

SB 474 A STAFF MEASURE SUMMARY**Carrier:** Rep. Stark**House Committee On Judiciary****Action Date:** 05/22/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 11-0-0-0**Yeas:** 11 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 5/8, 5/22**WHAT THE MEASURE DOES:**

Prevents parents from receiving damages from their child's wrongful death action in certain circumstances. Specifies process for forfeiture of parental share in wrongful death actions, intestate succession, or transfers on death deed. Specifies that when the individual who would benefit from the parental forfeiture is the child's sibling or child, the sibling or child must prove, by a preponderance of the evidence, that: 1) the child died as an adult and the parents had, in the year before the child became an adult, either willfully deserted their child or without just and sufficient cause neglected to provide proper care and maintenance for the child; 2) the child died while still a child, and the parents had willfully deserted the child or, without just and sufficient cause, neglected to provide the child with proper care and maintenance for the entirety of the child's life or for the year preceding the child's death; or 3) the parents' parental rights had been terminated. Specifies that when the individual who would benefit from the forfeiture is anyone other than the child's sibling or child, the individual must prove, by clear and convincing evidence, that: 1) the child died as an adult and the parents had, in the three years before the child became an adult, either willfully deserted their child or without just and sufficient cause neglected to provide proper care and maintenance for the child; 2) the child died while still a child, and the parents had willfully deserted the child or, without just and sufficient cause, neglected to provide the child with proper care and maintenance for the entirety of the child's life or for the three years preceding the child's death; or 3) the parents' parental rights had been terminated. Specifies that the damages distributable to the parent pass as if the parent had predeceased the child. Provides a timeline by which an individual who would benefit from the parent's forfeiture can petition to assert that interest. Allows individuals who were not entitled to be named as an interested person in the petition for appointment of a personal representative to assert that the parent's intestate share is subject to forfeiture and that the person has a right to inherit the share four months after notice by publication, or if no notice was published, one year after the decedent's death. Applies to actions and estates commenced on or after the effective date and pending on the effective date. Applies to transfers on death deed made before, on, or after the effective date. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Recent cases relevant to the measure
- The role of juries in the wrongful death awards and determination of parental share
- Court procedures for wrongful death, intestate inheritance, and death deed transfers

EFFECT OF AMENDMENT:

Creates separate standards and timelines depending on status of person who would benefit from the forfeiture in the wrongful death, intestate inheritance, and death deed transfer proceedings. Specifies that if the beneficiary is the sibling or child of the decedent, the child or sibling must prove willful desertion or neglect for one year by a preponderance of the evidence; if the beneficiary is anyone else, the person must prove willful desertion or

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neglect for three years by clear and convincing evidence.

BACKGROUND:

Currently, a parent who has abandoned or neglected to provide for a child may receive damages resulting from that child's wrongful death action. A recent wrongful death case involving a child who died while in state foster care brought attention to this issue. Each of the child's parents was awarded \$130,000 in damages, even though there were years of allegations of maltreatment, and at the time of her death, the child had been removed from their care. There are parental forfeiture laws that prevent parents who have abandoned or neglected to provide for their child from inheriting from them through intestate succession and transfer on death deeds. Those statutes require proof by clear and convincing evidence that a parent neglected to provide proper care and maintenance or willfully deserted their child for ten years before the child's death, or within ten years of the child becoming an adult.

Senate Bill 474 A prohibits parents who have neglected to provide proper care and maintenance or willfully deserted their child from receiving damages from a wrongful death action regarding that child and provides a process by which interested parties can assert their right to a parent's forfeited damages. It also changes the duration of time that a parent must have neglected to provide proper care and maintenance or willfully deserted their child in order to trigger a forfeiture of their intestate inheritance or death deed transfer. Finally, the measure makes the burden of proof for that determination a preponderance of the evidence if the individual seeking forfeiture is the child's sibling or child, and allows an individual who would benefit from a successful petition for forfeiture up to one year after the decedent's death to file a claim, if that person did not receive notice that a probate estate had been opened.

