

House Bill 2415

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Human Services)

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**.

Requires financial institution or credit union to respond to demand from Oregon Health Authority or Department of Human Services for moneys deposited to credit of deceased depositor or member by disclosing amount on deposit for each account in which deceased depositor or member held ownership interest and name and address of any person that also held ownership interest in each account.

Permits authority or department to apply to circuit court of this state for order to compel financial institution or credit union to comply with demand for account information or order to enjoin transfer of moneys from account of deceased depositor or member to any person other than deceased depositor's or member's spouse, authority or department within certain period following depositor's or member's death.

Provides that financial institution or credit union that transfers moneys that are subject to demand from authority or department is liable to authority or department for moneys and must notify authority or department when financial institution or credit union has replaced or recovered moneys.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to certain deposits upon death; creating new provisions; amending ORS 708A.430 and
3 723.466; and declaring an emergency.

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 less,*
7 *the financial institution may, upon receipt of an affidavit from the person claiming the deposit as pro-*
8 *vided 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 at any time after the death of the*
11 *depositor;]*

12 *[(b) If there is no surviving spouse, to the Oregon Health Authority or the Department of Human*
13 *Services, on demand of the authority or the department no less than 46 days and no more than 75 days*
14 *from the death of the depositor when there is a preferred claim arising under ORS 411.708, 411.795*
15 *or 416.350;]*

16 *[(c) If there is no surviving spouse and no authority or department claim, to the depositor's sur-*
17 *ving children 18 years of age or older;]*

18 *[(d) If there is no surviving spouse, authority claim, department claim or surviving child 18 years*
19 *of age or older, to the depositor's surviving parents; or]*

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

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 (1)(a) After a depositor dies, a financial institution may pay the moneys on deposit to the
 2 credit of the deceased depositor in accordance with paragraph (b) of this subsection if the
 3 moneys on deposit are \$25,000 or less and if the financial institution receives from a person
 4 that claims the moneys an affidavit that meets the requirements set forth in subsection (2)
 5 of this section.

6 (b) The financial institution may pay the moneys described in paragraph (a) of this sub-
 7 section to:

8 (A) The deceased depositor's surviving spouse, in response to the surviving spouse's de-
 9 mand at any time after the depositor's death;

10 (B) The Oregon Health Authority or the Department of Human Services, if:

11 (i) The deceased depositor does not have a surviving spouse;

12 (ii) The authority or the department makes a demand for the moneys not less than 46
 13 days and not more than 75 days after the depositor's death; and

14 (iii) The authority's or department's demand is based on a preferred claim for the mon-
 15 eys that arises under ORS 411.708, 411.795 or 416.350; or

16 (C) Other relatives of the deceased depositor, who may not request the moneys until 75
 17 days after the deceased depositor's death, in accordance with the following priority:

18 (i) The deceased depositor's surviving children who are 18 years of age or older, if the
 19 deceased depositor does not have a surviving spouse and the authority or the department
 20 does not make a demand for the moneys under subparagraph (B) of this paragraph;

21 (ii) The deceased depositor's surviving parents, if the deceased depositor does not have
 22 a surviving spouse or surviving children who are 18 years of age or older and if the authority
 23 or the department does not make a demand for the moneys under subparagraph (B) of this
 24 paragraph; or

25 (iii) The deceased depositor's surviving brothers or sisters who are 18 years of age or
 26 older, if the deceased depositor does not have a surviving spouse, surviving children who are
 27 18 years of age or older or a surviving parent and if the authority or the department does
 28 not make a demand for the moneys under subparagraph (B) of this paragraph.

29 (c) The financial institution, in addition to complying with any other duty toward the
 30 authority or the department that is required under this section, shall respond to a demand
 31 from the authority or the department for moneys deposited to the credit of the deceased
 32 depositor by disclosing to the authority or the department the amount on deposit for each
 33 account in which the deceased depositor held a legal, equitable or beneficial interest at the
 34 time of death and the name and address of any person that held, or acquired after the de-
 35 ceased depositor's death, a legal, equitable or beneficial interest in each of the accounts the
 36 deceased depositor held at the time of death.

37 (d) The authority or the department by rule may require a financial institution to provide
 38 the information required under this section on a form and in a format that the authority or
 39 the department specifies.

