

## HOUSE COMMITTEE ON JUDICIARY

January 28, 2003 Hearing Room 357

1:00 pm Tapes 17 - 18

**MEMBERS PRESENT:**       Rep. Max Williams, Chair  
                                  Rep. Robert Ackerman Vice-Chair  
                                  Rep. Gordon Anderson, Vice-Chair  
                                  Rep. Jeff Barker  
                                  Rep. Jerry Krummel  
                                  Rep. Greg Macpherson  
                                  Rep. Floyd Prozanski  
                                  Rep. Lane Shetterly

**MEMBER EXCUSED:**  
  
                                  Rep. Bob Jenson

**STAFF PRESENT:**       Bill Joseph, Counsel  
                                  Nancy Masee, Committee Assistant

**MEASURE/ISSUES HEARD:**  
  
                                  HB 2049 Public Hearing  
                                  HB 2053 Public Hearing  
                                  HB 2087 Public Hearing and Work Session  
                                  HB 2270 Public Hearing

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These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 17, A</b>		
006	Chair Williams	Opens meeting at 1:10 p.m. Announces field trip to Oregon Youth Authority on Friday. Opens public hearing on HB 2049.
<b><u>HB 2049 PUBLIC HEARING</u></b>		
014	Bill Joseph	Committee Counsel. Explains HB 2049 which relates to punitive damages; creating new provisions; and amending ORS 18.535.
031	Chair Williams	Refers to John Kaempfer letter, requestor of the bill ( <b>EXHIBIT A</b> ).
038	Joseph	Mentions issues of trial lawyers regarding HB 2049.
079	Rep. Shetterly	Asks for time to review concerns about the bill.
080	Susan Grabe	Oregon State Bar Public Affairs Program. States the Procedures and Practices Committee wishes to look at this bill.
092	Joseph	Comments about adding a "safe harbor" provision so that the judge would have discretion to allow motion to amend under certain circumstances.
105	Chair Williams	Asks the Oregon State Bar (OSB) to facilitate language in the bill with Counsel Joseph.
110	Chair Williams	Closes public hearing on HB 2049. Opens public hearing on 2053.
<b><u>HB 2053 PUBLIC HEARING</u></b>		
114	Counsel Joseph	Explains HB 2053 which relates to small claims in circuit court.

142 Jim Markee Oregon Collectors Association. Discusses forms used in small claims departments. Wants the statutes to authorize standardize forms **(EXHIBIT B)**.

191 Rep. Krummel Asks if municipal courts hear small claims issues. Why would other than standardized forms be used?

205 Markee Describes the committee that endorses forms. Does not object to use of other forms in addition to standardized forms.

208 Bradd Swank Special Counsel, State Court Administrator. Explains how their office appeals to the public for comments on procedures of Uniform Trial Court Rules Committee (UTCR) **(EXHIBIT C)**.

290 Swank Clarifies what the administrator's office suggests. Discusses small claims courts. Discusses Chief Justice's rules. Discusses municipal courts and small claims. Supports standardized forms. Wants minor changes in the bill.

353 Rep. Shetterly Asks if the UTCR procedures take care of the fiscal impact.

355 Swank Replies there was not money to inventory all the forms in the state.

400 Rep. Anderson Asks if there is a date certain to go to the mandated forms.

401 Swank Replies the UTCR form is targeted for August 2003. When the forms would run out is not known, however, there will most likely always be some local control.

439 Markee Has no problem with any amendment stating courts can accept forms other than the standard. Emphasizes the need for a standard form that is accepted by all courts.

**TAPE 18, A**

030 Markee Continues supporting standard forms but acceptance of other forms.

038 Rep. Shetterly Comments that municipal courts do not have small claims jurisdiction.

050 Chair Williams Reiterates that if the courts that have forms that they use now would be accepted by the courts but standardized forms could accepted by all courts.

055 Swank Explains there is a process in place to address the problem.

077 Markee Emphasizes moving forward with the standardized forms. Discusses the small claims departments.

079 Rep. Prozanski Compares forms from small counties and large counties.

089 Rep. Shetterly Discusses small claims' jurisdiction. Asks why they have power to determine the direction where forms go.

108 Rep. Prozanski Asks for a time frame on comment on the rules, March or April?

116 Swank States there is a March 21 meeting at the Court Administrator's office and the committee's recommendation will be made known then. States the Chief Justice does not always agree with the committee.

130 Rep. Barker Comments that justice courts ought to use standardized forms.

137 Swank Explains the historical use of court forms and the reasons for uniformity. The former practices were to use forms tailored to their business.

