

HB 2509 A -A2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 5/1, 5/8, 5/15

WHAT THE MEASURE DOES:

Permits the transfer of a recorded livestock brand if an interested person makes a request to the Oregon Department of Agriculture (ODA) within six months of the owner's death and submits certified copies of certain probate documents, a small estate affidavit, or an affidavit provided by ODA for an owner who has died intestate. Defines interested person to include a personal representative of an estate, an affiant of a small estate affidavit, or a person entitled to the brand under the laws of descent and distribution if no probate or small estate proceeding has been initiated.

REVENUE: No revenue impact

FISCAL: No fiscal impact

HOUSE VOTE: Ayes, 56; Nays, 0

ISSUES DISCUSSED:

- Recorded brands are passed down through generations
- If the brand is not transferred within the existing six month timeframe, anyone can claim the brand
- Currently, a brand cannot be transferred in the middle of the probate process

EFFECT OF AMENDMENT:

-A2 Resolves conflicts with Senate Bill 308 by replacing references to "small estate" with "simple estate."

BACKGROUND:

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 directs how and when a recorded brand can be transferred upon death.

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 use a residuary clause to say what they want done with any remaining property not specifically devised in the will. Currently, the will must specifically list the recorded brand and to whom it will be transferred. There is otherwise a presumption that multiple heirs to the estate have an ownership interest in the brand, but a brand can only be transferred to one person. A residuary clause in a will is insufficient to transfer a recorded brand to the devisee.

Additionally, ODA will currently transfer a brand upon presentation of a probate court order or an ODA affidavit attesting that the owner died intestate and that the affiant is entitled to the brand. Neither category fits when an estate with a will qualifies as a "small estate" under Oregon law, which provides an alternative to a probate proceeding when the estate assets are under a certain value. It may require a personal representative be appointed and open a full probate matter to have a court issue an order of transfer.

House Bill 2509 A permits a recorded livestock brand to be transferred after death of an owner when an interested person, including a small estate affiant, submits a transfer request along with certain documents to the Oregon Department of Agriculture within six months of the owner's death.