

HB 3008 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary

Action Date: 05/09/19
Action: Do pass the A-Eng bill.
Vote: 4-0-1-2
Yeas: 4 - Fagan, Gelser, Manning Jr, Prozanski
Exc: 1 - Thatcher
Abs: 2 - Bentz, Linthicum
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel
Meeting Dates: 5/1, 5/9

WHAT THE MEASURE DOES:

Specifies process for probate proceedings of wrongful death claims and estates with personal injury claims. Allows parties to a personal injury claim or wrongful death action to enter into settlement agreements, subject to approval of court, even if action has not yet commenced on claim. 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:

- Differences between wrongful death claim in probate and personal injury claim that preceded death
- Personal injury claim as an asset of estate
- Wrongful death claim is not an asset of estate, but personal representative must be appointed to bring claim on behalf of beneficiary
- Approval of settlement by court prior to administration of estate

EFFECT OF AMENDMENT:

No amendment.

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 A 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

HB 3008 A STAFF MEASURE SUMMARY

representative, damages received, and applications for compensation by the personal representative on or after the effective date of the act.