

**Enrolled**  
**House Bill 2359**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Elder Law Section)

CHAPTER .....

AN ACT

Relating to affidavits of persons claiming deposits of decedents; creating new provisions; and amending ORS 708A.430, 722.262 and 723.466.

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

**SECTION 1.** ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the depositor;**

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department *[within 60]* **no less than 46 days and no more than 75** days from the death of the depositor *[where]* **when** there is a preferred claim arising under ORS 411.708, 411.795 or 414.105, *or*;

(c) **If there is no surviving spouse and no department claim,** *[if there is no claim by the department,]* to the **depositor's** surviving children 18 years of age or older;

*[(c)]* (d) If *[the depositor left]* **there is** no surviving spouse, *[Department of Human Services]* **department** claim or surviving *[children]* **child 18 years of age or older,** to the depositor's surviving parents; or

*[(d)]* (e) If there is no surviving spouse, *[Department of Human Services]* **department** claim, surviving child **18 years of age or older** or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant *[or affiants]* to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **depositor** out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the [*decedent*] **depositor** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor[,]. However, payment of [*such*] **the** moneys in good faith to the affiant [*or affiants shall discharge and release*] **discharges and releases** the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the [*decedent*] **deceased depositor**.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, [*Department of Human Services claim*] **department**, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

**SECTION 2.** ORS 722.262 is amended to read:

722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the savings liability of an association or federal association on all savings accounts of the deceased, and the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association or federal association may, upon receipt of an affidavit from the person claiming the account **as provided in subsection (2) of this section**, pay the withdrawal value of the accounts of the deceased holder:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the holder;**

[*(b) If there is no surviving spouse, to the surviving children 18 years of age or older;*]

[*(c) If there is no surviving spouse or surviving children 18 years of age or older, to the surviving parents; or*]

[*(d) If there is no surviving spouse, surviving child 18 years of age or older or surviving parent, to the surviving brothers and sisters 18 years of age or older.*]

[*(2) If the deceased account holder or holder of a demand deposit account received public assistance pursuant to ORS chapter 411 or 414, the Department of Human Services may claim such withdrawal value by filing an affidavit in the form prescribed by subsection (3) of this section and the Department of Human Services shall be preferred to all other claimants except a surviving spouse.*]

**(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the holder if the holder received public assistance under ORS 411.708, 411.795 or 414.105;**

**(c) If there is no surviving spouse and no department claim, to the holder's surviving children 18 years of age or older;**

**(d) If there is no surviving spouse, department claim or surviving child 18 years of age or older, to the holder's surviving parent; or**

**(e) If there is no surviving spouse, department claim, surviving child 18 years of age or older or surviving parent, to the holder's surviving brothers and sisters 18 years of age or older.**

[*(3)*] **(2)** The affidavit [*of the person or the Department of Human Services claiming the account*] shall:

(a) State where and when the account holder or holder of a demand deposit account died;

(b) State that the total withdrawal value of all savings and demand deposit accounts of the deceased holder in all associations in Oregon, including federal associations, does not exceed \$25,000;

(c) Show the relationship of the affiant [*or affiants*] to the deceased holder; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **holder** out of the account to the full extent of the account if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

[(4)] (3) In the event the [*decedent*] **holder** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the withdrawal value of the accounts as escheat property.

[(5)] (4) A savings association or federal association is under no obligation to determine the relationship of the affiant to the deceased **holder**. Payment made in good faith to the person or the Department of Human Services or an estate administrator of the Department of State Lands making the affidavit is a full acquittance and release of the association or federal association for the amount so paid.

[(6)] (5) A probate proceeding is not necessary to establish the right of the surviving spouse, **department**, surviving children, surviving parent or surviving brothers and sisters to withdraw an account as provided by this section. However, if a personal representative is appointed in an estate of a deceased [*person*] **holder** whose account has been withdrawn under this section, the person [*or the Department of Human Services*] withdrawing the account shall account for it to the personal representative.

**SECTION 3.** ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the member**;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the [*Department of Human Services within 60*] **department no less than 46 days and no more than 75** days from the death of the member when there is a preferred claim arising under ORS 411.708, 411.795 or 414.105[, *or*];

(c) If there is no **surviving spouse and no department** claim [*by the Department of Human Services*], to the **member's** surviving children 18 years of age or older;

[(c)] (d) If there is no surviving spouse, [*Department of Human Services*] **department** claim or surviving [*children*] **child 18 years of age or older**, to the member's surviving parents; or

[(d)] (e) If there is no surviving spouse, [*Department of Human Services*] **department** claim, surviving [*children*] **child 18 years of age or older** or surviving [*parents*] **parent**, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant [*or affiants*] to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **member** out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the [*decedent*] **member** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of [*such*] **the** moneys in good faith to the affiant [*or affiants shall discharge and release*] **discharges and releases** the transferor from any liability or responsibility for the transfer

in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the [*decedent*] **deceased member**.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, [*Department of Human Services claim*] **department**, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

**SECTION 4. The amendments to ORS 708A.430, 722.262 and 723.466 by sections 1, 2 and 3 of this 2007 Act apply to a deposit of a person whose death occurs on or after the effective date of this 2007 Act.**

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Received by Governor:

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.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

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.....M.,....., 2007

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President of Senate

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Secretary of State