155 Chair Williams Suggests working with the justice courts towards uniform forms. Continues to talk about this issue. Closes public hearing on HB 2053. Opens Public hearing on HB 2087.

**HB 2087 PUBLIC HEARING**

176 Counsel Joseph Explains HB 2087 which relates to the Council on Court Procedures; amending ORS 1.730 and 1.735.

192	Judge Karston Rasmussen	Lane County. Explains why the Council on Court Procedures should make changes to proposed rules in response to public comment. <b>(EXHIBIT D)</b> Explains that notice language at the present does not allow the council to make rule changes. Refers to line 18 of HB 2087. Comments that referral to Ways and Means does not seem necessary.
277	Chair Williams	Agrees that this bill does not need referral to the Ways and Means committee.
294	Rep. Shetterly	Suggests getting the fiscal impact statement.
300	Rep. Prozanski	Suggests passing to the floor.
322	Chair Williams	States that the Speaker's office approval is needed. Wants the rescinding language first.
358	Bill Joseph	Comments that fiscal statement impact may be available now.
365	Chair Williams	Closes public hearing on HB 2087. Opens public hearing on HB 2270

**HB 2270 PUBLIC HEARING**

378	Bernard Vail	Oregon State Bar Committee, Northwestern School of Law. Supports HB 2270 which relates to spouses. Provides beneficiary in a will under divorce is automatically revoked HB 2270 consolidates the law of wills and will substitutes <b>(EXHIBIT E)</b> .
420	Rep. Shetterly	Asks about Section 2, the definition of "governing instrument." Asks about Section 4 language.

**TAPE 17, B**

044	Vail	Replies that in the possibility of predeceased persons, an anti-lapse statute might change the line of lineal descendents. Whereas with a disclaimer there is not the problem. Discusses Uniform Probate Code policy.
084	Rep. Macpherson	Discusses retirement plans subject to federal regulation. Asks what authority there is.
113	Vail	Replies stating a precedent, <i>Egelhoff</i> . Refers to ERISA plans.
123	Rep. Ackerman	Asks if the bill provides for a form of notice. Says the insurance companies need to determine what the notice should state. Asks for clarifying amendments. Refers to Section 6 sub 3, asks to identify the process as inter-pleader proceedings.
175	Rep. Barker	Asks if the committee considered the intent of the insured.
225	Vail	Replies the committee paralleled the will statute. Discusses presumptions based on what most people want.
246	Rep. Shetterly	Asks for more time to look at the bill.
272	Rep. Macpherson	Asks for more discussions on the language.
279	Rep. Krummel	Refers to Section 6, sub 1. Asks if that is a bailout for the insurance company.
285	Vail	Replies yes, and explains the provision. Explains disputes between spouses not between insurance company and spouses.
319	Chair Williams	Refers to e-mail from John Powell regarding presumptions and the <i>Egelhoff</i> and ERISA issues. Asks if the insured names the ex-wife as beneficiary after the divorce, is that impacted.
342	Vail	Replies that is correct because the divorce provokes a pre-existing beneficiary designation.
352	Chair Williams	Asks the OSB and parties to further discuss these questions. Asks for other testimony. Closes HB 2270 public hearing. Work Session

opened on HB 2087.

**HB 2087 WORK SESSION**

390	Chair Williams	<b>MOTION: Moves to rescind referral to Ways and Means Committee of HB 2087.</b>
391	Chair Williams	<b>Hearing no objection, declares the motion CARRIED.</b>
392	Chair Williams	<b>MOTION: Moves HB 2087 to the floor with a DO PASS recommendation.</b> <b>VOTE: 7-0-2</b> <b>EXCUSED: 2 - Jenson, Barker</b>
393	Chair Williams	<b>Hearing no objection, declares the motion CARRIED.</b> <b>REP. PROZANSKI will lead discussion on the floor.</b>
394	Chair Williams	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. BARKER to BE RECORDED as voting AYE on the " MOTION: Moves HB 2087 to the floor with a DO PASS recommendation."</b>
395	Chair Williams	<b>Adjourns meeting at 2:30 p.m.</b>

**EXHIBIT SUMMARY**

- A – HB 2049, Letter from John Kaempf, 1/28/03, 5 pp**
- B – HB 2053, Written testimony, Jim Markee, 2 pp**
- C – HB 2053, Advance Sheets and claim form, Bradd Swank, 9 pp**
- D – HB 2087, Written testimony, Judge Karston Rasmussen, 1 p**
- E – HB 2270, Written testimony, Bernie Vail, 1 p**