

HB 3008 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/13, 4/8

WHAT THE MEASURE DOES:

Specifies process for probate proceedings of wrongful death claims and estates with personal injury claims. Requires court approval of settlement of claims in probate proceedings. Requires particular information be stated in petition for approval of settlement. Reduces requirements on personal representative who opens probate solely for the purpose of pursuing wrongful death claim. Requires information on wrongful death claim in probate be given to beneficiaries of estate, Department of Human Services, and Oregon Health Authority. Waives specific requirements on personal representative when personal representative has been appointed to pursue wrongful death claim and no assets of estate have been discovered, such as publication of notice, bonding, accounting, and inventory. Allows closing of estate no less than four months after resolution and distribution of any recovered funds. Provides process for closing estate. Updates fee schedule for personal representative.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Replaces provisions relating to court approval of settlement. Allows parties to a personal injury claim or wrongful death action to enter into settlement agreement, subject to approval of court, even if action has not yet commenced on claim. Removes provisions requiring court to determine adequacy of proposed settlement, a statement that the attorney has independently evaluated the interest of the estate and beneficiary, and statement that attorney consulted with Department of Human Services to determine if lien exists.

BACKGROUND:

The Oregon Law Commission's Probate Modernization Work Group has been reviewing the probate statutes since 2013. Their efforts have resulted in enacted legislation in the 2015, 2016, and 2017 sessions. During the 2017-2018 interim, the Work Group undertook changes to the probate statutes in three areas: estates in which no assets are known to exist; small estates; and estates in which the personal representative is pursuing a wrongful death claim.

House Bill 3008 provides a standardized process for probate of estates that include a wrongful death or personal injury claim. The measure requires court approval of any settlement of a wrongful death or personal injury claim by the personal representative. The measure waives certain requirements on the personal representative when the probate is opened for the sole purpose of pursuing a wrongful death claim and no other assets are discovered, such as obtaining a bond, filing accountings, filing inventories, and notifying creditors. The measure applies to settlement agreements, petitions to appointment for appointment of a personal representative, to damages received, and applications for compensations by the personal representative on or after the effective date of the act.