



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: March 15, 2023

TO: Representative Jason Kropf
Chair, House Committee on Judiciary

FROM: Kimberly McCullough
Legislative Director, Oregon Department of Justice

SUBJECT: House Bill 2950 – Decedents’ Estates

This testimony is presented in opposition to HB 2950.

Background

DOJ’s Division of Child Support administers the Oregon Child Support Program, the federal Title IV-D program for the state. After public schools, the Oregon Health Plan, and SNAP, the Oregon Child Support Program is the public program serving the most children in Oregon. This important anti-poverty program collects more than \$366 million in child support annually for Oregon families. The federal government matches \$2 for every \$1 of state general fund, and in Oregon, \$3.96 is collected for every government dollar spent on compliance with child support.

The Department’s Civil Recovery Section supports the work of the Oregon Child Support Program, other state agencies, and Oregon crime victims by assisting with the collection of restitution, child support, civil penalties, and other debts owed to the State of Oregon.

HB 2950 Impact on Child Support and Other Collections

HB 2950 would have a direct impact on DOJ’s work to collect debts owed to the state, child support for Oregon families, and restitution for crime victims. The bill also could hinder the State’s obligations under the federal Medicaid program.

HB 2950 bars most creditors from recovering from a decedent’s estate if a probate proceeding has not been opened within 18 months after death. (The proposed -1 amendments would lengthen the period to 24 months, but the increase does not lessen the impact). This bill would effectively extinguish a decedent’s unsecured debts if someone does not start an estate recovery within 18 or 24 months of the debtor’s death—even if the creditor was unaware of the death. Creditors often do not learn of a debtor’s death right away, and this bill would create an incentive for their heirs and devisees to wait many months before filing an estate. Current law requires that the personal

representative of an estate give notice to creditors before their claims are barred. This bill effectively removes that protection.

DOJ frequently collects debts from probate estates on behalf of various state agencies and the Oregon Child Support Program. The claims arise from a wide variety of situations, including unpaid taxes, damage to state property, civil or criminal restitution to victims, penalties, unpaid child support, and federally mandated recovery of Medicaid. The amounts at issue in each case range from a few thousands to even hundreds of thousands of dollars.

These are not simply debts owed to the State. Unpaid child support, which the state assists in collecting, is largely owed to a private party—the parent—rather than to the State. While they are a minority, there are parents who have money and yet willfully avoid their child support obligations, and that is one reason why DOJ has a small probate team in the Division of Child Support. For example, in 2021, the Division of Child Support collected \$126,277.39 in child support in cases where the paying parent was deceased. In 2022, that number was \$82,343.66. This bill also could delay initiating probate in estates where a parent who owes past-due child support is an heir, leading to a further delay in getting that money to the parent to whom it's owed. Although the relative numbers may seem small, this money represents child support arrears where there are families on the other side—not typical creditors. Every dollar of that money was owed and went unpaid to children and families in Oregon.

Similarly, the state also recovers restitution owed to private parties, such as criminal restitution recovered by the Oregon Judicial Department, civil restitution recovered by the Department of Justice for victims of consumer protection violations, and civil restitution recovered by the Bureau of Labor and Industries for victims of civil rights violations.

There is no practical, effective mechanism to avoid the lost recoveries this bill would impose. In practice, creditors, including the state, are not well-positioned to monitor and discover whether a debtor has died. While the state may discover the death of a debtor with whom the state is actively engaged in efforts to collect the debt, if a debt was reduced to a judgment or final order at some time prior to the debtor's death, this bill could require years of monitoring. For example, civil judgments can be enforced for up to 20 years, judgments for criminal restitution are valid for 50 years, and child support judgments have a 35-year expiration. To ensure the state was timely aware of a debtor's death, the state would have to annually investigate each debtor owing money to the state to determine whether the debtor remained alive or had died in the past year. Even if the state determines a debtor has died, the decision of whether to open probate in order to preserve the state's ability to recover under the bill would then require investigation of the decedent's assets, which can take significant time and resources.

To the extent the bill is intended to address a concern about creditors coming forward to pursue recovery of the debt some number of years after the decedent's death, there is already a process in

existing law. If “unexpected” creditors are the bill’s concern, then the heirs or devisees under a decedent’s will have a better remedy, which is to timely open a probate and avail themselves of the existing statutes that set express timelines for when claims must be presented. *See* ORS 114.540(1) and 115.005. Claims not timely presented are barred. There is a process in the probate estate to deal with creditor claims. The law does not need to bar creditor claims for parties who choose not to properly administer an estate.

Impact on Federally Mandated Estate Recovery

HB 2950 is also particularly concerning in relation to federally mandated estate recovery. 42 USC § 1396p(b) requires the state to seek to recover Medicaid from the estate of a Medicaid client. Federal funds are only available to states that comply with all requirements. 42 USC §§ 1396-1, 1396b, 1396a(a)(18), 1396p(b). Federal law requires the state to pursue recovery of Medicaid from the assets of the Medicaid recipient, but postpones that recovery until the death of both the Medicaid client and any spouse of the Medicaid client. While ODHS is aware when a person receiving Medicaid has died, because the death results in closing the client’s Medicaid benefits, ODHS does not have a means to monitor for the death of a person who ceased receiving Medicaid at some time prior to death (such as when a Medicaid client’s financial situation changes such that they have sufficient income or resources to no longer qualify for the Medicaid program), or to monitor for the death of a Medicaid client’s spouse. By statute, notice of every small estate affidavit and petition for probate must be served upon ODHS, and ODHS also reviews court records of new filings. But because a surprising number of probates are not opened within 18 or 24 months after the person’s death, notice of the filing does not timely notify ODHS of the person’s death. Because there is not a cost-effective means to monitor for a debtor’s death, the State may be unable to recover from these estates.

For the reasons above, the Department of Justice opposes HB 2950.

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