

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

January 26, 1999 Hearing Room 357

1:00 p.m. Tapes 11 & 12

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Max Williams, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2290

HB 2291

HB 2292

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 11, A		

HB 2290 Public Hearing

004	Chair Shetterly	Opens meeting at 1:03 p.m.
011	Carl Myers	Oregon State Bar. Testifies in support of HB 2290. (EXHIBIT A& B) . This bill fills a gap in statutes dealing with joint owners of property when they die simultaneously and it establishes the ownership of the property. This is non-probate property. This bill takes care of double probate.
048	Rep. Edwards	Could you describe the need for this bill and how often would this problem happen?
050	Myers	States that it happens enough that this bill is a necessity. Estate planning experts felt this bill was necessary to clear up the situation of joint tenants.
059	Chair Shetterly	When a couple is killed in a common accident, the bank account would be distributed evenly between the two surviving families.
072	Myers	A family should have a will, then the will would determine where non-probate assets, that have survivorship clauses outside of the probate proceeding, would be divided.
081	Rep. Backlund	Would anyone oppose this bill?
084	Myers	I donit believe so.
090	Chair Shetterly	We donit want to create a situation where the bank will freeze the bank account for 5 days.
101	Myers	Discusses why the account would not be frozen.
114	Rep. Lowe	Why is it standard, instead of preponderance?
121	Myers	I donit know why that standard is there. We are dealing with the death and distribution of assets and higher than preponderance would be necessary, clear, and convincing. This is the standard used by Civil Law for proof.
128	Rep. Lowe	Section 6 of this bill does not have a wrongful death scenario exception, as in the case with murder and suicides, would you please comment on that?
130	Myers	Wrongful death makes it an estate or probate asset and would have to go through the probate court to be litigated and pursued. The changes in this bill deal only

		with non-probate assets.
136	Rep. Lowe	Would this have any effect on the statutes?
136	Myers	No, it would not.
<u>HB 2290 Work Session</u>		
158	Rep. Lowe	MOTION: Moves HB 2290 to the floor with a DO PASS recommendation.
		Vote: 9-0 Carrier: Rep. Williams
<u>HB 2291 Public Hearing</u>		
173	Carl Myers	Oregon State Bar. Testifies in support of HB 2291. (EXHIBIT C & D) . Discusses when a trust can be funded.
236	Chair Shetterly	This is an excellent bill for the protection of the people who are doing the estate planning.
246	Rep. Wells	We set up a trust for our grandchildren and I don't remember this issue of when to fund coming up. The money would go in to the trust from our estate when we die.
251	Myers	The language is clearer in this bill than the previous bill.
260	Chair Shetterly	This will make it more clear for those out-of-state practitioners who would not see this provision in Oregon law
<u>HB 2291 Work Session</u>		
275	Rep. Lowe	MOTION: Moves HB 2291 to the floor with a DO PASS recommendation.
		Vote: 9-0. Carrier: Rep. Edwards.
<u>HB 2292 Public Hearing</u>		
304	Carl Myers	Oregon State Bar.

		Testifies in support of HB 2292. (EXHIBIT E) . Discusses the problem created in the previous bill for practitioners, descendants, and estate representatives because common law marriage is not a law in Oregon.
356	Rep. Uherbelau	Why was this bill presented to us in the first place?
359	Myers	An attorney had a client who had lived with the decedent for a period of time and having this provision in the law allowed her to get social security. The bill was passed solely on the power of the Chair and his sponsorship of the bill. According to the Estate Planning Section, this was not a good law then and is not a good law now.
385	Rep. Williams	Could multiple people come forth and claim spousal benefits under this bill if a deceased individual had cohabit with more than one person for more than 10 years during his lifetime?
401	Myers	Yes.
404	Rep. Lowe	Could social security benefits accrue with those claiming to cohabit with the deceased?
418	Myers	I do not believe so. Those that receive social security benefits under the law will have already received those benefits and those benefits would not be retroactive. Couples that live together will have to get married to receive social security benefits.
434	Rep. Edwards	Are there any local ordinances in the state of Oregon that recognize common law marriages?
440	Myers	No, there are not.
444	Chair Shetterly	Under the Full Credit Clause of the constitution, if your marriage was validated under another state's law and then moved to Oregon, would it be recognized?
449	Myers	The only way Oregon would recognize common law marriage would be if you cohabit in a state that recognized common law marriage. The majority of states do not recognize common law marriage.
458	Rep. Edwards	They would have no claim to benefits if this law were repealed. If those of a common law marriage came in from another state, would this eliminate their ability to make a claim?
462	Chair Shetterly	No, if they came in from another state that recognized common law marriage, they would be considered married.

465	Myers	The full 10 years of residence required for recognition of common law marriage would have to be in a state where common law marriage is recognized. They couldn't live 5 years in Idaho then live the remaining 5 years here and claim a common law marriage.
474	Rep. Edwards	If the state where they lived recognized common law marriage and then they move here, the State of Oregon would recognize this marriage?
478	Myers	Yes, for all purposes.
484	Rep. Williams	A major downside to this legislation is that multiple people could approach the state following the death of the individual and claim a common law marriage under this statute.
Tape 12, Side A		
035	Rep. Witt	Under statute 112.017, paragraph 2, it would be pretty hard to make a claim of more than one person claiming cohabitation.
048	Rep. Williams	Was the bill amended in 1995 or 1997 from the original version?
049	Myers	I do not believe so. This is a situation where a person would live in a communal situation during that 10-year period.
057	Rep. Uherbelau	This law has been on the book since 1993 and I have never seen any problems. Are they anticipating problems? There are many long-term relationships that do not have a formal marriage and the spouse is left out in the cold. You have to establish proof of that relationship under the criteria.
075	Chair Shetterly	Discusses the problem this bill creates with recognizing common law marriage under certain circumstances.
084	Rep. Witt	Does this statute open up the problem where several common law relationships can come forth and make a claim?
093	Myers	Both common law relationships would have a claim as a surviving spouse when a man is married but lives with another woman
095	Rep. Witt	In paragraph D of ORS 112.017 it says, "if neither the person nor the decedent was legally married to another person at the time of the decedent's death." I think it opens up the possibility that there could be a relationship with several of the opposite sex that claim to be a couple.
105	Rep. Williams	States that if an individual had several of these relationships and within 2 years of expiring and went back to live with this person again, would the ten years

