

A-Engrossed
Senate Bill 414

Ordered by the Senate May 2
Including Senate Amendments dated May 2

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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.

Provides that upon delivery of small estate affidavit to person that controls access to personal property belonging to estate of decedent, including financial institution with safe deposit box, access must be provided to property [*and affiant must be allowed to take possession of property, unless it is apparent that*]. **Requires inventory to be taken of safe deposit box for purpose of determining whether** value of property exceeds amount subject to administration under small estate affidavit.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to small estates; creating new provisions; amending ORS 114.535, 708A.655 and 723.844; and
3 declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 114.505 to**
6 **114.560.**

7 **SECTION 2. (1) If a claiming successor or other person who is eligible to file an affidavit**
8 **under ORS 114.515 is aware that the decedent was the sole lessee or the last surviving lessee**
9 **of a safe deposit box at the time of the decedent's death, the claiming successor or other**
10 **person may not file an affidavit under ORS 114.515 until the person requests an inventory**
11 **of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution**
12 **as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as**
13 **defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an in-**
14 **ventory of the contents of the box to be made. The lessor shall retain the original inventory**
15 **in the box and shall provide a copy of the inventory to the person requesting the inventory.**
16 **The person requesting the inventory shall take the contents of the box into consideration in**
17 **determining whether the estate of the decedent is within the limits prescribed by ORS 114.515**
18 **(2). If an affidavit under ORS 114.515 is filed by the person, the value of the contents of the**
19 **box shall be stated in the affidavit.**

20 **(2) If a person who has filed an affidavit under ORS 114.515 becomes aware after the filing**
21 **of the affidavit that the decedent was the sole lessee or the last surviving lessee of a safe**
22 **deposit box at the time of the decedent's death, the person shall promptly request an in-**
23 **ventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating in-**
24 **stitution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit**
25 **union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause**

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 an inventory of the contents of the box to be made. The lessor shall retain the original in-
 2 ventory in the box and shall provide a copy of the inventory to the person requesting the
 3 inventory. If the estate of the decedent remains within the limits prescribed by ORS 114.515
 4 (2) after consideration of the value of the contents of the box, the person shall file an
 5 amended affidavit under ORS 114.515. Upon providing the lessor of the box with a certified
 6 copy of the amended affidavit, the lessor shall allow the person to take possession of the
 7 contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS
 8 114.515 (2) after consideration of the value of the contents of the box, the person may not file
 9 an amended affidavit under ORS 114.515 and shall file notice with the court that the estate
 10 of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice
 11 on the lessor of the box. The lessor of the box shall thereafter deliver the contents of the
 12 box to the personal representative for the decedent, or to such other person as may be pro-
 13 vided for under the terms of the lease of the box.

14 **SECTION 3.** ORS 114.535 is amended to read:

15 114.535. [(1) A person indebted to the decedent or having possession of personal property belonging
 16 to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the
 17 affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the
 18 personal property to the affiant.]

19 (1) Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant
 20 may deliver a certified copy of the affidavit to any person who was indebted to the decedent
 21 or who has possession of personal property belonging to the estate. Except as provided in
 22 this section, upon receipt of the copy, the person shall pay, transfer, deliver, provide access
 23 to and allow possession of the personal property to the affiant.

24 (2) Subject to section 2 of this 2011 Act, if a copy of an affidavit is delivered under sub-
 25 section (1) of this section to a person that controls access to personal property belonging to
 26 the estate of the decedent, including personal property held in a safe deposit box for which
 27 the decedent was the sole lessee or the last surviving lessee, the person shall:

28 (a) Provide the affiant with access to the decedent's personal property; and

29 (b) Allow the affiant to take possession of the personal property.

30 (3) Subject to section 2 of this 2011 Act, if a copy of an affidavit is delivered under sub-
 31 section (1) of this section to a person who has received property of the decedent under ORS
 32 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of
 33 an estate that is not being probated, the person shall pay, transfer, [or] deliver, provide access
 34 to or allow possession of the property to the affiant if the person would be required to pay,
 35 transfer, [or] deliver, provide access to or allow possession of the property to a personal repre-
 36 sentative of the estate. [The transferor]

37 (4) Any person that pays, transfers, delivers, provides access to or allows possession of
 38 property of a decedent in the manner provided by this section is discharged and released from
 39 any liability or responsibility for the [transfer] property in the same manner and with the same ef-
 40 fect as if the property had been transferred, delivered or paid to a personal representative of the
 41 estate of the decedent.

