

SB 474 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/21

WHAT THE MEASURE DOES:

Prevents a parent or stepparent (who is obliged to support the child under ORS 108.045) from receiving damages from their child's wrongful death action 1) if their child died as an adult and they 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) if their child died while still a child, and they 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) if the parent's parental rights have been terminated. Allows court to disregard incidental contact, communications, and contributions when determining whether a parent willfully deserted or neglected to provide proper care and maintenance. Allows court to take into account whether one parent impeded the other's parent's contact with the child when determining whether a parent willfully deserted or neglected to provide proper care and maintenance. Makes the damages distributable to the parent would pass as if the parent had predeceased the decedent.

Provides a timeline by which an individual who would benefit from the parent's forfeiture can petition to assert that interest. Requires proof of willful desertion or neglecting to provide proper care and maintenance for the child without just and sufficient cause by a preponderance of the evidence.

Prohibits a parent from inheriting through intestate succession when that parent neglected to provide proper care and maintenance or willfully deserted their child who died as an adult for one year before the child became an adult or when a parent neglected to provide proper care and maintenance or willfully deserted their child for one year before the child's death.

Allows individuals who were not entitled to be named as an interested person in the petition for appointment of a personal representative to assert by petition that the parent's intestate share is subject to forfeiture and that they have a right to inherit it four months after notice by publication, or if no notice was published, one year after the decedent's death. Changes the standard of proof to a preponderance of the evidence.

Prohibits a parent from inheriting through transfer on death deed when that parent neglected to provide proper care and maintenance or willfully deserted their child who died as an adult for one year before the child became an adult or when a parent neglected to provide proper care and maintenance or willfully deserted their child for one year before the child's death.

Allows individuals who were not entitled to be named as an interested person in the petition for appointment of a personal representative to assert by petition that the transfer is subject to forfeiture and that they have a right to the property in question four months after notice by publication, or if no notice was published, one year after the decedent's death. Changes the standard of proof to a preponderance of the evidence.

Applies to actions and estates commenced on or after the effective date and pending on the effective date.

Applies to transfer on death deed made before, on or after the effective date.

Declares emergency; effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

This summary has not been adopted or officially endorsed by action of the committee.

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No amendment.

BACKGROUND:

Currently, nothing prohibits a parent who has abandoned or neglected to provide for a child from receiving damages from that child's wrongful death action. A recent high-profile wrongful death case involving a child who died while in state foster care brought attention to this issue. Each of her parents acquired \$130,000 in damages even though there were years of allegations of maltreatment and at the time of her death their child had been removed from their care.

There are statutes 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 who died as an adult for ten years before the child became an adult or that a parent neglected to provide proper care and maintenance or willfully deserted their child who died as a child for ten years before the child's death.

Senate Bill 474 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 from ten years to one year and makes the burden of proof for that determination a preponderance of the evidence.