

**REVENUE: No revenue impact**

**FISCAL: Minimal fiscal impact, no statement issued**

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<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed
<b>Vote:</b>	5 - 0 - 0
<b>Yeas:</b>	Bonamici, Boquist, Dingfelder, Whitsett, Prozanski
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Lisa Nuss, Counsel
<b>Meeting Dates:</b>	5/19, 5/27

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**WHAT THE MEASURE DOES:** Amends Oregon’s elective share statutes: Increases percentage a surviving spouse may elect to receive in lieu of a written will from 25 percent to a maximum of 33 percent, prorated with length of marriage; expands assets encompassed in the elective share to include nonprobate transfers such as trusts or gifts.

**ISSUES DISCUSSED:**

- Spouses can still decide to waive the elective share statutes, via pre- and post-nuptial agreements
- Examples of nonprobate assets added would be life insurance, living trusts, and annuities

**EFFECT OF COMMITTEE AMENDMENT:** The amendments are primarily technical changes, many proposed by the Oregon State Bar Estate Planning Section.

**BACKGROUND:** “Elective share” refers to a statutory provision whereby a surviving spouse may choose between taking what is provided in the will or taking the share prescribed in statute. Oregon’s current elective share statute entitles a surviving spouse to “elect” to take 25 percent of the net probate estate of the deceased spouse, regardless of the provisions of the will. (ORS 114.105-.165) This election is available in cases when the will leaves less than what the spouse would otherwise receive by statute.

There are three suggested state interests for a statute that overrides a written testament: First, that it is necessary to help avoid Medicaid fraud, whereby couples are putting money in trusts to avoid probate and defeat or minimize what the elective share would be for the surviving spouse. The Attorney General for the Department of Human Services estimates that this does not happen a lot, but happens enough to cause concern.

Second, the proponents also suggest a state interest in allowing a spouse to have an elective share closer to, if not on par with, the 50 percent division provided after a divorce. Third, the proponents suggest a policy interest in preventing spouses from being accidentally disinherited, in cases such as a couple who do not update their wills after they marry.

This bill comes from the Oregon Law Commission. It is modeled in part on recommendations from the national Uniform Law Commission, which suggests that the elective share be 50 percent. Of states with elective share laws, Oregon has the lowest maximum percentage and is one of the few states to limit it to probate assets. Because the current law only folds net probate assets into the elective share calculation, the intent of the law is easily defeated by use of trusts and other nonprobate transfers captured by this bill.