42 [(2)] (5) A transfer agent of any corporate security registered in the name of the decedent shall
 43 change the registered ownership on the books of the corporation to the person entitled thereto on
 44 presentation of a certified copy of the affidavit filed under ORS 114.515.

45 [(3)] (6) If a person to whom an affidavit is delivered refuses to pay, deliver, [or] transfer, pro-

1 **vide access to or allow possession of** any personal property [to the affiant or the person entitled
2 to the property as disclosed in the affidavit filed under ORS 114.515] **as required by this section,**
3 the property may be recovered or payment, delivery [or], transfer of **or access to** the property may
4 be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by
5 or on behalf of the transferee.

6 [(4)] (7) If the affidavit was signed by the Director of Human Services, the Director of the
7 Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Ser-
8 vices, the Director of the Oregon Health Authority or the attorney may certify a copy of the affi-
9 davit for the purposes described in [subsection (1) or (2) of] this section.

10 **SECTION 4.** ORS 708A.655 is amended to read:

11 708A.655. (1) This section applies to the safe deposit box of any person who is the sole lessee
12 or last surviving lessee of the box and who has died.

13 (2) **Subject to section 2 of this 2011 Act,** upon being furnished with a certified copy of the
14 decedent's death certificate or other evidence of death satisfactory to the Oregon operating institu-
15 tion, the Oregon operating institution within which the box is located shall cause or permit the box
16 to be opened and the contents of the box examined at the request of an individual who furnishes
17 an affidavit stating:

18 (a) That the individual believes the box may contain the will of the decedent, a trust instrument
19 creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death,
20 documents pertaining to the disposition of the remains of the decedent, documents pertaining to
21 property of the estate of the decedent or property of the estate of the decedent; and

22 (b) That the individual is an interested person [as defined in this section] and wishes to open the
23 box to conduct a will search or trust instrument search, obtain documents relating to the disposition
24 of the decedent's remains, [or] inventory the contents of the box **or remove property of the estate**
25 **of the decedent pursuant to a small estate affidavit filed under ORS 114.515.**

26 (3) For the purpose of this section, "interested person" means any of the following:

27 (a) A person named as personal representative of the decedent in a purported will of the
28 decedent;

29 (b) The surviving spouse or any heir of the decedent;

30 (c) A person who was serving as the court-appointed guardian or conservator of the decedent
31 or as trustee for the decedent immediately prior to the decedent's death;

32 (d) A person named as successor trustee in a purported trust instrument creating a trust of
33 which the decedent was a trustor or a trustee at the time of the decedent's death;

34 (e) A person designated by the decedent in a writing that is acceptable to the Oregon operating
35 institution and is filed with it prior to the decedent's death;

36 (f) A person who immediately prior to the death of the decedent had the right of access to the
37 box as an agent of the decedent under a durable power of attorney; [or]

38 (g) If there are no heirs of the decedent, an estate administrator of the Department of State
39 Lands appointed under ORS 113.235; **or**

40 **(h) A person who is authorized to file an affidavit under ORS 114.515.**

41 (4) If the box is opened for the purpose of conducting a will search, the Oregon operating in-
42 stitution shall remove any document that appears to be a will, make a true and correct copy of it
43 and deliver the original will to a person designated in the will to serve as the decedent's personal
44 representative, or if no such person is designated or the Oregon operating institution cannot, despite
45 reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall

1 retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of
 2 the will shall be retained in the box. At the request of the interested person, a copy of the will,
 3 together with copies of any documents pertaining to the disposition of the remains of the decedent,
 4 may be given to the interested person.

