

HOUSE BILL REPORT

HB 1060

*As Reported By House Committee on:
Judiciary*

Title: An act relating to notice to the creditors of a deceased person.

Brief Description: Requiring the notice to the creditors of a deceased person to be filed with the clerk of the court.

Sponsor(s): Representatives Ludwig, Padden, R. Meyers, Orr, Winsley and Sheldon.

Brief History:

Reported by House Committee on:
Judiciary, January 23, 1991, DP.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass.* Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: The state's probate code prescribes the duties and powers of the personal representative of a deceased person in handling the decedent's estate. One of the duties of a personal representative is to notify creditors of the estate of how to file a claim against the estate. Before 1989, the law allowed a personal representative to notify creditors of an estate through publication in legal newspapers. A U.S. Supreme Court decision invalidated this state law by holding that the Due Process clause of the U.S. Constitution requires in-person, or at least mail, notification of "known or reasonably ascertainable" creditors.

House Bill 1173 was enacted in 1989 and requires a personal representative to exercise "reasonable diligence" in discovering creditors of the estate. The 1989 law also requires the personal representative to notify creditors of the estate in person or by mail.

The pre-1989 state statute contained an explicit requirement that a creditor who makes a claim against an estate must file that claim with the court in addition to serving the claim on the personal representative. The 1989 amendment removed this explicit statement regarding court filing. While the requirement remains implicit when the several sections of the law related to this subject are read together, there has been some concern among practitioners of probate law that the current statute is ambiguous.

Summary of Bill: An explicit provision is returned to the probate code requiring that creditors of an estate must file their claims with the court.

An emergency clause makes this provision take effect immediately upon enactment.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The bill clarifies an ambiguity in the current law.

Testimony Against: None.

Witnesses: Doug Lawrence, Washington State Bar Association (in favor of bill).