

**Enrolled**  
**House Bill 2509**

Sponsored by Representative OWENS, Senator FINDLEY; Representatives LEVY B, WRIGHT (at the request of William Nichols) (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to the transfer of recorded brands; creating new provisions; and amending ORS 114.535 and 604.041.

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

**SECTION 1.** ORS 114.535 is amended to read:

114.535. (1) The affiant may deliver a certified copy of a small estate affidavit to any person who has possession of personal property belonging to the estate or who was indebted to the decedent. Except as provided in this section, upon receipt of the certified copy, the person shall pay the debt or transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a certified copy of a small estate 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 ORS 114.537, if a certified copy of a small estate affidavit is delivered under subsection (1) of this section to a person who owes a debt to the decedent or 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 the debt or transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay the debt or transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays a debt owing to the decedent or 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 debt or property in the same manner and with the same effect as if the debt had been paid or the property had been transferred or delivered to a personal representative of the estate of the decedent.

(5) The affiant may deliver a certified copy of a small estate affidavit to a transfer agent of any corporate security registered in the name of the decedent. The transfer agent shall change the registered ownership on the books of the corporation to the affiant or the person named in the affidavit entitled to it, as directed by the affiant.

**(6) If the decedent was a holder of a recorded brand, the affiant may deliver a certified copy of a small estate affidavit to the State Department of Agriculture. Subject to the requirements under ORS 604.041, the department shall change the registered ownership of the**

**recorded brand to the affiant or the person named in the affidavit entitled to it, as directed by the affiant.**

[(6)(a)] **(7)(a)** If a person to whom a certified copy of a small estate affidavit is delivered under this section refuses to pay a debt or deliver, transfer, provide access to or allow possession of personal property as required by this section, the affiant may serve a written demand by certified mail on the person to pay the debt or deliver, transfer, provide access to or allow possession of the personal property. The demand must state that, if the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the personal property.

(b) If the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property within 30 days after service of a demand under paragraph (a) of this subsection, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the personal property. The court may enter a judgment awarding reasonable attorney fees to the prevailing party if the court finds that the affiant filed the motion without an objectively reasonable basis or the person refused to pay the debt or deliver, transfer, provide access to or allow possession of any personal property without an objectively reasonable basis.

[(7)] **(8)** If a small estate 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 this section.

[(8)] **(9)** Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon Health Authority serving as an affiant may deal with property of the estate as an affiant under this section.

**SECTION 1a. If Senate Bill 308 becomes law, section 1 of this 2023 Act (amending ORS 114.535) is repealed and ORS 114.535, as amended by section 13, chapter 17, Oregon Laws 2023 (Enrolled Senate Bill 308), is amended to read:**

114.535. (1) The affiant may deliver a certified copy of a simple estate affidavit to any person who has possession of personal property belonging to the estate or who was indebted to the decedent. Except as provided in this section, upon receipt of the certified copy, the person shall pay the debt or transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a certified copy of a simple estate 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 ORS 114.537, if a certified copy of a simple estate affidavit is delivered under subsection (1) of this section to a person who owes a debt to the decedent or 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 the debt or transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay the debt or transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays a debt owing to the decedent or 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 debt or property in the same manner and with the same effect as if the debt had been paid or the property had been transferred or delivered to a personal representative of the estate of the decedent.

(5) The affiant may deliver a certified copy of a simple estate affidavit to a transfer agent of any corporate security registered in the name of the decedent. The transfer agent shall change the reg-

istered ownership on the books of the corporation to the affiant or the person named in the affidavit entitled to it, as directed by the affiant.

**(6) If the decedent was a holder of a recorded brand, the affiant may deliver a certified copy of a simple estate affidavit to the State Department of Agriculture. Subject to the requirements under ORS 604.041, the department shall change the registered ownership of the recorded brand to the affiant or the person named in the affidavit entitled to it, as directed by the affiant.**

*[(6)(a)]* **(7)(a)** If a person to whom a certified copy of a simple estate affidavit is delivered under this section refuses to pay a debt or deliver, transfer, provide access to or allow possession of personal property as required by this section, the affiant may serve a written demand by certified mail on the person to pay the debt or deliver, transfer, provide access to or allow possession of the personal property. The demand must state that, if the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the personal property.

(b) If the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property within 30 days after service of a demand under paragraph (a) of this subsection, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the personal property. The court may enter a judgment awarding reasonable attorney fees to the prevailing party if the court finds that the affiant filed the motion without an objectively reasonable basis or the person refused to pay the debt or deliver, transfer, provide access to or allow possession of any personal property without an objectively reasonable basis.

*[(7)]* **(8)** If a simple estate 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 this section.

*[(8)]* **(9)** Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon Health Authority serving as an affiant may deal with property of the estate as an affiant under this section.

**SECTION 2.** ORS 604.041 is amended to read:

604.041. (1) Except as provided in subsection (2) of this section, in order to transfer a recorded brand by sale, assignment or otherwise, the transferor shall submit a written, signed and witnessed document of transfer to the State Department of Agriculture, accompanied by an application of the transferee as prescribed in ORS 604.027 (1), accompanied by a brand transfer fee, not to exceed \$50. Upon determining that the brand transfer documents are in order, the department shall issue its certificate of recordation to the transferee.

