Senate Bill 626

Sponsored by Senator LIEBER (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 **as introduced.**

Modifies definition of "descendant" for purposes of decedents' estates to include person with functional child relationship with decedent and functional child's descendants. Modifies definition of "pretermitted child" to include person court determines to be functional child of decedent if determination is made after date decedent executed will. Applies to estates of decedents dying on or after effective date of Act.

A BILL FOR AN ACT

Relating to functional children of deceased persons; creating new provisions; and amending ORS 111.005 and 112.405.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 112.

SECTION 2. (1)(a) Except as provided in paragraph (b) of this subsection, a functional child and the functional child's descendants shall take by intestate succession from a functional parent and the functional parent's descendants, and the functional parent and the functional parent's descendants shall take by intestate succession from the functional child and functional child's descendants, as though the functional child was the biological child of the functional parent.

(b) A functional child or a functional parent may provide, in writing, that the functional child is not to be recognized as a biological child of the functional parent for inheritance purposes.

(2) A court shall determine whether, considering the totality of the circumstances, a person is a functional child of a functional parent.

(3) In determining whether a person is a functional child of a functional parent, the court may consider any combination of the following:

(a) That the person lived in the purported functional parent's home for a majority of the person's first 20 years of life.

(b) That the person identified, looked to and treated the purported functional parent as a parent.

(c) That the person continued to have a relationship with the purported functional parent after the person reached the age of majority.

(d) That the person performed services for the purported functional parent such as caretaking or household labor.

(e) That the person was given the purported functional parent's last name.

(f) That the person received economic or emotional support from the purported functional parent.

(g) That the person had a parent-child relationship with the purported functional parent

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.

that was sufficiently long enough to form a parent-child bond.

(h) Any other evidence that shows by a preponderance of the evidence that a parent-child relationship was formed.

(4) In determining whether a person is a functional parent, the court may consider any combination of the following:

(a) Whether the person supported or housed the purported functional child before the purported functional child attained 18 years of age.

(b) Whether the person took applicable tax deductions or obtained relevant tax credits as a result of supporting the purported functional child.

(c) Whether the person made relevant educational or medical decisions for the purported functional child.

(d) Whether the person received care, assistance or other emotional or economic benefits from the purported functional child.

(e) Whether the person held the purported functional child out as being the person's child.

(f) Whether the person gave the purported functional child the person's last name.

(g) Whether the person named the purported functional child as a beneficiary on nonprobate assets, including life insurance policies, joint bank accounts or retirement accounts.

(h) Whether the person made an agreement to adopt the purported functional child or was in the process of adopting the purported functional child at the time of the person's death.

(i) Any other evidence that shows by a preponderance of the evidence that a parent-child relationship was formed.

(5) Nothing in this section affects the functional child's treatment as the child of any person other than the functional parent.

SECTION 3. ORS 111.005 is amended to read:

111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires otherwise:

(1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all claims, expenses and devises in full.

(2) "Action" includes suits and legal proceedings.

(3) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(4) "Advancement" means a gift by a decedent to an heir or devisee with the intent that the gift satisfy in whole or in part the heir's share of an intestate estate or the devisee's share of a testate estate.

(5) "Assets" includes real, personal and intangible property.

(6) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(7) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(8) "Decedent" means a person who has died.

(9)(a) "Descendant" means a person who is descended from a specific ancestor and includes an adopted child [*and the adopted child's descendants*] **or a functional child and the descendants of the adopted child or functional child**.

(b) When used to refer to persons who take by intestate succession, "descendant" does not include a person who is the descendant of a living descendant.

(10) "Devise," when used as a noun, means property disposed of by a will.

(11) "Devise," when used as a verb, means to dispose of property by a will.

(12) "Devisee" means a person designated in a will to receive a devise.

(13) "Distributee" means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(14) "Domicile" means the place of abode of a person, where the person intends to remain and to which, if absent, the person intends to return.

(15)(a) "Estate" means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment, substitutions or otherwise, augmented by any accretions or additions or diminished by any decreases or distributions.

(b) "Estate" includes tangible and intangible personal property of a decedent domiciled in Oregon, wherever the property is situated.

