

Senate Bill 414

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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 **as introduced**.

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 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.** ORS 114.535 is amended to read:

6 114.535. *[(1) A person indebted to the decedent or having possession of personal property belonging*
7 *to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the*
8 *affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the*
9 *personal property to the affiant.]*

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

15 **(2) If a copy of an affidavit is delivered under subsection (1) of this section to a person**
16 **that controls access to personal property belonging to the estate of the decedent, including**
17 **personal property held in a safe deposit box for which the decedent was the sole lessee or**
18 **the last surviving lessee, the person shall:**

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

20 **(b) Allow the affiant to take possession of the personal property, unless it is apparent to**
21 **the person that the value of the personal property exceeds the amount set forth in ORS**
22 **114.515 (2)(b). If it is apparent to the person that the value of the personal property exceeds**
23 **the amount set forth in ORS 114.515 (2)(b), the person may not allow the affiant to take**
24 **possession of the property.**

25 **(3) If a copy of an affidavit is delivered under subsection (1) of this section to a person**
26 **who has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a**
27 **similar statute providing for the transfer of property of an estate that is not being probated, the**
28 **person shall pay, transfer, [or] deliver, provide access to or allow possession of the property to**

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 the affiant if the person would be required to pay, transfer, [or] deliver, **provide access to or allow**
 2 **possession of** the property to a personal representative of the estate.

3 (4) [The transferor] **Any person that pays, transfers, delivers, provides access to or allows**
 4 **possession of property of a decedent in the manner provided by this section** is discharged and
 5 released from any liability or responsibility for the [transfer] **property** in the same manner and with
 6 the same effect as if the property had been transferred, delivered or paid to a personal represen-
 7 tative of the estate of the decedent.

8 [(2)] (5) A transfer agent of any corporate security registered in the name of the decedent shall
 9 change the registered ownership on the books of the corporation to the person entitled thereto on
 10 presentation of a certified copy of the affidavit filed under ORS 114.515.

11 [(3)] (6) If a person to whom an affidavit is delivered refuses to pay, deliver, [or] transfer, **pro-**
 12 **vide access to or allow possession of** any personal property [to the affiant or the person entitled
 13 to the property as disclosed in the affidavit filed under ORS 114.515] **as required by this section**,
 14 the property may be recovered or payment, delivery [or], transfer of **or access to** the property may
 15 be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by
 16 or on behalf of the transferee.

17 [(4)] (7) If the affidavit was signed by the Director of Human Services, the Director of the
 18 Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Ser-
 19 vices, the Director of the Oregon Health Authority or the attorney may certify a copy of the affi-
 20 davit for the purposes described in [subsection (1) or (2) of] this section.

21 **SECTION 2.** ORS 708A.655 is amended to read:

22 708A.655. (1) This section applies to the safe deposit box of any person who is the sole lessee
 23 or last surviving lessee of the box and who has died.

24 (2) Upon being furnished with a certified copy of the decedent's death certificate or other evi-
 25 dence of death satisfactory to the Oregon operating institution, the Oregon operating institution
 26 within which the box is located shall cause or permit the box to be opened and the contents of the
 27 box examined at the request of an individual who furnishes an affidavit stating:

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

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

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

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

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

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

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

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

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

3 (g) If there are no heirs of the decedent, an estate administrator of the Department of State
4 Lands appointed under ORS 113.235.

5 (4) If the box is opened for the purpose of conducting a will search, the Oregon operating in-
6 stitution shall remove any document that appears to be a will, make a true and correct copy of it
7 and deliver the original will to a person designated in the will to serve as the decedent's personal
8 representative, or if no such person is designated or the Oregon operating institution cannot, despite
9 reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall
10 retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of
11 the will shall be retained in the box. At the request of the interested person, a copy of the will,
12 together with copies of any documents pertaining to the disposition of the remains of the decedent,
13 may be given to the interested person.

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

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

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

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

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

38 **(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515**
39 **and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the**
40 **Oregon operating institution shall provide access to the decedent's property to the affiant.**
41 **The Oregon operating institution shall comply with subsection (4) or (5) of this section if a**
42 **will or trust instrument of the decedent is found in the box. The Oregon operating institution**
43 **shall allow the affiant to take possession of the personal property in the box unless it is ap-**
44 **parent to the Oregon operating institution that the value of the property exceeds the amount**
45 **set forth in ORS 114.515 (2)(b). If it is apparent that the value of the property exceeds the**

1 **amount set forth in ORS 114.515 (2)(b):**

2 (a) **The Oregon operating institution shall cause an inventory of the property to be made.**
 3 **The inventory must be attested to by a representative of the Oregon operating institution**
 4 **and may be attested to by the affiant, if the affiant is present when the inventory is made;**
 5 **and**

6 (b) **The Oregon operating institution shall retain the property of the decedent and the**
 7 **original inventory in the box, and shall furnish a copy of the inventory to the affiant upon**
 8 **request.**

