

House Bill 2381

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes new elective share for surviving spouses. Provides that elective share is percentage of augmented estate based on number of years of marriage.

Describes assets to be considered by court in establishing augmented estate. Establishes priorities for sources of payment of elective share. Creates procedure for filing motion or petition seeking payment of elective share.

A BILL FOR AN ACT

1
2 Relating to elective share of surviving spouse; creating new provisions; amending ORS 116.133; and
3 repealing ORS 114.105, 114.115, 114.125, 114.135, 114.145, 114.155 and 114.165.

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

5 **SECTION 1. Sections 2 to 24 of this 2007 Act are added to and made a part of ORS**
6 **chapter 114.**

DEFINITIONS

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10 **SECTION 2. Definitions. For purposes of sections 2 to 24 of this 2007 Act:**

11 (1) **"Power" or "power of appointment" includes a power to designate the beneficiary**
12 **under a beneficiary designation.**

13 (2) **"Property" includes rights subject to a beneficiary designation.**

14 (3) **"Transfer" includes:**

15 (a) **An exercise or release of a presently exercisable general power of appointment held**
16 **by the decedent, as described in section 14 (6) of this 2007 Act;**

17 (b) **A lapse at death of a presently exercisable general power of appointment held by the**
18 **decedent, as described in section 14 (6) of this 2007 Act;**

19 (c) **An exercise, release or lapse of a general power of appointment that the decedent**
20 **created in the decedent; and**

21 (d) **An exercise, release or lapse of a general power of appointment that the decedent**
22 **conferred on another person as described in section 15 (2)(c) of this 2007 Act.**

ELECTIVE SHARE

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26 **SECTION 3. Elective share generally. (1) If a decedent is domiciled in this state on the**
27 **decedent's date of death, and the decedent is survived by a spouse, the surviving spouse of**
28 **the decedent may elect to receive the elective share provided by sections 2 to 24 of this 2007**
29 **Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) Any amounts received under ORS 114.015 are in addition to the elective share provided
2 for in sections 2 to 24 of this 2007 Act.

3 (3) If a decedent dies domiciled outside this state, any right of a surviving spouse of the
4 decedent to take an elective share in property in this state is governed by the law of the
5 decedent's domicile at death.

6 SECTION 4. Amount of elective share. (1) Except as otherwise provided in sections 2 to
7 24 of this 2007 Act, the amount of the elective share is equal to a percentage of the aug-
8 mented estate of the deceased spouse as provided in this section. Properties and assets in-
9 cluded in the augmented estate shall be determined as provided in sections 2 to 24 of this
10 2007 Act.

11 (2) The elective share of a surviving spouse is determined by the length of time the
12 spouse and decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 2 years...	5% of the augmented estate
2 years but less	
than 3 years	7% of the augmented estate
3 years but less	
than 4 years	9% of the augmented estate
4 years but less	
than 5 years	11% of the augmented estate
5 years but less	
than 6 years	13% of the augmented estate
6 years but less	
than 7 years	15% of the augmented estate
7 years but less	
than 8 years	17% of the augmented estate
8 years but less	
than 9 years	19% of the augmented estate
9 years but less	
than 10 years.....	21% of the augmented estate
10 years but less	
than 11 years.....	23% of the augmented estate
11 years but less	
than 12 years.....	25% of the augmented estate
12 years but less	
than 13 years.....	27% of the augmented estate
13 years but less	
than 14 years.....	29% of the augmented estate
14 years but less	
than 15 years.....	31% of the augmented estate
15 years or more....	33% of the augmented estate

1 **SECTION 5. Payment of elective share.** In determining whether any payment is required
2 to a surviving spouse in satisfaction of the elective share provided for in sections 2 to 24 of
3 this 2007 Act, the court shall consider the values of the decedent's probate estate, the
4 decedent's nonprobate estate and the decedent's nonprobate transfers to the surviving
5 spouse. If the court determines that the decedent's nonprobate transfers to the surviving
6 spouse do not satisfy the amount of the elective share, any additional amount required to
7 satisfy the elective share shall be paid out of the decedent's probate estate and the
8 decedent's nonprobate estate in the manner provided by section 21 of this 2007 Act.

