

HOUSE JUDICIARY COMMITTEE

January 30, 2003 Hearing Room 357
1:00 P.M. Tapes 21 - 22

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:
 Introduction of LC 1280
 HB 2279 Public Hearing
 HB 2063 Public Hearing
 HB 2269 Public Hearing

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.

	Speaker	Comments
Tape 21, A		
006	Chair Williams	Convenes meeting at 1:10 p.m. Explains introduction of LC 1280, which increases motor vehicle liability coverage required for personal injury and property damage, as a committee bill (EXHIBIT A).
<u>INTRODUCTION OF LC 1280</u>		
020	Chair Williams	MOTION: Moves LC 1280 BE INTRODUCED as a committee bill.
022	Chair Williams	Hearing no objections, declares the motion CARRIED.
024	Chair Williams	Opens public hearing on HB 2279.
<u>HB 2279 PUBLIC HEARING</u>		
034	Bill Joseph	Committee Counsel. Explains HB 2279 which relates to arbitration; creating new provisions and amending certain ORS's.
044	James J. Damis	Oregon State Bar (OSB) Executive Committee on Alternative Dispute Resolution. Continues explaining purpose of HB 2279. Describes the current Uniform Act and says the statute would broaden provisions (EXHIBIT B).
077	Chair Williams	Asks how many states have adopted the act.
079	Damis	Answers he does not know.
082	Chair Williams	Explains there will be more discussion on this bill.

107	Damis	Expects the realtors to question this bill. Realtors may think this act will upset their arbitration methods used up to now.
110	Rep. Krummel	Asks if there should be realtor to realtor commission disputes addressed in the statute.
123	Damis	Responds OSB believes there is no need to change the language of the revised Uniform Arbitration Act.
134	Rep. Krummel	Asks if in an arbitration is it usual that both parties are represented by counsel.
145	Damis	Replies there is no requirement to be an arbitrator. Generally in arbitration representation is by attorneys or retired judges.
164	Harlan Levy	Oregon Association of Realtors. Explains the purpose of arbitration is to take less time and be less expensive; to create an alternative to litigation. Discusses Hawaii's arbitration statute changes. Purpose is to make process move more quickly.
198	Chair Williams	Asks if Hawaii has had any problems with disputes on commissions in the real estate business.
200	Levy	Replies at this time he does not have that information.
217	Joseph	Asks if the realtor's arbitration process is binding or not.
220	Levy	Believes it is a binding process.
223	Rep. Macpherson	Asks if the arbitration process is limited to realtor versus realtor disputes.
237	Levy	Answers the process referred to is when two realtors have a dispute over a commission.
236	Rep. Krummel	Asks about dispute between realtor and seller, what kind of arbitration would result.
255	Levy	Believes it is this kind of arbitration.
263	Chair Williams	Closes public hearing on HB 2279. Opens a public hearing on HB 2063.

HB 2063 PUBLIC HEARING

069	Bill Joseph	Committee Counsel Explains HB 2063 which relates to Uniform Principal and Income Act; creating new provisions; amending certain ORS's.
310	Chris Cline	Attorney, Portland, OSB Executive Committee on State Planning and Administration. Explains purpose of HB 2063 which will update investments in the act. Describes beneficiaries' income issues. Describes safeguards in the bill (EXHIBIT C).
355	Cline	Under principal income act there are rights under a trust agreement. Explains income for tax purposes means one thing but income for a trust agreement means something else under statute. This is a practice coming from English law.
397	Rep. Macpherson	Reiterates the bill is updating with respect to bringing asset classes not addressed before. Is there a slant to the way these new provisions work in the Uniform Act in enhancing the flow of income?
470	Cline	Answers in general it is fairly neutral theme, but somewhat arbitrary with the ten percent figure picked.

TAPE 22, A

039	Rep. Macpherson	Asks what the histories of these changes have been.
044	Cline	Replies the changes are fairly recent in response to the Prudent Investor Act. There are about 20 states now and more states will be adopting this.
055	Chair Williams	Asks if there are particular changes specific to Oregon.

059	Cline	Replies the major change was the Uniform Act.
074	Bradd Swank	Counsel, State Court Administrators Office. Refers to Section 4, A. Concern focuses on subsection 4, page 4 of the bill. Cites <u>Brown v OSB</u> .
113	Chair Williams	Asks if this would be in the form of a declaratory judgment action.
120	Swank	Responds that the court said there has to be a controversy or the court cannot give an advisory opinion.
130	Cline	Comments there is authority to go into court with a trust matter and get instruction from the court.
134	Chair Williams	Comments that the courts stand as ultimate protector of the beneficiaries of the trust.
154	Tim Martinez	Oregon Bankers Association. Asks for more time to discuss these issues with the OSB.
176	Chair Williams	Comments that bankers need to talk on uniform laws.
190	Martinez	Discusses the trust committee is comfortable with the bill. Addresses the question of liability. Twenty states have done this. Last session the Uniform Commercial Code legislation from Oregon was unlike other states.
213	Chair Williams	Closes the public hearing on HB 2063. Opens a public hearing on HB 2269.