40 (e) The authority or the department may apply to a circuit court of this state for an
 41 order to:

42 (A) Compel a financial institution to comply with the provisions of paragraph (c) of this
 43 subsection; or

44 (B) Enjoin the financial institution from transferring moneys from the account of a de-
 45 ceased depositor to any person other than the authority or the department within a period

1 **that begins on the date of the depositor's death and ends 75 days after the depositor's death.**
 2 **The authority or the department may seek the order if the authority or the department has**
 3 **evidence that the financial institution does not intend to comply with a demand from the**
 4 **authority or the department under paragraph (b)(B) of this subsection.**

5 (2) The affidavit *[shall]* **described in subsection (1)(a) of this section must:**

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

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

9 (c) Show the relationship of the affiant to the deceased depositor; and

10 (d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of
 11 the deceased depositor out of the deposit to the full extent of the deposit 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 (3) *[In the event]* **If** the depositor died intestate without known heirs, an estate administrator of
 15 the Department of State Lands appointed under ORS 113.235 *[shall be]* **is** the affiant and shall re-
 16 ceive the moneys as escheat property.

17 (4)(a) The financial institution shall determine the relationship of the affiant to the deceased
 18 depositor. *However,* **but, except as provided in paragraph (b) of this subsection,** payment of the
 19 moneys in good faith to the affiant discharges and releases the transferor from any liability or re-
 20 sponsibility for the transfer in the same manner and with the same effect as if the property had been
 21 transferred, delivered or paid to a personal representative of the estate of the deceased depositor.

22 (b)(A) **At the request of the authority or the department, a financial institution shall**
 23 **provide the authority or the department with a copy of an account statement that shows the**
 24 **balance in a deceased depositor's account on the date of the depositor's death.**

25 (B) **If, before 75 days have elapsed following a deceased depositor's death, a financial in-**
 26 **stitution has transferred to a person other than the deceased depositor's spouse moneys in**
 27 **an account that is subject to a demand from the authority or the department under sub-**
 28 **section (1)(b)(B) of this section, the financial institution has 60 days within which to recover**
 29 **the moneys the financial institution disbursed or to replace the disbursed moneys. The fi-**
 30 **ancial institution shall notify the authority or the department immediately after the finan-**
 31 **cial institution has recovered or replaced the moneys. The authority or the department has**
 32 **30 days after receiving a notice under this subparagraph to demand payment of the moneys**
 33 **from the financial institution.**

34 (5) A probate proceeding is not necessary to establish the right of the surviving spouse, au-
 35 thority, department, surviving child, surviving parent, surviving brothers and sisters or an estate
 36 administrator of the Department of State Lands to withdraw *[the deposits upon the filing of the affi-*
 37 *davit]* **moneys deposited to the credit of a deceased depositor after filing an affidavit in ac-**
 38 **cordance with this section.** If a personal representative is appointed in an estate where a
 39 withdrawal of *[deposits]* **moneys** was made under this section, the person withdrawing the
 40 *[deposits]* **moneys** shall account for *[them]* **the moneys** to the personal representative.

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

44 (7) This section is subject to the rights of other parties in the account under ORS 708A.455 to
 45 708A.515.

SECTION 2. 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 Oregon Health Authority or the Department of Human Services, on demand of the authority or the 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 416.350;]

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

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

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

(1)(a) After a member of a credit union dies, the credit union may pay the moneys on deposit to the credit of the deceased member in accordance with paragraph (b) of this subsection if the moneys on deposit are \$25,000 or less and if the credit union receives from a person that claims the moneys an affidavit that meets the requirements set forth in subsection (2) of this section.

(b) The credit union may pay the moneys described in paragraph (a) of this subsection to:

(A) The deceased member's surviving spouse, in response to the surviving spouse's demand at any time after the member's death;

(B) The Oregon Health Authority or the Department of Human Services, if:

(i) The deceased member does not have a surviving spouse;

(ii) The authority or the department makes a demand for the moneys not less than 46 days and not more than 75 days after the member's death; and

(iii) The authority's or department's demand is based on a preferred claim for the moneys that arises under ORS 411.708, 411.795 or 416.350; or

(C) Other relatives of the deceased member, who may not request the moneys until 75 days after the deceased member's death, in accordance with the following priority:

(i) The deceased member's surviving children who are 18 years of age or older, if the deceased member does not have a surviving spouse and the authority or the department does not make a demand for the moneys under subparagraph (B) of this paragraph;

(ii) The deceased member's surviving parents, if the deceased member does not have a surviving spouse or surviving children who are 18 years of age or older and if the authority or the department does not make a demand for the moneys under subparagraph (B) of this paragraph; or

(iii) The deceased member's surviving brothers or sisters who are 18 years of age or older, if the deceased member does not have a surviving spouse, surviving children who are 18 years of age or older or a surviving parent and if the authority or the department does not make a demand for the moneys under subparagraph (B) of this paragraph.