9 **SECTION 6. Waiver of right to elect and other rights.** (1) The right of election under
10 sections 2 to 24 of this 2007 Act may be waived, wholly or partially, before or after marriage
11 by a written contract, agreement or waiver signed by the surviving spouse.

12 (2) A surviving spouse's waiver under this section is not enforceable if the surviving
13 spouse proves that the surviving spouse did not execute the waiver voluntarily.

14 (3) A surviving spouse's waiver under this section is not enforceable if the surviving
15 spouse proves that the waiver was unconscionable when the waiver was executed and that
16 before execution of the waiver the surviving spouse:

17 (a) Was not provided a fair and reasonable disclosure of the property or financial obli-
18 gations of the decedent;

19 (b) Did not voluntarily and expressly waive, in writing, any right to disclosure of the
20 property or financial obligations of the decedent beyond the disclosure provided; and

21 (c) Did not have, or reasonably could not have had, an adequate knowledge of the prop-
22 erty or financial obligations of the decedent.

23 (4) The court shall decide whether a waiver is unconscionable under subsection (3) of this
24 section as a matter of law.

25 (5) Unless specifically provided otherwise, a written agreement that waives all rights in
26 the property or estate of a present or prospective spouse, using the phrase "all rights" or
27 other equivalent language, or a complete property settlement entered into after or in antic-
28 ipation of separation or divorce is a waiver of all rights to an elective share under sections
29 2 to 24 of this 2007 Act by each spouse in the property of the other and a renunciation by
30 each of all benefits that would otherwise pass to each spouse from the other by intestate
31 succession or by virtue of any will executed before the waiver or property settlement.

32 **SECTION 7. Who may exercise right of election.** (1) The right of election may be per-
33 sonally exercised by a surviving spouse, or may be exercised on the surviving spouse's behalf
34 by a conservator, guardian or agent under the authority of a power of attorney. If the sur-
35 viving spouse dies before the election is exercised, the right of election may be exercised by
36 a personal representative for the estate of that spouse.

37 (2) An election under sections 2 to 24 of this 2007 Act must be made by filing a motion
38 or petition within the time specified in section 24 of this 2007 Act, whether the election is
39 made by the surviving spouse or by another person under the provisions of this section.

40 **SECTION 8. Exercise of elective share by Department of Human Services.** (1) Except as
41 provided in this section, the Department of Human Services may exercise the right of
42 election under sections 2 to 24 of this 2007 Act on behalf of a surviving spouse if the de-
43 partment has a claim against the surviving spouse for amounts paid to the surviving spouse
44 as public assistance, as defined in ORS 411.010, or for amounts paid for the care and main-
45 tenance of the surviving spouse in a state institution as described in ORS 179.610 to 179.770.

1 (2) Notwithstanding section 6 of this 2007 Act, the surviving spouse may not waive the
 2 right of election under sections 2 to 24 of this 2007 Act if the Department of Human Services
 3 has a claim against the surviving spouse for amounts paid to the surviving spouse as public
 4 assistance, as defined in ORS 411.010, or for amounts paid for the care and maintenance of
 5 the surviving spouse in a state institution as described in ORS 179.610 to 179.770.

6 (3) The Department of Human Services may not exercise the right of election on behalf
 7 of a surviving spouse pursuant to the provisions of this section if:

8 (a) The decedent established a special needs trust as described in 42 U.S.C. 1396p(d)(4),
 9 as in effect on the effective date of this 2007 Act, for the benefit of the surviving spouse;

10 (b) The decedent funded the trust with an amount that equals or exceeds the amount
 11 that the surviving spouse would be entitled to as an elective share under sections 2 to 24 of
 12 this 2007 Act; and

13 (c) The trust names the Department of Human Services as the beneficiary of all amounts
 14 remaining in the trust at the time of the surviving spouse's death necessary to pay any claim
 15 of the department for amounts paid to the surviving spouse as public assistance, as defined
 16 in ORS 411.010, or for amounts paid for the care and maintenance of the surviving spouse in
 17 a state institution as described in ORS 179.610 to 179.770.

