

SENATE COMMITTEE ON JUDICIARY

February 5, 2001 Hearing Room 343
1:00 p.m. Tapes 23-24

MEMBERS PRESENT: Sen. Minnis, Chair
Sen. Courtney, Vice-Chair
Sen. R. Beyer
Sen. Burdick
Sen. Duncan
Sen. Harper
Sen. Metsger

STAFF PRESENT: Marilyn Odell, Counsel
Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: SB 120 Public Hearing and Work Session
SB 122 Public Hearing and Work Session
SB 123 Public Hearing and Work Session
Introduction of LC Drafts 2590, 1851 and 2076

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.

TAPE/#	Speaker	Comments
TAPE 23, A 004	Vice Chair Courtney	Calls the meeting to order at 1:01 and opens a public hearing on SB 120.
<u>SB 120 PUBLIC HEARING</u> 010	Jonathan Levy	Member, Estate Planning and Administration Section, Oregon State Bar Submits testimony and testifies in support of SB 120 (EXHIBIT A). Explains that he is in favor of the bill with the proposed changes as explained in his exhibit. Maintains that under current Oregon law, there is a problem with living trusts because there is no clear way to expedite payment of claims and closure of trust estate. This bill provides a procedure whereby trust parties can give notice to creditors, and require them to present their claims within a limited time. Advises that a suggested amendment has been submitted to Legislative Counsel.
101	Chair Minnis	Asks for an example of how this has occurred in his practice.
102	Levy	Gives example of a person who has a revocable trust designed to go to his wife and children, then a claim for injury comes out years later.
115	Chair Minnis	Asks if there is not a statute of ultimate repose for damages.
121	Levy	Responds that it might be a very long time.
135	Sen. Metsger	Asks about due diligence for possible claims by the trustee and wonders about risk to trustee.
149	Levy	Replies that under SB 120, the procedure would parallel probate laws, and explains that the personal representative/trustee could

159 Sen. Metsger be liable for not giving proper notice.
Asks about priority of claims against the trust with regard to child support arrears.

169 Levy Replies that the committee did not address back child support because it assumes that the vulnerability of a living trust to cover unpaid support would continue.

200 **Kevin Mannix** Testifies that he would like to see child support arrearage in this bill.

211 Chair Minnis Asks when the Legislative Counsel amendments will be completed.

222 Counsel Odell Explains that she has spoken to Legislative Counsel, and the amendments are in the process of being drafted.

229 Chair Minnis Asks for an overview of what the amendments will do.

253 Levy Explains that one section will delete trustee liability and another will delete attorney's fee.

229 Chair Minnis Closes the public hearing on SB 120, and opens a work session on SB 120.

SB 120 WORK SESSION

271 Chair Minnis Advises that if there is no opposition to including Mr. Mannix's suggested amendment to this bill, he will have Legislative Counsel draft it as well. Closes the work session on SB 120 and opens a public hearing on SB 122.

SB 122 PUBLIC HEARING

289 **Christopher Cline**

Member, Oregon State Bar's Estate Planning Administration Section.

Submits testimony and testifies in support of SB 122 relating to transfers to minors (**EXHIBIT B**). States that current law requires that a custodianship must terminate when a minor attains age 21 and SB 122 would change the age limit to 25. Explains that it would also give personal representatives and trustees the discretion to make testamentary transfers to custodians rather than outright to minors, without court authorization, in an amount up to \$30,000. Asserts that his committee expects no adverse consequences from passage of this bill.

TAPE 24, A

007 Sen. Metsger Asks if the extension of time has to do with a person's desire to make sure that a child is mature and competent enough to manage it.

014 Cline Replies that it is in part correct; however, says the main thrust is to accomplish a set goal, such as college, a first house, etc. States that this allows relatively small gifts to be managed without having to set up a trust.

028 Sen. Harper Asks about federal statute regarding the age limit.

029 Cline Replies that he is not aware of federal statute, but explains that many of the changes are modeled after what California has done.

031 Chair Minnis Closes the public hearing on SB 122 and opens a work session.

SB 122 WORK SESSION

033 **Vice Chair Courtney**

MOTION: Moves SB 122 to the floor with a DO PASS recommendation.

