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May 1, 2023

Oregon Senate Committee on the Judiciary

Hon. Floyd Prozanski, Chair
Hon. Kim Thatcher, Vice-Chair
Hon. Sara Gelser Blouin
Hon. Dennis Linthicum
Hon. James Manning, Jr.

Re: HB 2509 A

Good afternoon Chairman Prozanski, and distinguished members of this committee. For the record, my name is William Nichols, my office address is 5700 E. Franklin Road, Nampa, Idaho. I also live in Nampa. It is my privilege to come before you today and share with you my experience that led me to contact Representative Owens and Senator Findley and suggest an amendment to ORS 604.041.

Regarding my background, I am an attorney. I was first admitted to practice in Oregon in 1980. In fact, I was sworn in as a member of the Oregon State Bar on the floor of the House of Representatives in which you now serve. I am a graduate of Burns Union High School, Linfield College now known as Linfield University just up the road in McMinnville, and the University of Oregon School of Law. My first job out of law school was with a small firm in Nyssa, Oregon just south of Ontario on the border with Idaho. In my 42 years as an Oregon lawyer, I have had many ranching clients who own registered brands. And although my current office is in Idaho, I still practice law in Oregon, primarily probate, trust administration, and estate planning.

Late in 2021 I was contacted by an Idaho attorney who had a client who needed some help with a relatively small Oregon estate in Harney County. I agreed to help. I looked at the will, asked about the assets involved in the estate and

determined that the total value of all the assets were such that this client could use the Oregon Small Estate proceeding via the Affidavit of Claiming Successor (ORS 114.505 et seq.). One of those assets was a recorded brand that had been in the family for at least two, if not three, generations. The will in question left all the decedent's assets to his son by what we lawyers call the residuary clause. The will intentionally omitted two other children. I did not draft the will in question.

When I called a Brand Recorder in Salem to verify that the Claiming Successor under the Small Estate Affidavit could transfer the registered Brand, the Brand Recorder I spoke with told me that the Department took the position that registered brands had to be specifically named in the will and could not be transferred by a residuary clause. She said that the Department either required a court order for the transfer (which implied a full probate), or, my client could use an affidavit that the Department had developed. She offered to send the form affidavit to me, which she did.

After I reviewed the Affidavit, I could see it essentially asked my client, the son, to say that he was the sole surviving heir at law which would not have been correct. He was the sole beneficiary of the will via the residuary clause, but not the sole heir because the omitted children, his siblings, were also heirs. I could not have my client commit perjury. And the size of this estate, less than $25,000, did not warrant a regular probate with all of those requirements, fees, etc.

I then reviewed ORS 604.041 and the applicable Administrative Rules to see if there was a codified rule that set out the Department's practice and could not find support for the practice in the statute or the OAR.

I called and spoke with Jack Noble, a well-respected Program Manager in the Office of Animal Identification at the Department of Agriculture, who, at that time, was a 26-year veteran in that department. Mr. Noble told me that for as long as he had been in the Department, it had been the policy of the department that a will had to specifically call out a brand as an asset to be distributed to a specific person and if not, you had to use the Affidavit developed by the Department.

That is what caused me to suggest a change to the statute. In my years as an Oregon lawyer, I had never come across this unwritten rule that if you had a client with a registered brand you had to list the brand in the will and specifically call it

out as to which beneficiary that brand was to be distributed. I have had clients throughout Eastern Oregon, many of whom had registered brands. For the first nineteen years of my practice, I was in Nyssa in a firm with other lawyers and there were many ranching clients and not once did I ever hear one of the senior partners admonish us to be sure that we listed a brand separately in the wills we drafted.

That is why I initially suggested to Rep. Owens and Sen. Findley that the brand transfer statute be amended to include a subsection that provided a reference to transfers via residuary clause in a trust or will. However, after the House Judiciary Committee hearing on the original version of HB 2509, some excellent work by Ms. Lori Anne Sills in the Office of Legislative Counsel has resulted in HB 2509 A that addresses the problem that my client encountered, namely that it allows for transfers using the small estate process when applicable, and frankly fixes some other problems that were inherent in the statute such as that most probates don't wrap up within six months but the statute expects the brand to be transferred in six months. I wholeheartedly support HB 2509 A. I think it will serve Oregonians well and make the work of the Department of Agriculture easier going forward.

Thank you for considering my comments on this bill.

Very truly yours,

/s/William F. Nichols

William F. Nichols

Enc.
cc: Sen: Findley
Rep. Owens