18 (4) If a decedent established a special needs trust for a surviving spouse that otherwise
 19 meets the requirements of subsection (3) of this section, but funded the trust with an
 20 amount that was less than the amount that the surviving spouse would be entitled to as an
 21 elective share under sections 2 to 24 of this 2007 Act, the Department of Human Services
 22 may exercise the right of election on behalf of the surviving spouse but the payment to the
 23 surviving spouse as an elective share may not exceed an amount equal to the difference be-
 24 tween the amount that the surviving spouse would be entitled to as an elective share and the
 25 amount with which the trust was funded.

26
 27 **AUGMENTED ESTATE**

28 (Generally)

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 30 **SECTION 9. Augmented estate.** (1) Except as otherwise provided in sections 2 to 24 of
 31 this 2007 Act, the augmented estate consists of all of the following property, whether real
 32 or personal, movable or immovable, tangible or intangible, wherever situated:

33 (a) The decedent's probate estate as described in section 12 of this 2007 Act.

34 (b) The decedent's nonprobate estate as described in sections 13 to 19 of this 2007 Act.

35 (c) The decedent's nonprobate transfers to the surviving spouse, as described in section
 36 20 of this 2007 Act.

37 (2) The value attributable to any property included in the augmented estate under
 38 sections 2 to 24 of this 2007 Act must be reduced by the amount of all enforceable claims
 39 against the property.

40 (3) The value attributable to any property included in the augmented estate may include
 41 the present value of any present or future interest and the present value of amounts payable
 42 under any trust, life insurance settlement option, annuity contract, public or private pension,
 43 disability compensation, death benefit or retirement plan, or any similar arrangement, ex-
 44 clusive of the federal Social Security Act.

45 **SECTION 10. Exclusions from augmented estate.** (1) The augmented estate does not in-

1 clude any value attributable to future enhanced earning capacity of either spouse.

2 (2) The augmented estate does not include any property that was irrevocably transferred
 3 before or after the death of the decedent spouse with the written joinder or written consent
 4 of the surviving spouse. For purposes of this subsection, consent by the surviving spouse to
 5 split-gift treatment under the federal gift tax laws does not constitute consent to a transfer
 6 made by the decedent.

7 **SECTION 11. Effect of separation.** If the decedent and the surviving spouse were living
 8 apart at the time of the decedent's death, whether or not there was a judgment of legal
 9 separation, the court may deny any right to elect against the will or may reduce the elective
 10 share to such amount as the court determines reasonable and proper. In deciding if all or
 11 part of the elective share should be denied, the court shall consider whether the marriage
 12 was a first or subsequent marriage for either or both of the spouses, the contribution of the
 13 surviving spouse to the property of the decedent in the form of services or transfers of
 14 property, the length and cause of the separation and any other relevant circumstances.

15
 16 (Decedent's Probate Estate)

17
 18 **SECTION 12. Decedent's probate estate.** For purposes of sections 2 to 24 of this 2007 Act,
 19 a decedent's probate estate is the value of all estate property that is subject to probate and
 20 that is available for distribution after payment of claims and expenses of administration. A
 21 decedent's probate estate includes all property that could be administered under a small es-
 22 tate affidavit pursuant to ORS 114.505 to 114.560.

23
 24 (Decedent's Nonprobate Estate)

25
 26 **SECTION 13. Decedent's nonprobate estate.** For purposes of sections 2 to 24 of this 2007
 27 Act, a decedent's nonprobate estate is property described in sections 13 to 19 of this 2007
 28 Act that is not included in the decedent's probate estate.