*[(2)]* *In the event of the death of a holder of a recorded brand, the person to whom it is transferred, either by will or the laws of descent and distribution, may have the brand recorded to the transferee or to another person upon submitting to the department within six months of the death of the holder of the recorded brand, either a copy of an order of a court having jurisdiction of the decedent's estate directing such transfer accompanied by an application of the transferee as prescribed in ORS 604.027 (1) and the brand transfer fee prescribed in subsection (1) of this section, or if no court has jurisdiction of the decedent's estate, an affidavit of the person entitled by the laws of descent and distribution to have the brand recorded to the person accompanied by an application of the transferee as prescribed in ORS 604.027 (1) and the brand transfer fee prescribed in subsection (1) of this section.]*

**(2)(a) As used in this subsection, "interested person" means any of the following:**

**(A) The person who has been appointed by a court to serve as personal representative of the decedent's estate;**

**(B) The affiant under a small estate affidavit described in ORS 114.515; or**

**(C) If no probate or small estate proceeding has been initiated for the administration of the decedent's estate, a person entitled by the laws of descent and distribution to have the brand recorded to the person.**

(b) In the event of the death of a holder of a recorded brand, the department may transfer the recorded brand as provided in this subsection.

(c) No later than six months following date of death of a holder of a recorded brand, an interested person may request the transfer of the recorded brand by submitting to the department an application prescribed in ORS 604.027 (1), the brand transfer fee prescribed in subsection (1) of this section and:

(A) If the interested person is the personal representative of the decedent's estate, a certified copy of the letters testamentary or letters of administration;

(B) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515, a certified copy of the affidavit; or

(C) If the interested person is a person entitled by the laws of descent and distribution to have the brand recorded to the person, the affidavit described in paragraph (d) of this subsection.

(d) The affidavit [shall] **required under paragraph (c)(C) of this subsection must** include:

[(a)] (A) The name and address of the decedent and the date and place of death;

[(b)] (B) The name and address of the affiant, and if the intended transferee is another person, the name and address of such person with a statement of intent to transfer to the person;

[(c)] (C) A description of the recorded brand as prescribed in ORS 604.027 (1); [and]

(D) **A statement that no probate or small estate proceeding has been initiated for the administration of the decedent's estate; and**

[(d)] (E) A statement that the affiant is entitled to have the described brand transferred to the affiant or to the other named person, and that the affiant agrees to the termination of the brand recordation should the affidavit be found false in any material respect.

(3) If the transfer documents prescribed in subsection (2) of this section are not submitted within six months after the death of the holder of the recorded brand, the brand recordation shall terminate and thereafter be available for recording by any person.

**SECTION 2a.** If Senate Bill 308 becomes law, ORS 604.041, as amended by section 2 of this 2023 Act, is amended to read:

604.041. (1) Except as provided in subsection (2) of this section, in order to transfer a recorded brand by sale, assignment or otherwise, the transferor shall submit a written, signed and witnessed document of transfer to the State Department of Agriculture, accompanied by an application of the transferee as prescribed in ORS 604.027 (1), accompanied by a brand transfer fee, not to exceed \$50. Upon determining that the brand transfer documents are in order, the department shall issue its certificate of recordation to the transferee.

(2)(a) As used in this subsection, "interested person" means any of the following:

(A) The person who has been appointed by a court to serve as personal representative of the decedent's estate;

(B) The affiant under a [small] **simple** estate affidavit described in ORS 114.515; or

(C) If no probate or [small] **simple** estate proceeding has been initiated for the administration of the decedent's estate, a person entitled by the laws of descent and distribution to have the brand recorded to the person.

(b) In the event of the death of a holder of a recorded brand, the department may transfer the recorded brand as provided in this subsection.

(c) No later than six months following date of death of a holder of a recorded brand, an interested person may request the transfer of the recorded brand by submitting to the department an application prescribed in ORS 604.027 (1), the brand transfer fee prescribed in subsection (1) of this section and:

(A) If the interested person is the personal representative of the decedent's estate, a certified copy of the letters testamentary or letters of administration;

(B) If the interested person is an affiant of a [small] **simple** estate affidavit filed under ORS 114.515, a certified copy of the affidavit; or

(C) If the interested person is a person entitled by the laws of descent and distribution to have the brand recorded to the person, the affidavit described in paragraph (d) of this subsection.

(d) The affidavit required under paragraph (c)(C) of this subsection must include:

(A) The name and address of the decedent and the date and place of death;

(B) The name and address of the affiant, and if the intended transferee is another person, the name and address of such person with a statement of intent to transfer to the person;

(C) A description of the recorded brand as prescribed in ORS 604.027 (1);

(D) A statement that no probate or [small] simple estate proceeding has been initiated for the administration of the decedent's estate; and

(E) A statement that the affiant is entitled to have the described brand transferred to the affiant or to the other named person, and that the affiant agrees to the termination of the brand recordation should the affidavit be found false in any material respect.

(3) If the transfer documents prescribed in subsection (2) of this section are not submitted within six months after the death of the holder of the recorded brand, the brand recordation shall terminate and thereafter be available for recording by any person.

**SECTION 3. The amendments to ORS 114.535 and 604.041 by sections 1 and 2 of this 2023 Act apply to transfers of recorded brands occurring on or after the effective date of this 2023 Act.**

**SECTION 3a.** If Senate Bill 308 becomes law, section 3 of this 2023 Act is amended to read:

**Sec. 3.** The amendments to ORS 114.535 and 604.041 by sections [1 and 2] 1a to 2a of this 2023 Act apply to transfers of recorded brands occurring on or after the effective date of this 2023 Act.

Passed by House April 5, 2023

Received by Governor:

Repassed by House June 23, 2023

.....M.,....., 2023

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2023

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Dan Rayfield, Speaker of House

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Tina Kotek, Governor

Passed by Senate June 21, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

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Rob Wagner, President of Senate

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Secretary of State