1 (c) The credit union, in addition to complying with any other duty toward the authority
 2 or the department that is required under this section, shall respond to a demand from the
 3 authority or the department for moneys deposited to the credit of the deceased member by
 4 disclosing to the authority or the department the amount on deposit for each account in
 5 which the deceased member held a legal, equitable or beneficial interest at the time of death
 6 and the name and address of any person that held, or acquired after the deceased member's
 7 death, a legal, equitable or beneficial interest in each of the accounts the deceased member
 8 held at the time of death.

9 (d) The authority or the department by rule may require a credit union to provide the
 10 information required under this section on a form and in a format that the authority or the
 11 department specifies.

12 (e) The authority or the department may apply to a circuit court of this state for an
 13 order to:

14 (A) Compel a credit union to comply with the provisions of paragraph (c) of this sub-
 15 section; or

16 (B) Enjoin the credit union from transferring moneys from the account of a deceased
 17 member to any person other than the authority or the department within a period that be-
 18 gins on the date of the member's death and ends 75 days after the member's death. The au-
 19 thority or the department may seek the order if the authority or the department has
 20 evidence that the credit union does not intend to comply with a demand from the authority
 21 or the department under paragraph (b)(B) of this subsection.

22 (2) The affidavit *[shall]* described in subsection (1)(a) of this section must:

23 (a) State where and when the member died;

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

26 (c) Show the relationship of the affiant to the deceased member; and

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

31 (3) *[In the event]* If the member died intestate without known heirs, an estate administrator of
 32 the Department of State Lands appointed under ORS 113.235 *[shall be]* is the affiant and shall re-
 33 ceive the moneys as escheat property.

34 (4)(a) The credit union shall determine the relationship of the affiant to the deceased member.
 35 *However,* but, except as provided in paragraph (b) of this subsection, payment of the moneys
 36 in good faith to the affiant discharges and releases the transferor from any liability or responsibility
 37 for the transfer in the same manner and with the same effect as if the property had been transferred,
 38 delivered or paid to a personal representative of the estate of the deceased member.

39 (b)(A) At the request of the authority or the department, a credit union shall provide the
 40 authority or the department with a copy of an account statement that shows the balance in
 41 a deceased member's account on the date of the member's death.

42 (B) If, before 75 days have elapsed following a deceased member's death, a credit union
 43 has transferred to a person other than the deceased member's spouse moneys in an account
 44 that is subject to a demand from the authority or the department under subsection (1)(b)(B)
 45 of this section, the credit union has 60 days within which to recover the moneys the credit

1 **union disbursed or to replace the disbursed moneys. The credit union shall notify the au-**
 2 **thority or the department immediately after the credit union has recovered or replaced the**
 3 **moneys. The authority or the department has 30 days after receiving a notice under this**
 4 **subparagraph to demand payment of the moneys from the credit union.**

5 (5) A probate proceeding is not necessary to establish the right of the surviving spouse, au-
 6 thority, Department of Human Services, surviving children, surviving parents, surviving brothers
 7 and sisters or an estate administrator of the Department of State Lands to withdraw the [*deposits*
 8 *upon the filing of the affidavit*] **moneys deposited to the credit of a deceased member after filing**
 9 **an affidavit in accordance with this section.** If a personal representative is appointed in an estate
 10 where a withdrawal of [*deposits*] **moneys** was made under this section, the person withdrawing the
 11 [*deposits*] **moneys** shall account for [*them*] **the moneys** to the personal representative.

12 (6) [*When*] **If** a credit union transfers moneys under subsection (1) of this section, the transferor
 13 may require the transferee to furnish the transferor with a written indemnity agreement, indem-
 14 nifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

15 (7) This section is subject to the rights of other parties to the account under ORS 723.474 to
 16 723.498.

17 **SECTION 3. (1) The amendments to ORS 708A.430 and 723.466 by sections 1 and 2 of this**
 18 **2015 Act become operative January 1, 2016.**

19 **(2) The Director of the Oregon Health Authority and the Director of Human Services**
 20 **may take any action before the operative date specified in subsection (1) of this section that**
 21 **is necessary to enable the directors, on and after the operative date specified in subsection**
 22 **(1) of this section, to exercise all of the duties, functions and powers conferred on the di-**
 23 **rectors by the amendments to ORS 708A.430 and 723.466 by sections 1 and 2 of this 2015 Act.**

24 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
 25 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 26 **on its passage.**