

House Bill 2684

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Elder Law Section)

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**.

Modifies calculation of elective share of surviving spouse. Provides that surviving spouse's estate includes 50 percent of corpus of trust or portion of trust established by decedent for special or supplemental needs of surviving spouse who is disabled or incapable. Applies only to surviving spouse of decedent who dies on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to elective share of surviving spouse; creating new provisions; amending ORS 114.675; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 114.675 is amended to read:

6 114.675. (1) For purposes of ORS 114.600 to 114.725, a surviving spouse's estate is:

7 (a) All property of the spouse other than decedent's probate transfers to the surviving spouse
8 under ORS 114.685, as determined on the date of the decedent's death.

9 (b) The decedent's probate transfers to the spouse, as described in ORS 114.685.

10 (c) Any property that would have been included under paragraph (a) or (b) of this subsection
11 except for the exercise of a disclaimer by the spouse after the death of the decedent.

12 (2)(a) For the purpose of establishing the value of the surviving spouse's estate under this sec-
13 tion, the estate includes 100 percent of the corpus of any trust or portion of a trust from which all
14 income must be distributed to or for the benefit of the surviving spouse during the life of the sur-
15 viving spouse, and for which the surviving spouse has a general power of appointment that the
16 surviving spouse, acting alone, may exercise, during the surviving spouse's lifetime or at death of
17 the surviving spouse, to or for the benefit of the surviving spouse or the surviving spouse's estate.

18 (b) For the purpose of establishing the value of the surviving spouse's estate under this section,
19 the estate includes 100 percent of the corpus of a trust or portion of a trust, if all income from the
20 trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during
21 the life of the surviving spouse and the trust principal may be accessed only by the trustee or the
22 spouse and only for the purpose of providing for the health, education, support or maintenance of
23 the spouse.

24 (c) For the purpose of establishing the value of the surviving spouse's estate under this section,
25 the estate includes 50 percent of the corpus of a trust or portion of a trust if all income from the
26 trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during
27 the life of the surviving spouse and neither the trustee nor the spouse has the power to distribute
28 trust principal to or for the benefit of the surviving spouse or any other person during the spouse's
29 lifetime.

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.

