provisions in HB 3007.
- HB 3008 modifies and enhances provisions related to estates in which the personal representative pursues a personal injury claim or a wrongful death claim. The bill would allow an estate to be opened in a county with jurisdiction over a personal injury or wrongful death claim, and would adopt statewide certain practices currently used in only some counties, such as requiring court approval of personal injury or wrongful death settlements. Where an estate is opened solely for the purpose of pursuing a wrongful death claim, that is, where there are no other assets to administer, the bill would defer or modify certain requirements, such as obtaining a bond, filing annual accounts, filing an inventory, identifying and notifying creditors other than those entitled to recover from wrongful death proceeds. These changes are intended to avoid unnecessary costs since wrongful death proceeds are disbursed pursuant to ORS 30.030 rather than provisions of the probate code. The bill would also clarify that the calculation of a personal representative's fee under ORS 116.173 includes the amount recovered on a wrongful death claim.

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