

SB 728 STAFF MEASURE SUMMARY

Carrier: Rep. Wallan

House Committee On Judiciary**Action Date:** 05/18/21**Action:** Do Pass.**Vote:** 10-0-0-0**Yeas:** 10 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Noble, Power, Wallan, Wilde**Fiscal:** No fiscal impact**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 5/3, 5/5, 5/18**WHAT THE MEASURE DOES:**

Provides specific authorities, processes, and definitions in probate proceedings. Allows substitution of personal representative of defendant's estate for deceased defendant within 90 days of commencing action if defendant died before statute of limitation ran on claim or within 60 days after the action is commenced. Specifies that a court may require a hearing on any petition or motion in a probate proceeding. Applies many Oregon Rules of Civil Procedure to probate proceedings. Applies Oregon Evidence Code to contested issues in probate proceedings. Formalizes court authority to compel production of documents and oversee fiduciaries. Provides definitions. Clarifies persons who qualify as "interested person" within probate code. Specifies uniform content and process for probate notices. Clarifies decisions that may be contained in limited judgment. Requires a personal representative who files motion for possession of real property to give notice of the motion to all adult occupants of the real property. Repeals current statute on declaratory judgment in trusts and estates and stenographic recording of probate proceedings. Makes technical changes.

ISSUES DISCUSSED:

- Examples of situations in which Oregon Rules of Civil Procedure would apply
- Ability of probate court to determine possession of property
- Interaction between property rights and probate

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, 2017, and 2019 sessions. During the 2019-2021 interim, the Work Group undertook process, notice, and court authority updates to the Probate Code.

Senate Bill 728 is the product of the Probate Modernization Work Group with an addition from the Oregon Council on Court Procedures. The measure specifies which Oregon Rules of Court Procedure apply to probate proceedings and clarifies that the Oregon Evidence Code applies to contested hearings. Several technical updates are made and modifications to notice provisions provided. Additionally, the measure allows for a 90-day window for a plaintiff to substitute the personal representative of a defendant's estate in an action against the defendant if the defendant dies before the statute of limitation runs or within 60 days after the action is commenced.