CHAPTER 461

AN ACT

SB 474

Relating to forfeiture of parent's share of child's estate; creating new provisions; amending ORS 93.983, 93.985, 112.047 and 112.049; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2019 Act are added to and made a part of ORS 30.010 to 30.100.

SECTION 2. (1) Notwithstanding ORS 30.020, any damages distributable under ORS 30.030 to 30.060 to a parent or stepparent shall pass and be vested as if the parent or stepparent had predeceased the decedent if:

(a) The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was an adult when the decedent died and:

(A) The parent or stepparent of the decedent willfully deserted the decedent for the one-year period immediately preceding the date on which the decedent became an adult; or

(B) The parent or stepparent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the one-year period immediately preceding the date on which the decedent became an adult.

(b) The person who would be benefited by the forfeiture is not a child or sibling of the decedent, the decedent was an adult when the decedent died and:

(A) The parent or stepparent of the decedent willfully deserted the decedent for the three-year period immediately preceding the date on which the decedent became an adult; or

(B) The parent or stepparent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the three-year period immediately preceding the date on which the decedent became an adult.

(c) The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was a minor when the decedent died and:

(A) The parent or stepparent of the decedent willfully deserted the decedent for the life of the decedent or for the one-year period immediately preceding the date on which the decedent died; or

(B) The parent or stepparent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the one-year period immediately preceding the date on which the decedent died.

(d) The person who would be benefited by the forfeiture is not a child or sibling of the de-

cedent, the decedent was a minor when the decedent died and:

(A) The parent or stepparent of the decedent willfully deserted the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died; or

(B) The parent or stepparent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died.

(e) The parental rights of the parent with respect to the decedent were terminated and the parent-child relationship between the parent and the decedent was not judicially reestablished.

(2) For the purposes of subsection (1) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent or stepparent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent.

(3) For the purposes of subsection (1) of this section, in determining whether the parent or stepparent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent or stepparent whose damages would be forfeited under this section.

(4) The forfeiture provisions of subsection (1) of this section apply to a stepparent only if the stepparent had an obligation to provide support for the decedent under ORS 108.045.

(5) The distribution of damages to a parent or stepparent of a decedent may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under section 3 of this 2019 Act. A petition filed under ORS 113.035 may not request the forfeiture of damages distributable to a parent or stepparent of a decedent under this section.

SECTION 3. (1) A petition may be filed in probate proceedings to assert that the interest in damages distributable to a parent or stepparent under ORS 30.030 to 30.060 is subject to forfeiture under section 2 of this 2019 Act. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's or stepparent's distribution.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:

(A) Four months after the first publication of notice to interested persons; or

(B) If notice to interested persons was not published, one year after the decedent's date of death.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by:

(a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

SECTION 4. ORS 112.047 is amended to read:

112.047. (1) Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if:

(a) The parental rights of the parent with respect to the decedent were terminated and the parent-child relationship between the parent and the decedent was not judicially reestablished.

(b) The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was an adult when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the [10-year] one-year period immediately preceding the date on which the decedent became an adult; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the [10-year] one-year period immediately preceding the date on which the decedent became an adult.

(c) The person who would be benefited by the forfeiture is not a child or sibling of the decedent, the decedent was an adult when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the three-year period immediately preceding the date on which the decedent became an adult; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the three-year period immediately preceding the date on which the decedent became an adult.

[(c)] (d) The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was a minor when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the life of the decedent or for the [10-year] one-year period immediately preceding the date on which the decedent died; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance

for the decedent for the life of the decedent or for the [10-year] one-year period immediately preceding the date on which the decedent died.

(e) The person who would be benefited by the forfeiture is not a child or sibling of the decedent, the decedent was a minor when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died.

(2) For the purposes of subsection (1) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent.

(3) For the purposes of subsection (1) of this section, in determining whether the parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent whose intestate share would be forfeited under this section.

(4) The intestate share of a parent of a decedent may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 112.049. A petition filed under ORS 113.035 may not request the forfeiture of the intestate share of a parent of a decedent under this section.

