

HB 2509 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/28, 3/21

WHAT THE MEASURE DOES:

Specifies that a residuary clause in a will is sufficient to transfer a recorded livestock brand upon death of the brand owner.

REVENUE: No revenue impact

FISCAL: No fiscal impact

ISSUES DISCUSSED:

- Brands are used to identify owners of cattle at large or at market
- Sentimental value of brands
- Expense of opening a probate proceeding
- Limits of agency authority under current law

EFFECT OF AMENDMENT:

-1 Replaces the measure. Specifies that State Department of Agriculture (ODA) shall change the registered ownership of a recorded brand upon presentation of a small estate affidavit. Replaces process to transfer a recorded brand after the owner's death to a request to ODA within six months by an interested person, including a personal representative of an estate, an affiant of a small estate affidavit, or a person entitled to the brand under laws of descent and distribution if no probate or small estate proceeding has been initiated and the person submits an affidavit in the form required.

BACKGROUND:

When someone creates a will (a "testator"), they may designate that certain property be given to certain people ("devisees") when the testator dies. The testator may also say what they want done with any remaining property not specifically devised in the will -- the "residue" of the estate -- in a residuary clause.

A "brand" is a "distinctive design, mark or other means of identification applied to a designated location of the hide, wool or skin of livestock," and it is "recorded" when it is registered with the Oregon Department of Agriculture (ODA), as specified by ORS 604.027 and ODA rules. ORS 604.041 specifies how and when a recorded brand can be transferred upon death.

The ODA does not recognize the residuary clause in a will as being sufficient to transfer a recorded brand to the devisee of the residuary clause. Instead, the will must specifically list the recorded brand and to whom it will be transferred. Without that, there is a presumption that all heirs to the estate have an equal ownership of the brand, as if there had been no will. This may require the devisee to obtain the consent of the other heirs and submit an affidavit of transfer, or open a probate matter to have a court issue an order of transfer.

HB 2509 would permit a recorded livestock brand to be transferred by a residuary clause in a will.