

**Testimony before the Senate Judiciary Committee  
in support of Senate Bill 168  
On behalf of the Oregon State Bar  
January 23, 2025**

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

For the record my name is June Wiyrick Flores, and I am here on behalf of the Oregon State Bar's Estate Planning and Administration Section.

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 15,000 active members. The OSB serves the public interest by: regulating the legal profession and improving the quality of legal services; supporting the judiciary and improving the administration of justice; and advancing a fair, inclusive and accessible justice system. This bill is put forth as part of the bar's Law Improvement Program, through which Practice Sections of the Bar may initiate legislative efforts to improve and clarify law.

### **Senate Bill 168**

SB 168 addresses several separate issues related to probate in Oregon.

#### **Intestate Succession**

ORS 112.105(2) addresses how to establish parentage for the purposes of intestate succession. This statute has been amended multiple times over the years, and a drafting error made its way in the statute when it was last updated in 2017.

Originally the statute provided that parentage could be established by any of the normal methods used for family law purposes (ORS 109.065), **OR** if a parent had acknowledged being the parent of a child in writing. As a result of a drafting error in 2017, the "or" in that statute was replaced by an "and". This change has the potential to make it more difficult for children to prove that a person was their parent for the purpose of intestate succession. SB 168 simply reverts the statute to the original wording.

#### **Simple Estates**

In 2023, Oregon adopted a provision to allow for a simple estate affidavit procedure for a decedent who had a revocable trust and a will that designates the decedent's trust as the beneficiary. The statute provides a simple estate affidavit is not available for such an estate if

more than \$75,000 of personal property and more than \$200,000 of real property is attributable to one or more specific devisees.

However, if the decedent's will contains a specific devise to the decedent's trust of more than these amounts, then the simple estate affidavit cannot be used, even if the specific devisee and the residuary devisee are the decedent's trust. The intent of the statute was to allow the use of the simple estate affidavit when the decedent's will directs that the assets will be distributed to the decedent's trust. SB 168 updates the statute to allow the simple estate affidavit to be used in these circumstances.

We are also proposing one minor change to this section of the bill, which is to correct the term "distributee" to instead be "devisee". Both of these terms are already defined in ORS 111.005, and the term "devisee" more accurately refers to a person designated in a will to receive property (a devise).

### **Will Execution Formalities**

ORS 112.238 is Oregon's "Harmless Error" statute. The purpose of the harmless error statute is to allow a court to address mistakes in execution of a will. That is, the statute was intended to address the problem that occurred when a testator attempted to execute a will but failed to comply with all of the required formalities.

SB 168 clarifies several ambiguities in the statute, including when a writing must have been created to be treated as a will, and that electronic documents may not be considered.

### **Probate Code Procedure**

By default, the Oregon Rules of Civil Procedure and the Oregon Evidence Code do not apply in probate proceedings. However, ORS 111.200 specifies a list of specific ORCPs that do apply in these cases. SB 168 adds ORCP 45, which provides rules related to Requests for Admission to this list.

### **Applicability**

We are also recommending a minor amendment to Section 6 of the bill, which is the applicability provisions. Subsection (1) provides that the amendments in the bill apply to "decedents dying" on or after the effective date of the bill. It would be more accurate to say that it applies to "estates of" decedents dying on or after that date. We are happy to work with Legislative Counsel on those minor changes.

Thank you for your consideration of SB 168. I am happy to answer any questions.