(16) "Functional child" means a person a court has determined to be the functional child of a functional parent under section 2 of this 2023 Act.

[*(16)*] **(17)** "Funeral" includes the burial or other disposition of the remains of a decedent, any plot or tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or other observance and related expenses.

[*(17)*] **(18)** "General devise" means a devise chargeable generally on the estate of a testator so that the devise is not distinguishable from other parts of the estate and does not constitute a specific devise.

[*(18)*] **(19)** "Heir" means any person who is or would be entitled under intestate succession to property of a person upon that person's death.

[*(19)*] **(20)**(a) "Interested person" means any person having a property right in or claim against the estate of a decedent that may be affected by the proceeding.

(b) "Interested person" includes a decedent's heir, devisee, child, spouse or creditor if the heir, devisee, child, spouse or creditor has a property right in or claim against the decedent's estate.

(c) "Interested person" also includes a fiduciary representing a person described in paragraph (a) or (b) of this subsection.

[*(20)*] **(21)** "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.

[*(21)*] **(22)** "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

[*(22)*] **(23)** "Issue" means a descendant or descendants.

[*(23)*] **(24)** "Net estate" means the real and personal property of a decedent, except property used for the support of the surviving spouse and children and for the payment of expenses of administration, funeral expenses, claims and taxes.

[*(24)*] **(25)** "Net intestate estate" means any part of the net estate of a decedent not effectively disposed of by the will.

[*(25)*] **(26)** "Personal property" includes all property other than real property.

[*(26)*] **(27)** "Personal representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

[*(27)*] **(28)** "Property" includes both real and personal property.

[*(28)*] **(29)** "Real property" includes all legal and equitable interests in land, in fee and for life.

[*(29)*] **(30)** "Settlement" includes, as to the estate of a decedent, the full process of administration, distribution and closing.

[*(30)*] **(31)** "Specific devise" means a devise of a specific thing or specified part of the estate of a testator that is so described as to be capable of identification. A specific devise is a gift of a part of the estate identified and differentiated from all other parts.

[*(31)*] **(32)** "Will" includes codicil and also includes a testamentary instrument that merely appoints a personal representative or that merely revokes or revives another will.

SECTION 4. ORS 112.405 is amended to read:

112.405. (1) As used in this section, "pretermitted child" means a child of a testator who is born, adopted, [*or*] conceived as described in ORS 112.077 (3) or (4), **or is determined to be the functional child of the testator,** after the execution of the will of the testator, who is neither provided for in the will nor in any way mentioned in the will and who survives the testator.

(2) If a testator has one or more children living when the testator executes a will and no provision is made in the will for one or more of the living children, a pretermitted child shall not take a share of the estate of the testator disposed of by the will.

(3) If a testator has one or more children living when the testator executes a will and provision is made in the will for one or more of the living children, a pretermitted child is entitled to share in the estate of the testator disposed of by the will as follows:

(a) The pretermitted child may share only in the portion of the estate devised to the living children by the will.

(b) The share of each pretermitted child shall be the total value of the portion of the estate devised to the living children by the will divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the will.

(c) To the extent feasible, the interest of a pretermitted child in the estate is of the same character, whether equitable or legal, as the interest the testator gave to the living children by the will.

(4) If a testator has no child living when the testator executes a will, a pretermitted child shall take a share of the estate as though the testator had died intestate, unless the will devised all or substantially all of the estate to the other parent of the pretermitted child and that other parent survives the testator and is entitled to take under the will.

(5) A pretermitted child may recover the share of the estate to which the child is entitled, as provided in this section, either from the other children under subsection (3) of this section or from the testamentary beneficiaries under subsection (4) of this section, ratably, out of the portions of the estate passing to those persons under the will. In abating the interests of those beneficiaries, the character of the testamentary plan adopted by the testator must be preserved so far as possible.

SECTION 5. Sections 1 and 2 of this 2023 Act and the amendments to ORS 111.005 and 112.405 by sections 3 and 4 of this 2023 Act apply to estates of decedents whose date of death occurs on or after the effective date of this 2023 Act.