29 **SECTION 14. Decedent's nonprobate estate; property owned immediately before death.**
 30 (1) A decedent's nonprobate estate includes all property over which the decedent immediately
 31 before death held a presently exercisable inter vivos general power of appointment that could
 32 be exercised only by the decedent. The amount included in the decedent's nonprobate estate
 33 under the provisions of this subsection is the value of the property that is transferred upon
 34 the death of the decedent to any person other than the decedent's estate or surviving spouse
 35 or that is transferred for the benefit of any person other than the decedent's estate or sur-
 36 viving spouse. The amount included in the decedent's nonprobate estate under the provisions
 37 of this subsection is not affected by the manner in which the transfer occurs.

38 (2) A decedent's nonprobate estate includes the decedent's fractional interest in property
 39 held by the decedent in any form of survivorship tenancy immediately before the death of
 40 the decedent. The amount included in the decedent's nonprobate estate under the provisions
 41 of this subsection is the value of the decedent's fractional interest, to the extent the frac-
 42 tional interest passes by right of survivorship at the decedent's death to a surviving tenant
 43 other than the decedent's surviving spouse. For the purposes of this subsection, the
 44 decedent's fractional interest in property held in a survivorship tenancy is determined by
 45 multiplying the value of the property by a fraction the numerator of which is one and the

1 denominator of which is one plus the number of tenants who survive the decedent.

2 (3) A decedent's nonprobate estate includes the decedent's ownership interest in property
 3 or accounts held immediately before death under a payable on death designation, under a
 4 transfer on death registration or in coownership registration with a right of survivorship.
 5 The amount included in the decedent's nonprobate estate under the provisions of this sub-
 6 section is the value of the decedent's ownership interest, to the extent the decedent's own-
 7 ership interest passed at the decedent's death to any person other than the decedent's estate
 8 or surviving spouse or for the benefit of any person other than the decedent's estate or
 9 surviving spouse.

10 (4) A decedent's nonprobate estate includes the net cash surrender value of an insurance
 11 policy on the life of the decedent, including accidental death benefits, if immediately before
 12 death the decedent owned the insurance policy or held a presently exercisable general power
 13 of appointment over the policy or its proceeds that could be exercised only by the decedent.
 14 The net cash surrender value of an insurance policy is included in the nonprobate estate only
 15 if all or part of the proceeds of the policy were payable at the decedent's death to any person
 16 other than the decedent's estate or surviving spouse or for the benefit of any person other
 17 than the decedent's estate or surviving spouse. The net cash surrender value of an insurance
 18 policy is determined immediately before the death of the decedent for the purposes of this
 19 subsection.

20 (5) A decedent's nonprobate estate includes any property that the decedent could have
 21 acquired by revocation of a revocable trust or other transfer of property, without regard to
 22 whether the revocation was required to be made by the decedent alone or in conjunction with
 23 other persons.

24 (6) A general power of appointment is presently exercisable for purposes of this section
 25 if before death the decedent could have exercised the power to create a present or future
 26 interest in the decedent, in the decedent's creditors, in the decedent's estate or in creditors
 27 of the decedent's estate. A power of appointment is presently exercisable even though the
 28 decedent lacks capacity to exercise the power.

29 SECTION 15. Decedent's nonprobate estate; property transferred during marriage with
 30 interest retained by decedent. (1) A decedent's nonprobate estate includes property trans-
 31 ferred by the decedent during marriage by means of an irrevocable transfer under which the
 32 decedent retains the right to the possession or enjoyment of the property, or retains the
 33 right to the income from the property, to the extent that the decedent's right terminates
 34 on or after the decedent's death. The amount included in the decedent's nonprobate estate
 35 under the provisions of this subsection is:

36 (a) The value of those parts of the property over which the decedent retained the right
 37 to possession or enjoyment, to the extent those parts of the property pass outside probate
 38 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

39 (b) The value of those parts of the property from which the decedent retained the right
 40 to receive income, including but not limited to a right to payments under a commercial or
 41 private annuity, an annuity trust, a unitrust or a similar arrangement, to the extent those
 42 parts of the property pass outside probate to or for the benefit of any person other than the
 43 decedent's estate or surviving spouse.