5 (5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon
 6 operating institution shall remove any document that appears to be a trust instrument creating a
 7 trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true
 8 and correct copy of it and deliver the original trust instrument to a person designated in the trust
 9 instrument to serve as the successor trustee on the death of the decedent. If no such person is
 10 designated or the Oregon operating institution cannot, despite reasonable efforts, determine the
 11 whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A
 12 copy of the trust instrument shall be retained in the box. At the request of any interested person,
 13 a copy of the trust instrument may be given to the interested person.

14 (6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of
 15 the decedent's remains, the Oregon operating institution shall comply with subsection (4) **or** (5) of
 16 this section with respect to any will **or trust instrument** of the decedent found in the box, and
 17 may in its discretion either:

18 (a) Make and retain in the box a copy of any documents pertaining to the disposition of the
 19 remains of the decedent and tender the original documents to the interested person; or

20 (b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent
 21 to the interested person and retain the original documents in the box.

22 (7) If the box is opened for the purpose of making an inventory of its contents, the Oregon op-
 23 erating institution shall comply with subsection (4) or (5) of this section with respect to any will or
 24 trust instrument of the decedent that is found in the box, and shall cause the inventory to be made.
 25 The inventory *[shall]* **must** be attested to by a representative of the Oregon operating institution
 26 and may be attested to by the interested person, if the interested person is present when the in-
 27 ventory is made. The Oregon operating institution shall retain the original inventory in the box, and
 28 shall furnish a copy of the inventory to the interested person upon request.

29 **(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515**
 30 **and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the**
 31 **Oregon operating institution shall provide to the affiant access to the decedent's property.**
 32 **The Oregon operating institution shall comply with subsection (4) or (5) of this section if a**
 33 **will or trust instrument of the decedent is found in the box. Subject to section 2 of this 2011**
 34 **Act, the Oregon operating institution shall allow the affiant to take possession of the per-**
 35 **sonal property in the box.**

36 *[(8)]* (9) The Oregon operating institution may presume the truth of any statement contained in
 37 the affidavit required to be furnished under this section **or ORS 114.535**, and when acting in reli-
 38 ance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with
 39 the personal representative of the decedent. The Oregon operating institution is not responsible for
 40 the adequacy of the description of any property included in an inventory of the contents of a box,
 41 or for the conversion of the property in connection with actions performed under this section, except
 42 for conversion by intentional acts of the Oregon operating institution or its employees, directors,
 43 officers or agents. If the Oregon operating institution is not satisfied that the requirements of this
 44 section have been satisfied, the Oregon operating institution may decline to open the box.

45 *[(9)]* (10) If the interested person **or affiant** does not furnish the key needed to open the box,

1 and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon
2 operating institution may require that the interested person **or affiant** pay the expense of opening
3 the box.

4 [(10)] (11) Any examination of the contents of a box under this section shall be conducted in the
5 presence of at least one employee of the Oregon operating institution.

6 **SECTION 5.** ORS 723.844 is amended to read:

7 723.844. (1) This section applies to the safe deposit box of any person who is the sole lessee or
8 last surviving lessee of the box and who has died.

9 (2) **Subject to section 2 of this 2011 Act**, upon being furnished with a certified copy of the
10 decedent's death certificate or other evidence of death satisfactory to the credit union, the credit
11 union within which the box is located shall cause or permit the box to be opened and the contents
12 of the box examined at the request of an individual who furnishes an affidavit stating:

13 (a) That the individual believes the box may contain the will of the decedent, a trust instrument
14 creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death,
15 documents pertaining to the disposition of the remains of the decedent, documents pertaining to
16 property of the estate of the decedent or property of the estate of the decedent; and

17 (b) That the individual is an interested person [*as defined in this section*] and wishes to open the
18 box to conduct a will search or trust instrument search, obtain documents relating to the disposition
19 of the decedent's remains or inventory the contents of the box **or remove property of the estate**
20 **of the decedent pursuant to a small estate affidavit filed under ORS 114.515.**

21 (3) For the purpose of this section, "interested person" means any of the following:

22 (a) A person named as personal representative of the decedent in a purported will of the
23 decedent;

24 (b) The surviving spouse or any heir of the decedent;

25 (c) A person who was serving as the court-appointed guardian or conservator of the decedent
26 or as trustee for the decedent immediately prior to the decedent's death;

