

**SB 474 A STAFF MEASURE SUMMARY****Carrier:** Rep. Stark**House Committee On Judiciary****Action Date:** 05/22/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 11-0-0-0**Yeas:** 11 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 5/8, 5/22**WHAT THE MEASURE DOES:**

Prevents parents from receiving damages from their child's wrongful death action in certain circumstances. Specifies process for forfeiture of parental share in wrongful death actions, intestate succession, or transfers on death deed. Specifies that when the individual who would benefit from the parental forfeiture is the child's sibling or child, the sibling or child must prove, by a preponderance of the evidence, that: 1) the child died as an adult and the parents 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) the child died while still a child, and the parents 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) the parents' parental rights had been terminated. Specifies that when the individual who would benefit from the forfeiture is anyone other than the child's sibling or child, the individual must prove, by clear and convincing evidence, that: 1) the child died as an adult and the parents had, in the three years 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) the child died while still a child, and the parents 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 three years preceding the child's death; or 3) the parents' parental rights had been terminated. Specifies that the damages distributable to the parent pass as if the parent had predeceased the child. Provides a timeline by which an individual who would benefit from the parent's forfeiture can petition to assert that interest. Allows individuals who were not entitled to be named as an interested person in the petition for appointment of a personal representative to assert that the parent's intestate share is subject to forfeiture and that the person has a right to inherit the share four months after notice by publication, or if no notice was published, one year after the decedent's death. Applies to actions and estates commenced on or after the effective date and pending on the effective date. Applies to transfers on death deed made before, on, or after the effective date. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Recent cases relevant to the measure
- The role of juries in the wrongful death awards and determination of parental share
- Court procedures for wrongful death, intestate inheritance, and death deed transfers

**EFFECT OF AMENDMENT:**

Creates separate standards and timelines depending on status of person who would benefit from the forfeiture in the wrongful death, intestate inheritance, and death deed transfer proceedings. Specifies that if the beneficiary is the sibling or child of the decedent, the child or sibling must prove willful desertion or neglect for one year by a preponderance of the evidence; if the beneficiary is anyone else, the person must prove willful desertion or

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neglect for three years by clear and convincing evidence.

### **BACKGROUND:**

Currently, a parent who has abandoned or neglected to provide for a child may receive damages resulting from that child's wrongful death action. A recent wrongful death case involving a child who died while in state foster care brought attention to this issue. Each of the child's parents was awarded \$130,000 in damages, even though there were years of allegations of maltreatment, and at the time of her death, the child had been removed from their care. There are parental forfeiture laws 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 for ten years before the child's death, or within ten years of the child becoming an adult.

Senate Bill 474 A 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. Finally, the measure makes the burden of proof for that determination a preponderance of the evidence if the individual seeking forfeiture is the child's sibling or child, and allows an individual who would benefit from a successful petition for forfeiture up to one year after the decedent's death to file a claim, if that person did not receive notice that a probate estate had been opened.