44 (2) A decedent's nonprobate estate includes property transferred by the decedent during
 45 marriage by means of a transfer under which the decedent creates a power over income or

1 property to or for the benefit of the decedent, creditors of the decedent, the decedent's es-
 2 tate or creditors of the decedent's estate, if:

3 (a) The power is exercisable by the decedent alone;

4 (b) The power is exercisable by the decedent in conjunction with any other person; or

5 (c) The power is exercisable by a person who does not have a substantial beneficial in-
 6 terest in the property or income that would be adversely affected by the exercise or nonex-
 7 ercise of the power. For purposes of this paragraph, a person who has a general power of
 8 appointment over the property or income has a beneficial interest in the property or income.

9 (3) The following amounts are included in the decedent's nonprobate estate under the
 10 provisions of subsection (2) of this section to the extent that the power created by the
 11 decedent is exercisable at the decedent's death to or for the benefit of any person other than
 12 the decedent's surviving spouse or to the extent that the property is transferred at the
 13 decedent's death to or for the benefit of any person other than the decedent's estate or
 14 surviving spouse:

15 (a) If the decedent creates a power over property, the value of any property subject to
 16 the power is included in the decedent's nonprobate estate.

17 (b) If the decedent creates a power over income, the value of the property that produces
 18 the income is included in the decedent's nonprobate estate.

19 (c) If the decedent creates a power over both income and property, the greater of the
 20 amount determined under paragraph (a) of this subsection and the amount determined under
 21 paragraph (b) of this subsection.

22 (4) Subsection (2) of this section applies only to transfers of property made by the
 23 decedent on or after January 1, 2008.

24 **SECTION 16. Decedent's nonprobate estate; property transferred within two years of**
 25 **death; termination of right, interest or power.** (1) A decedent's nonprobate estate includes
 26 property that passed during marriage and during the two-year period immediately before the
 27 decedent's death by means of the termination of a right to property, the termination of an
 28 interest in property or the termination of a power over property, if the property would have
 29 been included in the decedent's nonprobate estate under section 14 (1) to (4) or 15 of this 2007
 30 Act had the transfer occurred at the time of the decedent's death.

31 (2) The amount included in the decedent's nonprobate estate under the provisions of
 32 subsection (1) of this section is the value of the property that would have been included un-
 33 der section 14 (1) to (4) or 15 of this 2007 Act determined as of the time that the right, in-
 34 terest or power terminated. Amounts under subsection (1) of this section are included in the
 35 decedent's nonprobate estate only to the extent that the property passed upon termination
 36 to or for the benefit of any person other than the decedent or the decedent's estate, spouse
 37 or surviving spouse.

38 (3) For purposes of this section:

39 (a) A termination of a right or interest in property occurs when the right or interest is
 40 terminated by the terms of the instrument that governs the right or interest, or when the
 41 decedent transferred or relinquished the right or interest.

42 (b) Except as provided in paragraph (c) of this subsection, a termination of a power over
 43 property occurs when the power terminates by exercise, release, lapse, default or otherwise.

44 (c) A termination of a power described in section 14 (1) of this 2007 Act occurs only when
 45 the power terminates by exercise or release of the power.

1 under sections 13 to 19 of this 2007 Act had it passed to or for the benefit of a person other
 2 than the decedent's spouse.

3 (2) The decedent's nonprobate transfers to the decedent's surviving spouse do not include
 4 any property passing to the surviving spouse under the federal Social Security Act.

5
 6 **PAYMENT OF ELECTIVE SHARE**
 7

8 **SECTION 21. Priority of sources from which elective share payable.** (1) The following
 9 amounts are applied first to satisfy an elective share amount and to reduce or eliminate any
 10 contributions due from the decedent's probate estate and recipients of the decedent's
 11 nonprobate transfers to others:

12 (a) The amount included in the decedent's probate estate under section 12 of this 2007
 13 Act that passes to the surviving spouse by testate or intestate succession.

