

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2509
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

1 On page 2 of the printed A-engrossed bill, after line 31, insert:

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3 **Act (amending ORS 114.535) is repealed and ORS 114.535, as amended**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

6 “114.535. (1) The affiant may deliver a certified copy of a simple estate
7 affidavit to any person who has possession of personal property belonging
8 to 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 simple 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 simple estate affidavit

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

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

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

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

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

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

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

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

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

26 On page 3, after line 35, insert:

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

29 “604.041. (1) Except as provided in subsection (2) of this section, in order
30 to transfer a recorded brand by sale, assignment or otherwise, the transferor

1 shall submit a written, signed and witnessed document of transfer to the
2 State Department of Agriculture, accompanied by an application of the
3 transferee as prescribed in ORS 604.027 (1), accompanied by a brand transfer
4 fee, not to exceed \$50. Upon determining that the brand transfer documents
5 are in order, the department shall issue its certificate of recordation to the
6 transferee.

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

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

11 “(B) The affiant under a [*small*] **simple** estate affidavit described in ORS
12 114.515; or

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

16 “(b) In the event of the death of a holder of a recorded brand, the de-
17 partment may transfer the recorded brand as provided in this subsection.

18 “(c) No later than six months following date of death of a holder of a
19 recorded brand, an interested person may request the transfer of the recorded
20 brand by submitting to the department an application prescribed in ORS
21 604.027 (1), the brand transfer fee prescribed in subsection (1) of this section
22 and:

23 “(A) If the interested person is the personal representative of the
24 decedent’s estate, a certified copy of the letters testamentary or letters of
25 administration;

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

28 “(C) If the interested person is a person entitled by the laws of descent
29 and distribution to have the brand recorded to the person, the affidavit de-
30 scribed in paragraph (d) of this subsection.

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

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

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

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

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

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

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

19 After line 38, insert:

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

22 “**Sec. 3.** The amendments to ORS 114.535 and 604.041 by sections [*1 and*
23 *2*] **1a to 2a** of this 2023 Act apply to transfers of recorded brands occurring
24 on or after the effective date of this 2023 Act.”.

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