

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)

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**.

Establishes timelines for submitting affidavits to claim certain deposits of decedents.

A BILL FOR AN ACT

1
2 Relating to affidavits of persons claiming deposits of decedents; creating new provisions; and
3 amending ORS 708A.430, 722.262 and 723.466.

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

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

6 708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or
7 less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit
8 as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased
9 depositor:

10 (a) To the surviving spouse **on demand of the surviving spouse within 45 days from the**
11 **death of the depositor;**

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

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

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

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

24 (2) The affidavit shall:

25 (a) State where and when the depositor died;

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

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

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

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 are entitled to those moneys by law.

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

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

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

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

19 (7) This section is subject to the rights of other parties in the account under ORS 708A.455 to
 20 708A.515.

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

22 722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the
 23 savings liability of an association or federal association on all savings accounts of the deceased, and
 24 the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association
 25 or federal association may, upon receipt of an affidavit from the person claiming the account **as**
 26 **provided in subsection (2) of this section**, pay the withdrawal value of the accounts of the de-
 27 ceased holder:

28 (a) To the surviving spouse **on demand of the surviving spouse within 45 days from the**
 29 **death of the holder;**

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

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

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

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

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

42 **(c) If there is no surviving spouse or department claim, to the holder's surviving children**
 43 **18 years of age or older;**

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

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

4 [(3)] **(2)** The affidavit [*of the person or the Department of Human Services claiming the account*]
 5 shall:

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

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

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

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

14 [(4)] **(3)** In the event the [*decedent*] **holder** died intestate without known heirs, an estate ad-
 15 ministrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and
 16 shall receive the withdrawal value of the accounts as escheat property.

17 [(5)] **(4)** A savings association or federal association is under no obligation to determine the
 18 relationship of the affiant to the deceased **holder**. Payment made in good faith to the person or the
 19 Department of Human Services or an estate administrator of the Department of State Lands making
 20 the affidavit is a full acquittance and release of the association or federal association for the amount
 21 so paid.

22 [(6)] **(5)** A probate proceeding is not necessary to establish the right of the surviving spouse,
 23 **department**, surviving children, surviving parent or surviving brothers and sisters to withdraw an
 24 account as provided by this section. However, if a personal representative is appointed in an estate
 25 of a deceased [*person*] **holder** whose account has been withdrawn under this section, the person [*or*
 26 *the Department of Human Services*] withdrawing the account shall account for it to the personal
 27 representative.

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

29 723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the de-
 30 ceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person
 31 claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

32 (a) To the surviving spouse **on demand of the surviving spouse within 45 days from the**
 33 **death of the member;**

34 (b) If there is no surviving spouse, to the Department of Human Services, on demand of the
 35 [*Department of Human Services within 60*] **department no less than 46 days and no more than**
 36 **75** days from the death of the member when there is a preferred claim arising under ORS 411.708,
 37 411.795 or 414.105[*, or*];

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

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

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

45 (2) The affidavit shall:

- 1 (a) State where and when the member died;
- 2 (b) State that the total deposits of the deceased member in all financial institutions in this state
3 do not exceed \$25,000;
- 4 (c) Show the relationship of the affiant [*or affiants*] to the deceased member; and
- 5 (d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of
6 the deceased **member** out of the deposit, to the full extent of the deposit if necessary, in the order
7 of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who
8 are entitled to those moneys by law.
- 9 (3) In the event the [*decedent*] **member** died intestate without known heirs, an estate adminis-
10 trator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall
11 receive the moneys as escheat property.
- 12 (4) The credit union shall determine the relationship of the affiant to the deceased member.
13 However, payment of [*such*] **the** moneys in good faith to the affiant [*or affiants shall discharge and*
14 *release*] **discharges and releases** the transferor from any liability or responsibility for the transfer
15 in the same manner and with the same effect as if the property had been transferred, delivered or
16 paid to a personal representative of the estate of the [*decedent*] **deceased member**.
- 17 (5) A probate proceeding is not necessary to establish the right of the surviving spouse, [*De-*
18 *partment of Human Services claim*] **department**, surviving children, surviving parents, surviving
19 brothers and sisters or an estate administrator of the Department of State Lands to withdraw the
20 deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where
21 a withdrawal of deposits was made under this section, the person withdrawing the deposits shall
22 account for them to the personal representative.
- 23 (6) When a credit union transfers moneys under subsection (1) of this section, the transferor may
24 require the transferee to furnish the transferor with a written indemnity agreement, indemnifying
25 the transferor against loss for moneys paid to the extent of the amount of the deposit.
- 26 (7) This section is subject to the rights of other parties to the account under ORS 723.474 to
27 723.498.

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

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