SECTION 5. ORS 112.049 is amended to read:

112.049. (1) A petition may be filed in probate proceedings to assert that the intestate share of a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:

(A) Four months after the first publication of notice to interested persons [if the person on whose behalf the petition is filed was not required to be

named as an interested person in the petition for appointment of a personal representative.]; or

(B) If notice to interested persons was not published, one year after the decedent's date of death.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by *[clear and convincing evidence.]*:

(a) If the petitioner is a child or sibling of the decedent, a preponderance of evidence; or

(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

SECTION 6. ORS 93.983 is amended to read:

93.983. (1) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from a deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if **the person who would be benefited by the forfeiture is a child or sibling of the transferor**, the transferor was an adult when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the *[10-year]* **one-year** period immediately preceding the date on which the transferor became an adult; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the *[10-year]* **one-year** period immediately preceding the date on which the transferor became an adult.

(2) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from a deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if the person who would be benefited by the forfeiture is not a child or sibling of the transferor, the transferor was an adult when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the three-year period immediately preceding the date on which the transferor became an adult; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the three-year period immediately preceding the date on which the transferor became an adult.

[(2)] **(3)** Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from the deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if **the person who would be benefited by the forfeiture is a child or sibling of the transferor**, the transferor was a minor when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the life of the transferor or for the *[10-year]* **one-year** period immediately preceding the date on which the transferor died; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance

for the transferor for the life of the transferor or for the *[10-year]* **one-year** period immediately preceding the date on which the transferor died.

(4) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from the deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if the person who would be benefited by the forfeiture is not a child or sibling of the transferor, the transferor was a minor when the transferor died and:

(a) The parent of the transferor willfully deserted the transferor for the life of the transferor or for the three-year period immediately preceding the date on which the transferor died; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the life of the transferor or for the three-year period immediately preceding the date on which the transferor died.

[(3)] **(5)** For the purposes of subsections (1) *[and (2)]* **to (4)** of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the transferor.

[(4)] **(6)** For the purposes of subsections (1) *[and (2)]* **to (4)** of this section, in determining whether the parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the deceased transferor, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the transferor and the parent whose transfer would be forfeited under this section.

[(5)] **(7)** The transfer of property, as defined in ORS 93.949, to a parent of a deceased transferor may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 93.985. A petition filed under ORS 113.035 may not request the forfeiture of a transfer by a transfer on death deed of a parent of a deceased transferor under this section.

SECTION 7. ORS 93.985 is amended to read:

93.985. (1) A petition may be filed in probate proceedings to assert that the interest in property, as defined in ORS 93.949, transferred by a transfer on death deed to a parent of a deceased transferor is subject to forfeiture under ORS *[112.047]* **93.983**. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or

mailed to the person on whose behalf the petition is filed; or

(b) **If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:**

(A) Four months after the first publication of notice to interested persons [*if the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative*]; or

(B) **If notice to interested persons was not published, one year after the decedent's date of death.**

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by [*clear and convincing evidence*.]:

(a) **If the petitioner is a child or sibling of the transferor, a preponderance of evidence; or**

(b) **If the petitioner is not a child or sibling of the transferor, clear and convincing evidence.**

SECTION 8. (1) Sections 2 and 3 of this 2019 Act apply to actions under ORS 30.020 commenced on or after the effective date of this 2019

Act, and to actions under ORS 30.020 commenced prior to the effective date of this 2019 Act that are pending on the effective date of this 2019 Act.

(2) The amendments to ORS 112.047 and 112.049 by sections 4 and 5 of this 2019 Act apply to estates of decedents commenced on or after the effective date of this 2019 Act, and to estates of decedents commenced prior to the effective date of this 2019 Act that are pending on the effective date of this 2019 Act.

(3) The amendments to ORS 93.983 and 93.985 by sections 6 and 7 of this 2019 Act apply to a transfer on death deed made before, on or after the effective date of this 2019 Act.

SECTION 9. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Approved by the Governor June 20, 2019
 Filed in the office of Secretary of State June 24, 2019
 Effective date June 20, 2019