

SB 744: Amendment to ORS 113.085  
Written Testimony of Emma Crispin, J.D.

Monday, March 3, 2025

Chair Prozanski, Vice Chair Thatcher, and members of the Senate Judiciary Committee:

My name is Emma Crispin, and I am an attorney at Nay & Friedenbergl, a firm that handles estate planning, elder law and probate proceedings. Most of my practice is related to probate.

SB 744 seeks to amend ORS 113.085 to create a mandatory notice requirement to individuals with a higher priority to serve as Personal Representative by replacing the word “may” in ORS 113.085(2) with the word “shall”. Currently, courts have the discretion to require notice to higher priority individuals. This bill seems to be a solution in search of a problem with unintended consequences.

This testimony is opposed to SB 744 for numerous reasons. It is already within court authority to require this notice, and SB 744 would add unnecessary delay to probate proceedings, which are often time sensitive. After someone dies, a Personal Representative must be appointed quickly to access bank accounts, stop automatic withdrawals, ensure property, make sure bills are paid. Tax elections must be taken within a certain time limit, and statutes of limitations may be looming for related litigation. It is imperative the Personal Representative have the time and ability to take on the multitude of tasks. Additionally, if someone with higher priority to serve as Personal Representative is deemed not fit to serve, SB 744 provides no flexibility and would require notice regardless.

I have experienced several situations in my practice where a mandatory notice requirement would have significantly delayed the appointment of a Personal Representative unnecessarily, at times to the detriment of the survivors. For example, I work closely with several litigation firms doing mass tort litigation and have been contacted numerous times because a plaintiff passed away just before an impending trial date, and now a Personal Representative must be appointed to proceed with trial. In these situations, the flexibility of the current language is integral to expedite the appointment of a Personal Representative. Not only do we have to contend with impending trials, but there is also the issue of statutes of limitation for commencing actions. I was recently contacted by a litigation firm to open an estate for a decedent who was survived by his unmarried life-partner and an estranged son to pursue a survival claim. The decedent’s life partner wished to be appointed as Personal Representative, and the son had not had contact with the family in over a decade. If the proposed change was in effect, it would have required substantial time and effort to attempt to locate the estranged son. By the time he was located, if he was ever located, and given notice of the petition for appointment, the statute of limitations for commencement of the action would have run. If the Court was concerned, they could have required us to give notice to the son as a higher priority person as is clearly within their authority.

There are a number of other situations where a mandatory notice does not make sense. Sometimes higher priority individuals cannot be located without the appointment of a Personal Representative or are disqualified for other reasons. Many of my clients appointed as Personal Representatives did not have priority but were supported by the higher priority individuals. For example, the granddaughter of the decedent agreed to serve because the children of the decedent were all elderly and did not feel like they would be able to serve. I have also experienced situations in which the court did require notice be given to higher priority individuals before appointment. The courts have this authority already.

SB 744 makes mandatory a requirement that the court may impose already, at the expense and delay of people seeking to administer an estate. The current version of ORS 113.085 provides some flexibility, but still gives the courts authority to require notice to higher priority individuals. Too many situations exist where it would not make sense to notice higher priority individuals, including situations where the higher priority person is not fit to serve, supports the proposed Personal Representative's appointment, or cannot be located. For these reasons, I oppose SB 744. Thank you.