14 (b) The amount of all of the decedent's nonprobate transfers to the surviving spouse de-
 15 scribed in section 20 of this 2007 Act.

16 (2) If after application of the amounts specified in subsection (1) of this section the
 17 elective share amount is not fully satisfied, the following amounts shall be applied to the
 18 extent necessary to satisfy the balance of the elective share amount:

19 (a) Amounts included in the decedent's probate estate.

20 (b) Amounts included in the decedent's nonprobate estate under sections 2 to 24 of this
 21 2007 Act except those amounts included under sections 16 and 18 of this 2007 Act.

22 (3) Amounts applied against the unsatisfied balance of an elective share amount under
 23 subsection (2) of this section shall be collected from both the probate and nonprobate estates
 24 of the decedent in a manner that ensures that the probate and nonprobate estates bear
 25 proportionate burdens for the amounts necessary to pay the elective share amount.

26 (4) Amounts applied against the unsatisfied balance of an elective share amount under
 27 subsection (2) of this section out of the probate estate of the decedent must be apportioned
 28 among all recipients of the decedent's probate estate in a manner that ensures that each
 29 recipient bears liability for a portion of the payment that is proportionate to the recipient's
 30 interest in the decedent's probate estate. Amounts applied against the unsatisfied balance
 31 of an elective share amount under subsection (2) of this section out of the nonprobate estate
 32 of the decedent must be apportioned among all recipients of the decedent's nonprobate estate
 33 in a manner that ensures that each recipient bears liability for a portion of the payment that
 34 is proportionate to the recipient's interest in the decedent's nonprobate estate.

35 (5) If after application of the amounts specified in subsections (1) and (2) of this section
 36 the elective share amount is not fully satisfied, the remaining portion of the decedent's
 37 nonprobate estate must be applied to satisfy the balance of the elective share amount in a
 38 manner that ensures that each recipient of the remaining portion of the decedent's
 39 nonprobate estate bears liability for a portion of the payment out of the nonprobate estate
 40 that is proportionate to the recipient's interest in the nonprobate estate.

41 (6) All apportionments required under this section between the probate and nonprobate
 42 estates of the decedent and between the recipients of those estates shall be based on the
 43 assets of each estate that are subject to distribution by the court under the provisions of
 44 sections 2 to 24 of this 2007 Act.

45 **SECTION 22. Liability of recipients of decedent's nonprobate estate.** (1) The following

1 recipients of the decedent's nonprobate estate are the only persons who may be required to
 2 make a proportional contribution toward the satisfaction of the surviving spouse's elective
 3 share under the provisions of sections 2 to 24 of this 2007 Act:

4 (a) An original recipient of the decedent's nonprobate estate.

5 (b) A person who has received as a gift all or part of the decedent's nonprobate estate
 6 from an original recipient of the property, to the extent the person has the property or its
 7 proceeds.

8 (c) A person who received the proceeds of a policy whose premiums were included in the
 9 decedent's nonprobate estate under section 17 of this 2007 Act.

10 (2) A recipient of the decedent's nonprobate estate who is required to make a propor-
 11 tional contribution toward the satisfaction of the surviving spouse's elective share may elect
 12 to make the contribution by returning property determined to be adequate to satisfy the
 13 recipient's obligation or by paying a sum of money equal to the value of that property.

14 (3) If any provision of sections 2 to 24 of this 2007 Act is preempted by federal law with
 15 respect to a payment, an item of property or any other benefit included in the decedent's
 16 nonprobate estate, a person who, not for value, receives the payment, item of property, or
 17 any other benefit is obligated to return the payment, item of property or benefit, or is per-
 18 sonally liable for the amount of the payment or the value of that item of property or benefit
 19 to the person who would have been entitled to the payment, item of property or benefit if
 20 that provision was not preempted.