9 [(8)] (9) The Oregon operating institution may presume the truth of any statement contained in
 10 the affidavit required to be furnished under this section **or ORS 114.535**, and when acting in reli-
 11 ance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with
 12 the personal representative of the decedent. The Oregon operating institution is not responsible for
 13 the adequacy of the description of any property included in an inventory of the contents of a box,
 14 or for the conversion of the property in connection with actions performed under this section, except
 15 for conversion by intentional acts of the Oregon operating institution or its employees, directors,
 16 officers or agents. **The Oregon operating institution is not liable to any person for any valu-**
 17 **ation of property in a box that is performed under subsection (8) of this section.** If the Oregon
 18 operating institution is not satisfied that the requirements of this section have been satisfied, the
 19 Oregon operating institution may decline to open the box.

20 [(9)] (10) If the interested person **or affiant** does not furnish the key needed to open the box,
 21 and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon
 22 operating institution may require that the interested person **or affiant** pay the expense of opening
 23 the box.

24 [(10)] (11) Any examination of the contents of a box under this section shall be conducted in the
 25 presence of at least one employee of the Oregon operating institution.

26 **SECTION 3.** ORS 723.844 is amended to read:

27 723.844. (1) This section applies to the safe deposit box of any person who is the sole lessee or
 28 last surviving lessee of the box and who has died.

29 (2) Upon being furnished with a certified copy of the decedent's death certificate or other evi-
 30 dence of death satisfactory to the credit union, the credit union within which the box is located
 31 shall cause or permit the box to be opened and the contents of the box examined at the request of
 32 an individual who furnishes an affidavit stating:

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

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

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

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

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

45 (c) A person who was serving as the court-appointed guardian or conservator of the decedent

1 or as trustee for the decedent immediately prior to the decedent's death;

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

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

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

8 (g) If there are no heirs of the decedent, an estate administrator of the Department of State
9 Lands appointed under ORS 113.235.

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

18 (5) If the box is opened for the purpose of conducting a trust instrument search, the credit union
19 shall remove any document that appears to be a trust instrument creating a trust of which the
20 decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy
21 of it and deliver the original trust instrument to a person designated in the trust instrument to serve
22 as the successor trustee on the death of the decedent. If no such person is designated or the credit
23 union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union
24 shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the
25 request of any interested person, a copy of the trust instrument may be given to the interested
26 person.

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

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

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

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

42 **(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515**
43 **and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the**
44 **credit union shall provide access to the decedent's property to the affiant. The credit union**
45 **shall comply with subsection (4) or (5) of this section if a will or trust instrument of the**

1 **decedent is found in the box. The credit union shall allow the affiant to take possession of**
 2 **the personal property in the box unless it is apparent to the credit union that the value of**
 3 **the property exceeds the amount set forth in ORS 114.515 (2)(b). If it is apparent that the**
 4 **value of the property exceeds the amount set forth in ORS 114.515 (2)(b):**

5 **(a) The credit union shall cause an inventory of the property to be made. The inventory**
 6 **must be attested to by a representative of the credit union and may be attested to by the**
 7 **affiant, if the affiant is present when the inventory is made; and**

8 **(b) The credit union shall retain the property of the decedent and the original inventory**
 9 **in the box, and shall furnish a copy of the inventory to the affiant upon request.**

10 [(8)] **(9) The credit union may presume the truth of any statement contained in the affidavit re-**
 11 **quired to be furnished under this section and ORS 114.535, and when acting in reliance upon such**
 12 **an affidavit, the credit union is discharged as if it had dealt with the personal representative of the**
 13 **decedent. The credit union is not responsible for the adequacy of the description of any property**
 14 **included in an inventory of the contents of a box, or for the conversion of the property in connection**
 15 **with actions performed under this section, except for conversion by intentional acts of the credit**
 16 **union or its employees, directors, officers or agents. The credit union is not liable to any person**
 17 **for any valuation of property in a box that is performed under subsection (8) of this section.**
 18 **If the credit union is not satisfied that the requirements of this section have been satisfied, the**
 19 **credit union may decline to open the box.**

20 [(9)] **(10) If the interested person or affiant does not furnish the key needed to open the box,**
 21 **and the credit union must incur expense in gaining entry to the box, the credit union may require**
 22 **that the interested person or affiant pay the expense of opening the box.**

23 [(10)] **(11) Any examination of the contents of a box under this section shall be conducted in the**
 24 **presence of at least one employee of the credit union.**

25 **SECTION 4. The amendments to ORS 114.535, 708A.655 and 723.844 by sections 1 to 3 of**
 26 **this 2011 Act apply only to small estate affidavits delivered under ORS 114.535 on or after the**
 27 **effective date of this 2011 Act.**

28 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
 29 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 30 **on its passage.**

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