

Enrolled Senate Bill 474

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, NOBLE, POWER, SOLLMAN, WILLIAMSON (Presession filed.)

CHAPTER

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.

SECTION 4. ORS 112.047 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 112.049 is amended to read:

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

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

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

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

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

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

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

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

(b) **If the petitioner is not a child or sibling of the decedent, clear and convincing evidence.**

SECTION 6. ORS 93.983 is amended to read:

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

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

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

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

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

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

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

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

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the life of the transferor or for the [*10-year*] **one-year** period immediately preceding the date on which the transferor died.

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

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

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

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

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

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

SECTION 7. ORS 93.985 is amended to read:

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

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

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

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

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

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

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

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

(b) If the petitioner is not a child or sibling of the transferor, clear and convincing evidence.

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

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

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

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

Passed by Senate March 7, 2019

Repassed by Senate June 11, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 4, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State