

**Enrolled**  
**Senate Bill 414**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Bankers Association)

CHAPTER .....

AN ACT

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

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

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

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

(2) If a person who has filed an affidavit under ORS 114.515 becomes aware after the filing of the affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the person shall promptly request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. If the estate of the decedent remains within the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person shall file an amended affidavit under ORS 114.515. Upon providing the lessor of the box with a certified copy of the amended affidavit, the lessor shall allow the person to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS

114.515 (2) after consideration of the value of the contents of the box, the person may not file an amended affidavit under ORS 114.515 and shall file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The lessor of the box shall thereafter deliver the contents of the box to the personal representative for the decedent, or to such other person as may be provided for under the terms of the lease of the box.

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

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

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

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

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

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

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

(4) Any person that pays, transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the [transfer] property 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.

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

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

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

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

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

(2) Subject to section 2 of this 2011 Act, upon being furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the Oregon operating insti-

tution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[8] (9) The credit union may presume the truth of any statement contained in the affidavit required to be furnished under this section and ORS 114.535, and when acting in reliance upon such an affidavit, the credit union is discharged as if it had dealt with the personal representative of the decedent. The credit union is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the credit

union or its employees, directors, officers or agents. If the credit union is not satisfied that the requirements of this section have been satisfied, the credit union may decline to open the box.

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

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

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

**SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

**Passed by Senate May 4, 2011**

.....  
Robert Taylor, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 7, 2011**

.....  
Bruce Hanna, Speaker of House

.....  
Arnie Roblan, Speaker of House

**Received by Governor:**

.....M.,....., 2011

**Approved:**

.....M.,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2011

.....  
Kate Brown, Secretary of State