21 **SECTION 23. Protection of payors and other third parties.** (1) Except as provided in
 22 subsection (2) of this section, a person is not liable for having made a payment or transferred
 23 an item of property or other benefit pursuant to an instrument after having requested and
 24 received satisfactory proof of death, or for having taken any other action in good faith reli-
 25 ance on the validity of an instrument, even though the payment, item of property or other
 26 benefit is part of a decedent's nonprobate estate under the provisions of sections 2 to 24 of
 27 this 2007 Act.

28 (2) A person is liable for making a payment or transferring an item of property or other
 29 benefit included in the decedent's nonprobate estate under the provisions of sections 2 to 24
 30 of this 2007 Act if the payment or delivery is made after the person receives written notice
 31 from the spouse or the spouse's representative that indicates that the surviving spouse or
 32 representative has filed a motion or petition for the elective share under section 24 of this
 33 2007 Act or that the surviving spouse or representative intends to file a motion or petition
 34 within the time allowed in section 24 of this 2007 Act.

35 (3) Notice under subsection (2) of this section must be mailed by registered or certified
 36 mail, return receipt requested, or be served in the same manner as a summons in a civil
 37 action. The person receiving the notice may deposit any money or property held by the
 38 person with the court having jurisdiction of the probate proceedings relating to the
 39 decedent's estate or, if no proceedings have been commenced, with the circuit court for the
 40 county of the decedent's residence. If motion or petition is filed in the court within the
 41 specified time under section 24 of this 2007 Act, the court shall order disbursement of the
 42 money or property to the appropriate beneficiary. Deposit of the money or property with the
 43 court discharges the person making the deposit from all claims for the money or property.

44
 45 **PROCEDURE**

1 (d) Specific devises.

2 (3) A general devise charged on any specific property or fund is considered, for purposes of
 3 abatement, property specifically devised to the extent of the value of the thing on which it is
 4 charged. Upon the failure or insufficiency of the thing on which it is charged, it is considered a
 5 general devise to the extent of the failure or insufficiency.

6 (4) Abatement within each classification is in proportion to the amounts of property each of the
 7 distributees would have received had full distribution of the property been made in accordance with
 8 the terms of the will.

9 (5) Persons to whom the will gives tangible personal property not used in trade, agriculture or
 10 other business are not required to contribute from that property unless the particular devise forms
 11 a substantial amount of the total estate and the court specifically orders contribution because of the
 12 devise.

13 (6) When the subject matter of a preferred devise is sold or used incident to administration,
 14 abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in
 15 the remaining assets.

16 **SECTION 26. Sections 2 to 24 of this 2007 Act apply only to the surviving spouses of**
 17 **decedents who die on or after the effective date of this 2007 Act. Notwithstanding the repeal**
 18 **of ORS 114.105, 114.115, 114.125, 114.135, 114.145, 114.155 and 114.165 by section 28 of this 2007**
 19 **Act, the rights of a surviving spouse of a decedent who dies before the effective date of this**
 20 **2007 Act shall continue to be governed by the law in effect immediately before the effective**
 21 **date of this 2007 Act.**

22 **SECTION 27. A written contract, agreement or waiver entered into before the effective**
 23 **date of this 2007 Act, whether prenuptial or post-nuptial, that waives in whole or in part the**
 24 **elective share of a surviving spouse shall be effective as a waiver under section 6 of this 2007**
 25 **Act unless a court determines that the agreement, contract or waiver was not executed**
 26 **voluntarily or was unconscionable under the provisions of section 6 of this 2007 Act. Section**
 27 **6 (5) of this 2007 Act applies to contracts, agreements or waivers entered into before the**
 28 **effective date of this 2007 Act.**

29 **SECTION 28. ORS 114.105, 114.115, 114.125, 114.135, 114.145, 114.155 and 114.165 are re-**
 30 **pealed.**

31 **SECTION 29. The unit and section captions used in this 2007 Act are provided only for**
 32 **the convenience of the reader and do not become part of the statutory law of this state or**
 33 **express any legislative intent in the enactment of this 2007 Act.**

34