VOTE: 7-0

036 **Chair Minnis**

Hearing no objection, declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor.

SB 123 PUBLIC HEARING

042 Christopher Cline

Oregon State Bar

Submits testimony and testifies in support of SB 123 relating to disclaimers to property interest (**EXHIBIT C**). Explains that this bill would consolidate the Oregon law of disclaimers into a single statute, it would provide greater clarity and would remove the current timing restrictions for disclaimers. Discusses the -1 amendment requested by Senior and Disabled Services (**EXHIBIT D**). Clarifies that it would not affect the current restrictions on disclaimers that are in other parts of the ORS and Regulations.

114 Counsel Odell

Conveys that Dave Heynderickx from Legal Counsel (LC) does not think the amendment is necessary, but understands that the parties involved would be more comfortable with it.

131 Rick Mills

Senior and Disabled Services Division (SDSD)

Explains that their concern regarding the disclaimer is that clients may seek to disclaim an inheritance they are legally entitled to, preventing SDSD from effecting their eligibility or their own ability to recover against an estate.

158 Sen. Duncan
160 Counsel Odell

Asks why LC does not think the amendment is needed.
Replies that Dave Heynderickx does not think the law would currently allow that. Asks what change in the disclaimer provision affects the law that might allow this to happen assuming it cannot happen how.

169 Mills

Replies that he cannot give a specific example, but states that his committee's concern is that someone could initiate an expensive litigation process by trying to assert this disclaimer.

185 Counsel Odell
186 Mills
197 Sen. Harper
199 Mills

Asks if there is a problem under current law.
Replies that an argument could be made either way.
Asks if there is a case in Oregon at this time.

204 Counsel Odell
207 Mills
210 Chair Minnis
213 Mills

Replies that there is no case in Oregon that he is aware of that would indicate that a disclaimer would affect SDSD's recovery.
Asks if this is a problem with the new law.
Responds, yes.

228 Chair Minnis
229 Mills
245 Chair Minnis

Asks what the new law does that changes the exposure.
Gives an example of how a person could use the disclaimer law to reject money, then continue to receive assistance, when the money disclaimed could have been used to provide care.
Asks if this same scenario is possible under current law.
Replies that he has not researched this issue.
Closes the public hearing on SB 123 and opens a work session on SB 123.

SB 123 WORK SESSION

256 Vice Chair
Courtney

MOTION: Moves to ADOPT SB 123-1 amendments dated 2/5/01.

VOTE: 7-0

272 Chair Minnis

Hearing no objection, declares the motion CARRIED.

274 Vice Chair
Courtney

MOTION: Moves SB 123A to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 7-0

277 Chair Minnis

Hearing no objection, declares the motion CARRIED.

CHAIR MINNIS will lead discussion on the floor.

280	Counsel Odell	Introduces LC 2590 relating to private security service; LC 1851 relating to persistent bioaccumulative toxins; and LC 2076 relating to fly ash from solid waste incinerators (EXHIBITS E-G).
292	Vice Chair Courtney	MOTION: Moves LC's: LC 2590, 1851, 2076 BE INTRODUCED as committee bills.
326	Chair Minnis	VOTE: 7-0 Hearing no objection, declares the motion CARRIED.
330	Chair Minnis	Closes the work session on SB 123 and adjourns the meeting at 2:00 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Marilyn Odell,
Counsel

EXHIBIT SUMMARY

A – SB 120, written testimony submitted by Jonathan A. Levy, dated 2/5/01, 11 pp
B – SB 122, written testimony submitted by Christopher Cline, dated 1/24/01, 1 p
C – SB 123, written testimony submitted by Christopher Cline, dated 1/24/01, 1 p
D – SB 123, -1 amendment, submitted by staff, dated 2/5/01, 1 p
E – LC 2590, submitted by staff, dated 2/2/01, 8 pp
F – LC 1851, submitted by staff, dated 11/30/00, 4 pp
G – LC 2076, submitted by staff, dated 1/11/01, 2 pp