

A-Engrossed
House Bill 2509

Ordered by the House March 28
Including House Amendments dated March 28

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

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.

[Provides that residuary clause in will or trust that conveys all property of decedent is sufficient to transfer recorded brand.] **Modifies process for transfer of recorded brand following death of brand holder.**

A BILL FOR AN ACT

1
2 Relating to the transfer of recorded brands; creating new provisions; and amending ORS 114.535 and
3 604.041.

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

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 affidavit to any person who
7 has possession of personal property belonging to the estate or who was indebted to the decedent.
8 Except as provided in this section, upon receipt of the certified copy, the person shall pay the debt
9 or transfer, deliver, provide access to and allow possession of the personal property to the affiant.

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

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

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

16 (3) Subject to ORS 114.537, if a certified copy of a small estate affidavit is delivered under sub-
17 section (1) of this section to a person who owes a debt to the decedent or has received property of
18 the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the
19 transfer of property of an estate that is not being probated, the person shall pay the debt or transfer,
20 deliver, provide access to or allow possession of the property to the affiant if the person would be
21 required to pay the debt or transfer, deliver, provide access to or allow possession of the property
22 to a personal representative of the estate.

23 (4) Any person that pays a debt owing to the decedent or transfers, delivers, provides access to
24 or allows possession of property of a decedent in the manner provided by this section is discharged
25 and released from any liability or responsibility for the debt or property in the same manner and
26 with the same effect as if the debt had been paid or the property had been transferred or delivered
27 to a personal representative of the estate of the decedent.

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

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

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

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

24 [(7)] (8) If a small estate affidavit was signed by the Director of Human Services, the Director
25 of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human
26 Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the
27 affidavit for the purposes described in this section.

28 [(8)] (9) Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State
29 Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the
30 Oregon Health Authority serving as an affiant may deal with property of the estate as an affiant
31 under this section.

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

33 604.041. (1) Except as provided in subsection (2) of this section, in order to transfer a recorded
34 brand by sale, assignment or otherwise, the transferor shall submit a written, signed and witnessed
35 document of transfer to the State Department of Agriculture, accompanied by an application of the
36 transferee as prescribed in ORS 604.027 (1), accompanied by a brand transfer fee, not to exceed \$50.
37 Upon determining that the brand transfer documents are in order, the department shall issue its
38 certificate of recordation to the transferee.

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

1 *have the brand recorded to the person accompanied by an application of the transferee as prescribed*
2 *in ORS 604.027 (1) and the brand transfer fee prescribed in subsection (1) of this section.]*

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

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

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

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

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

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

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

18 **(B) If the interested person is an affiant of a small estate affidavit filed under ORS**
19 **114.515, a certified copy of the affidavit; or**

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

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

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

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

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

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

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

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

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