

Requested by Representative OWENS

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2509**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and insert “creating new provisions; and amending ORS 114.535  
3 and 604.041.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

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

6 “114.535. (1) The affiant may deliver a certified copy of a small estate af-  
7 fidavit to any person who has possession of personal property belonging to  
8 the estate or who was indebted to the decedent. Except as provided in this  
9 section, upon receipt of the certified copy, the person shall pay the debt or  
10 transfer, deliver, provide access to and allow possession of the personal  
11 property to the affiant.

12 “(2) Subject to ORS 114.537, if a certified copy of a small estate affidavit  
13 is delivered under subsection (1) of this section to a person that controls  
14 access to personal property belonging to the estate of the decedent, including  
15 personal property held in a safe deposit box for which the decedent was the  
16 sole lessee or the last surviving lessee, the person shall:

17 “(a) Provide the affiant with access to the decedent’s personal property;  
18 and

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

20 “(3) Subject to ORS 114.537, if a certified copy of a small estate affidavit  
21 is delivered under subsection (1) of this section to a person who owes a debt

1 to the decedent or has received property of the decedent under ORS 446.616,  
2 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer  
3 of property of an estate that is not being probated, the person shall pay the  
4 debt or transfer, deliver, provide access to or allow possession of the prop-  
5 erty to the affiant if the person would be required to pay the debt or transfer,  
6 deliver, provide access to or allow possession of the property to a personal  
7 representative of the estate.

8 “(4) Any person that pays a debt owing to the decedent or transfers, de-  
9 livers, provides access to or allows possession of property of a decedent in  
10 the manner provided by this section is discharged and released from any li-  
11 ability or responsibility for the debt or property in the same manner and  
12 with the same effect as if the debt had been paid or the property had been  
13 transferred or delivered to a personal representative of the estate of the  
14 decedent.

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

20 **“(6) If the decedent was a holder of a recorded brand, the affiant**  
21 **may deliver a certified copy of a small estate affidavit to the State**  
22 **Department of Agriculture. Subject to the requirements under ORS**  
23 **604.041, the department shall change the registered ownership of the**  
24 **recorded brand to the affiant or the person named in the affidavit**  
25 **entitled to it, as directed by the affiant.**

26 “[~~(6)(a)~~] **(7)(a)** If a person to whom a certified copy of a small estate af-  
27 fidavit is delivered under this section refuses to pay a debt or deliver,  
28 transfer, provide access to or allow possession of personal property as re-  
29 quired by this section, the affiant may serve a written demand by certified  
30 mail on the person to pay the debt or deliver, transfer, provide access to or

1 allow possession of the personal property. The demand must state that, if the  
2 person fails to pay the debt or deliver, transfer, provide access to or allow  
3 possession of the personal property, the affiant may file a motion to compel  
4 payment of the debt or delivery of, transfer of or access to the personal  
5 property.

6 “(b) If the person fails to pay the debt or deliver, transfer, provide access  
7 to or allow possession of the personal property within 30 days after service  
8 of a demand under paragraph (a) of this subsection, the affiant may file a  
9 motion to compel payment of the debt or delivery of, transfer of or access  
10 to the personal property. The court may enter a judgment awarding reason-  
11 able attorney fees to the prevailing party if the court finds that the affiant  
12 filed the motion without an objectively reasonable basis or the person re-  
13 fused to pay the debt or deliver, transfer, provide access to or allow pos-  
14 session of any personal property without an objectively reasonable basis.

15 “[7] (8) If a small estate affidavit was signed by the Director of Human  
16 Services, the Director of the Oregon Health Authority or an attorney ap-  
17 proved under ORS 114.517, the Director of Human Services, the Director of  
18 the Oregon Health Authority or the attorney may certify a copy of the affi-  
19 davit for the purposes described in this section.

20 “[8] (9) Notwithstanding ORS chapters 270, 273 and 274, an estate ad-  
21 ministrator of the State Treasurer appointed under ORS 113.235 or the Di-  
22 rector of Human Services or Director of the Oregon Health Authority  
23 serving as an affiant may deal with property of the estate as an affiant under  
24 this section.

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

26 “604.041. (1) Except as provided in subsection (2) of this section, in order  
27 to transfer a recorded brand by sale, assignment or otherwise, the transferor  
28 shall submit a written, signed and witnessed document of transfer to the  
29 State Department of Agriculture, accompanied by an application of the  
30 transferee as prescribed in ORS 604.027 (1), accompanied by a brand transfer

1 fee, not to exceed \$50. Upon determining that the brand transfer documents  
2 are in order, the department shall issue its certificate of recordation to the  
3 transferee.

4 *“(2) In the event of the death of a holder of a recorded brand, the person  
5 to whom it is transferred, either by will or the laws of descent and distrib-  
6 ution, may have the brand recorded to the transferee or to another person upon  
7 submitting to the department within six months of the death of the holder of  
8 the recorded brand, either a copy of an order of a court having jurisdiction  
9 of the decedent’s estate directing such transfer accompanied by an application  
10 of the transferee as prescribed in ORS 604.027 (1) and the brand transfer fee  
11 prescribed in subsection (1) of this section, or if no court has jurisdiction of  
12 the decedent’s estate, an affidavit of the person entitled by the laws of descent  
13 and distribution to have the brand recorded to the person accompanied by an  
14 application of the transferee as prescribed in ORS 604.027 (1) and the brand  
15 transfer fee prescribed in subsection (1) of this section.]*

16 **“(2)(a) As used in this subsection, ‘interested person’ means any of  
17 the following:**

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

20 **“(B) The affiant under a small estate affidavit described in ORS  
21 114.515; or**

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

26 **“(b) In the event of the death of a holder of a recorded brand, the  
27 department may transfer the recorded brand as provided in this sub-  
28 section.**

29 **“(c) No later than six months following date of death of a holder  
30 of a recorded brand, an interested person may request the transfer of**

1 **the recorded brand by submitting to the department an application**  
2 **prescribed in ORS 604.027 (1), the brand transfer fee prescribed in**  
3 **subsection (1) of this section and:**

4 **“(A) If the interested person is the personal representative of the**  
5 **decedent’s estate, a certified copy of the letters testamentary or letters**  
6 **of administration;**

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

9 **“(C) If the interested person is a person entitled by the laws of de-**  
10 **scendant and distribution to have the brand recorded to the person, the**  
11 **affidavit described in paragraph (d) of this subsection.**

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

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

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

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

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

23 **“[(d)] (E) A statement that the affiant is entitled to have the described**  
24 **brand transferred to the affiant or to the other named person, and that the**  
25 **affiant agrees to the termination of the brand recordation should the affida-**  
26 **vit be found false in any material respect.**

27 **“(3) If the transfer documents prescribed in subsection (2) of this section**  
28 **are not submitted within six months after the death of the holder of the re-**  
29 **corded brand, the brand recordation shall terminate and thereafter be avail-**  
30 **able for recording by any person.**

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

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