

A-Engrossed
Senate Bill 474

Ordered by the House May 30
Including House Amendments dated May 30

Sponsored by Senator GELSER, Representative STARK; Senators BURDICK, DEMBROW, FREDERICK, GOLDEN, JOHNSON, MANNING JR, MONNES ANDERSON, PROZANSKI, RILEY, ROBLAN, STEINER HAYWARD, THATCHER, WAGNER, Representatives BARRETO, POWER, SOLLMAN, WILLIAMSON (Presession filed.)

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.

[*Modifies*] **Reduces** length of time of parental desertion or abandonment of child resulting in forfeiture of parent's intestate share of child's estate [*and*] **or** parent's interest in property transferred from child to parent by transfer on death deed **in parental forfeiture action to one year if person who would benefit from forfeiture is child or sibling of deceased child or three years for all others.** Modifies burden of proof in **parental** forfeiture action to preponderance of evidence **if person who would benefit from forfeiture is child or sibling of deceased child.** Extends deadline for commencing parental forfeiture action to no later than one year after decedent's date of death if notice to interested persons not published.

Prohibits parent or stepparent who abandoned child from receiving damages for wrongful death of child.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to forfeiture of parent's share of child's estate; creating new provisions; amending ORS
3 93.983, 93.985, 112.047 and 112.049; and declaring an emergency.

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

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

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

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

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

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

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

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

22 (B) **The parent or stepparent neglected without just and sufficient cause to provide**

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 proper care and maintenance for the decedent for the three-year period immediately pre-
2 ceding the date on which the decedent became an adult.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (a) Four months after the date of delivery or mailing of the information described in ORS

1 **113.145 if that information was required to be delivered or mailed to the person on whose**
2 **behalf the petition is filed; or**

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

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

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

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

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

11 **(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evi-**
12 **dence.**

13 **SECTION 4.** ORS 112.047 is amended to read:

14 112.047. (1) Property that would pass by intestate succession under ORS 112.045 from the estate
15 of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased
16 the decedent if:

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

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

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

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

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

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

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

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

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

37 (B) The parent neglected without just and sufficient cause to provide proper care and mainte-
38 nance for the decedent for the life of the decedent or for the [10-year] **one-year** period immediately
39 preceding the date on which the decedent died.

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

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

44 (B) **The parent neglected without just and sufficient cause to provide proper care and**
45 **maintenance for the decedent for the life of the decedent or for the three-year period im-**

1 **mediately preceding the date on which the decedent died.**

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

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

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

15 **SECTION 5.** ORS 112.049 is amended to read:

16 112.049. (1) A petition may be filed in probate proceedings to assert that the intestate share of
17 a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this
18 section only by a person who would be benefited by a forfeiture of the parent's share.

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

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

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

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

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

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

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

33 **(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evi-**
34 **dence.**

35 **SECTION 6.** ORS 93.983 is amended to read:

36 93.983. (1) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from
37 a deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent
38 had predeceased the transferor if **the person who would be benefited by the forfeiture is a child**
39 **or sibling of the transferor**, the transferor was an adult when the transferor died and:

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

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

45 **(2) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from**

1 a deceased transferor to a parent of the deceased transferor shall pass and be vested as if
2 the parent had predeceased the transferor if the person who would be benefited by the
3 forfeiture is not a child or sibling of the transferor, the transferor was an adult when the
4 transferor died and:

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

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

10 [(2)] (3) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from the
11 deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent
12 had predeceased the transferor if **the person who would be benefited by the forfeiture is a child
13 or sibling of the transferor**, the transferor was a minor when the transferor died and:

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

17 (b) The parent neglected without just and sufficient cause to provide proper care and mainte-
18 nance for the transferor for the life of the transferor or for the [10-year] **one-year** period imme-
19 diately preceding the date on which the transferor died.

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

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

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

31 [(3)] (5) For the purposes of subsections (1) [and (2)] **to (4)** of this section, the court may disre-
32 gard incidental visitations, communications and contributions in determining whether a parent
33 willfully deserted the deceased transferor or neglected without just and sufficient cause to provide
34 proper care and maintenance for the transferor.

35 [(4)] (6) For the purposes of subsections (1) [and (2)] **to (4)** of this section, in determining
36 whether the parent willfully deserted the deceased transferor or neglected without just and suffi-
37 cient cause to provide proper care and maintenance for the deceased transferor, the court may
38 consider whether a custodial parent or other custodian attempted, without good cause, to prevent
39 or to impede contact between the transferor and the parent whose transfer would be forfeited under
40 this section.

41 [(5)] (7) The transfer of property, as defined in ORS 93.949, to a parent of a deceased transferor
42 may be forfeited under this section only pursuant to an order of the court entered after the filing
43 of a petition under ORS 93.985. A petition filed under ORS 113.035 may not request the forfeiture
44 of a transfer by a transfer on death deed of a parent of a deceased transferor under this section.

45 **SECTION 7.** ORS 93.985 is amended to read:

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

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

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

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

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

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

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

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

20 (b) **If the petitioner is not a child or sibling of the transferor, clear and convincing evi-
21 dence.**

22 **SECTION 8. (1) Sections 2 and 3 of this 2019 Act apply to actions under ORS 30.020
23 commenced on or after the effective date of this 2019 Act, and to actions under ORS 30.020
24 commenced prior to the effective date of this 2019 Act that are pending on the effective date
25 of this 2019 Act.**

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

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

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