27 (d) A person named as successor trustee in a purported trust instrument creating a trust of
28 which the decedent was a trustor or a trustee at the time of the decedent's death;

29 (e) A person designated by the decedent in a writing that is acceptable to the credit union and
30 is filed with it prior to the decedent's death;

31 (f) A person who immediately prior to the death of the decedent had the right of access to the
32 box as an agent of the decedent under a durable power of attorney; [*or*]

33 (g) If there are no heirs of the decedent, an estate administrator of the Department of State
34 Lands appointed under ORS 113.235; **or**

35 **(h) A person who is authorized to file an affidavit under ORS 114.515.**

36 (4) If the box is opened for the purpose of conducting a will search, the credit union shall re-
37 move any document that appears to be a will, make a true and correct copy of it and deliver the
38 original will to a person designated in the will to serve as the decedent's personal representative,
39 or if no such person is designated or the credit union cannot, despite reasonable efforts, determine
40 the whereabouts of such person, the credit union shall retain the will or deliver it to a court having
41 jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the
42 request of the interested person, a copy of the will, together with copies of any documents pertain-
43 ing to the disposition of the remains of the decedent, may be given to the interested person.

44 (5) If the box is opened for the purpose of conducting a trust instrument search, the credit union
45 shall remove any document that appears to be a trust instrument creating a trust of which the

1 decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy
2 of it and deliver the original trust instrument to a person designated in the trust instrument to serve
3 as the successor trustee on the death of the decedent. If no such person is designated or the credit
4 union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union
5 shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the
6 request of any interested person, a copy of the trust instrument may be given to the interested
7 person.

8 (6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of
9 the decedent's remains, the credit union shall comply with subsection (4) **or** (5) of this section with
10 respect to any will **or trust instrument** of the decedent found in the box, and may in its discretion
11 either:

12 (a) Make and retain in the box a copy of any documents pertaining to the disposition of the
13 remains of the decedent and tender the original documents to the interested person; or

14 (b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent
15 to the interested person and retain the original documents in the box.

16 (7) If the box is opened for the purpose of making an inventory of its contents, the credit union
17 shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument
18 of the decedent that is found in the box, and shall cause the inventory to be made. The inventory
19 [shall] **must** be attested to by a representative of the credit union and may be attested to by the
20 interested person, if the interested person is present when the inventory is made. The credit union
21 shall retain the original inventory in the box, and shall furnish a copy of the inventory to the in-
22 terested person upon request.

23 **(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515**
24 **and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the**
25 **credit union shall provide to the affiant access to the decedent's property. The credit union**
26 **shall comply with subsection (4) or (5) of this section if a will or trust instrument of the**
27 **decedent is found in the box. Subject to section 2 of this 2011 Act, the credit union shall allow**
28 **the affiant to take possession of the personal property in the box.**

29 [(8)] (9) The credit union may presume the truth of any statement contained in the affidavit re-
30 quired to be furnished under this section **and ORS 114.535**, and when acting in reliance upon such
31 an affidavit, the credit union is discharged as if it had dealt with the personal representative of the
32 decedent. The credit union is not responsible for the adequacy of the description of any property
33 included in an inventory of the contents of a box, or for the conversion of the property in connection
34 with actions performed under this section, except for conversion by intentional acts of the credit
35 union or its employees, directors, officers or agents. If the credit union is not satisfied that the re-
36 quirements of this section have been satisfied, the credit union may decline to open the box.

37 [(9)] (10) If the interested person **or affiant** does not furnish the key needed to open the box,
38 and the credit union must incur expense in gaining entry to the box, the credit union may require
39 that the interested person **or affiant** pay the expense of opening the box.

40 [(10)] (11) Any examination of the contents of a box under this section shall be conducted in the
41 presence of at least one employee of the credit union.

42 **SECTION 6. Section 2 of this 2011 Act, and the amendments to ORS 114.535, 708A.655 and**
43 **723.844 by sections 3 to 5 of this 2011 Act apply only to small estate affidavits delivered under**
44 **ORS 114.535 on or after the effective date of this 2011 Act.**

45 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
2 **on its passage.**

3
