

# 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, Representative POWER (Pre-session 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 length of time of parental desertion or abandonment of child resulting in forfeiture of parent's intestate share of child's estate and parent's interest in property transferred from child to parent by transfer on death deed. Modifies burden of proof in forfeiture action to preponderance of evidence. 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 decedent was an adult when the decedent died and:**

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

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

16 (b) **The decedent was a minor when the decedent died and:**

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

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

23 (c) **The parental rights of the parent with respect to the decedent were terminated and**  
24 **the parent-child relationship between the parent and the decedent was not judicially rees-**  
25 **tablished.**

26 (2) **For the purposes of subsection (1) of section, the court may disregard incidental**  
27 **visitations, communications and contributions in determining whether a parent or**

**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 stepparent willfully deserted the decedent or neglected without just and sufficient cause to  
2 provide proper care and maintenance for the decedent.

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

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

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

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

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

22 (a) Four months after the date of delivery or mailing of the information described in ORS  
23 113.145 if that information was required to be delivered or mailed to the person on whose  
24 behalf the petition is filed; or

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

27 (A) Four months after the first publication of notice to interested persons; 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  
31 section by a preponderance of evidence.

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

33 112.047. (1) Property that would pass by intestate succession under ORS 112.045 from the estate  
34 of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased  
35 the decedent if:

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

38 (b) The decedent was an adult when the decedent died and:

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

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

44 (c) The decedent was a minor when the decedent died and:

45 (A) The parent of the decedent willfully deserted the decedent for the life of the decedent or for

1 the [10-year] **one-year** period immediately preceding the date on which the decedent died; or

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

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

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

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

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

19 112.049. (1) A petition may be filed in probate proceedings to assert that the intestate share of  
 20 a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this  
 21 section only by a person who would be benefited by a forfeiture of the parent's share.

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

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

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

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

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

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

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 transferor was an adult when the transferor died and:

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

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

44 (2) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from the  
 45 deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent

1 had predeceased the transferor if the transferor was a minor when the transferor died and:

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

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

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

12 (4) For the purposes of subsections (1) and (2) of this section, in determining whether the parent  
 13 willfully deserted the deceased transferor or neglected without just and sufficient cause to provide  
 14 proper care and maintenance for the deceased transferor, the court may consider whether a custo-  
 15 dial parent or other custodian attempted, without good cause, to prevent or to impede contact be-  
 16 tween the transferor and the parent whose transfer would be forfeited under this section.

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

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

22 93.985. (1) A petition may be filed in probate proceedings to assert that the interest in property,  
 23 as defined in ORS 93.949, transferred by a transfer on death deed to a parent of a deceased  
 24 transferor is subject to forfeiture under ORS [112.047] **93.983**. A petition may be filed under this  
 25 section only by a person who would be benefited by a forfeiture of the parent’s share.

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

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

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

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

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

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

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

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

1 on the effective date of this 2019 Act.

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

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

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