HB 2269 PUBLIC HEARING

212	Bill Joseph	Committee Counsel. Explains HB 2269 which relates to trusts; creating new provisions; and amending ORS 128.009.
238	Chris Cline	Attorney, OSB Executive Committee on Estate Planning and Administration. Explains reasons for HB 2269. Gives examples of irrevocable trusts. Discusses wills and trusts. States the committee has worked for five years to make laws for trusts conform to laws of wills (EXHIBIT D).
300	Chair Williams	Discusses language of trusts.
320	Cline	Says these laws will cover the blank spots for trusts just as wills have historically been covered.
325	Rep. Macpherson	Refers to revocable trusts and the role they play in estate planning.
328	Cline	Starting in the early 70s, revocable trusts, instead of wills, have been used more than before. This bill is to bring uniformity to the trust laws.
356	Rep. Macpherson	Asks if there is a Uniform Act that Oregon has used.
377	Cline	Refers to the uniform probate code. Suggests that in 2005 the uniform trust code will be looked at. Oregon has not adopted them.
398	Rep. Macpherson	Refers to pre-deceasing and disclaiming.
407	Cline	Rep. Shetterly asked if this legislation can become effective right away.
399	Chair Williams	Indicates Rep. Shetterly wishes to add an emergency clause. Asks Counsel to draft emergency clause. Closes public hearing on HB 2269. Re-opens public hearing on HB 2279.

HB 2279 PUBLIC HEARING RE-OPENED

440	Steve Murrell	Attorney. State Farm Insurance. Addresses the revised Uniform Arbitration Act. States they are neutral on the bill; notes concerns with section 21 of the Act.
483	Shawn Miller	National Association of Independent Insurers. Refers to Page 8,

Section 28. Supports arbitration in resolving disputes expeditiously.

TAPE 21, B

062	Murrell	Continues discussing concerns with punitive damages. Discusses how other states have removed punitive damages. Refers to alternative dispute resolutions. Asks to work with committee further.
070	Rep. Prozanski	Asks if in mandatory arbitration punitive damage should be awarded in order to bypass judicial proceeding.
090	Murrell	Replies there are agreements with a broader picture to be concerned with.
100	Chair Williams	Comments about bargaining power being unequal in relation to arbitration clauses. Wants to know what other states have done.
115	Rep. Ackerman	Asks if upon conclusion of arbitration, is the award confirmed by the court.
118	Murrell	Answers that is an option to be confirmed by the court and entered as a judgment. In his experience, the court does not get involved.
124	Rep. Ackerman	If the court confirms an award, would it be in the form of an enforceable judgment rather than just an order.
126	Murrell	Replies that is his understanding.
131	Damis	States that a big complaint of arbitration is it takes away punitive damages. Explains how federal law protects arbitration process in states.
170	Bradd Swank	State Court Administrator's Office. Discusses ways to assist arbitration. Concern is the costs from double paperwork and double appeals. Also, the bill appears to limit the ability of the court to review. Wants further discussion with OSB.
264	Chair Williams	Asks where the potential increase in cost is.
265	Swank	Responds there is the potential for increased supervision of the arbitration by the courts.
277	Chair Williams	Comments those are not necessarily new powers granted. Points out an example of pending arbitration.
303	Swank	Answers that some of those who deal with arbitrations regularly in the court say the reason for this act is to increase the supervision of arbitrations and access to courts. Discusses doubling of appeals. States that further study of increase in costs will be discussed.
331	Rep. Ackerman	Comments that there is savings by keeping cases out of court through arbitration.
344	Swank	Agrees that dispute resolution programs through arbitration and mediation programs assist and expedite the courts' work. States that they are looking at unintended consequences and costs so that the legislation works in the best possible way.
370	Chair Williams	Closes the public hearing on HB 2279. Adjourns the meeting at 2:30 p.m.

EXHIBIT SUMMARY

A – LC 1280, dated 11/20/02, Staff, 4 pp

B – HB 2279, Written testimony, James Damis, 1/30/03, 1 p

C – HB 2063, Written testimony, Chris Cline, 1/30/03, 2 pp

D – HB 2269, Written testimony, Chris Cline, 1/30/03, 1 p