		accrue?
115	Rep. Edwards	What is the need of this bill? Is there a problem? Who are we effecting?
124	Chair Shetterly	There is enough people living in Oregon where anything could happen.
129	Myers	Discusses the one situation that caused this bill to happen. This bill provides consistency and will avoid problems in the future.
138	Rep. Edwards	On the background the staff put together in 1995, the very last sentence talked about the elected to retain the exception except in a narrow form. Where did it come from and what did it get narrowed down to?
142	Myers	I do not remember what the change was.
157	Rep. Lowe	Could someone articulate the public policy reason behind the underlining federal statute that gives social security benefits to the surviving domestic partner after a ten-year relationship?
163	Myers	I do not remember. The federal legislation was drafted to cover states where common law marriage was recognized so that common law spouses could take social security as if they were a married spouse.
174	Rep. Lowe	How many Oregonians would be denied social security with the repeal of this bill?
178	Myers	I do not know. It is problematic as to how many would be out there because there are conditions that need to be met.
186	Rep. Lowe	May I presume that balancing the wisdom in this bill will give no social security benefits to those that lived in a common law marriage in Oregon?
192	Myers	That may be the case.
195	Rep. Witt	Do we know for a fact that social security benefits for common law spouses are provided in these types of situations?
198	Myers	No, that was the argument for the passage of the law in the first place. I have never run across the situation
207	Rep. Witt	We don't know if social security can be applied to common law spouses who predeceased them?

213	Myers	I have no idea.
216	Rep. Backlund	We should exclude the existing bill, as it is now constituted, because it is a somewhat dubious law.
227	Chair Shetterly	Yes, especially since the State of Oregon has not recognized common law marriage.
231	Rep. Williams	The reason estate planners opposed this issue is to give some certainty to people who are planning their estates and those trying to make the decision whether to marry or not to marry for the purpose of handling their affairs. We ought to pass this bill to help clarify where Oregon currently stands with respect to common law marriage.
248	Chair Shetterly	It is a matter of consistency of policy more than a moral judgment.
255	Rep. Wells	How do states that have common law marriages deal with this issue? There seems to be a lot more to it than what is before us.
272	Chair Shetterly	If the relationship has not been lawfully binding then there is the problem of proofing that relationship.
287	Rep. Uherbelau	This bill does not allow security to those that cohabit. It deserves me to repeal this bill?
300	Rep. Witt	Who gets the property in common law marriages? There are two remedies: They can execute a will or get married.
340	Rep. Lowe	It has never been a problem for the bar. For many reasons, senior citizens cohabit. Does this bill effect those people?
374	Chair Shetterly	Senior citizens cohabit because they can collect both of their social security.. Then after the death of one, this bill says you can now, as a survivor, claim that you were in fact married. I am not so sure about this policy.
386	Rep. Uherbelau	Also, senior citizens cohabit because of present tax reasons.
402	Chair Shetterly	It has been suggested that we hold the bill and let the State Planning section come in and talk to us about the problems raised today.
<u>Work Session on HB 2292</u>		
421	Rep. Walker	In this state we donit have common-law marriage, so why should there be common law marriage in death?

433	Rep. Lowe	I see this bill as not being about do we or do we not have common law marriage. I see this bill as do we or donít we extend someone receiving social security benefits which is a whole different thing.
453	Rep. Witt	We donít have any concrete information relative to social security benefits and how this bill would assist someone receiving these benefits whom otherwise might not receive them. We are speculating on this. There are other public policies in issue here that makes it clear that we should support this bill. It is clear that Oregon does not recognize common law marriage and this bill undercuts that policy. Our state does value marriage and they should uphold that policy.
492	Rep. Williams	The Estate Planning Section of the Oregon State Bar is not a group of individuals who are in the business of making moral judgements about marriage laws in this state. They are in the business of passing suggestion and advice as to the clarity, conciseness, and applicability of the statutes as they relate to intestate, succession, wills of the state, and trusts.
Tape 11, Side B		
041	Chair Shetterly	This bill comes to us as a practitioner bill from the Estate Planning Section; they deal with this and are aware what is going on.
050	Rep. Williams	MOTION: Moves SB 2292 to the floor with a DO PASS recommendation. Vote: 6-3, Rep. Lowe, Rep. Uherbelau, Rep. Edwards. Carrier: Rep. Backlund.
060	Chair Shetterly	Closes work session.
072	Chair Shetterly	We have draft number, LC2148 that reorganizes spousal support and criteria into three categories; creates higher standard for modification of compensatories; spousal support; removes enhanced earning capacity from property awards. This comes in from a family law practitioner.
079	Rep. Wells	MOTION: Moves LC 2148 BE INTRODUCED as a committee bill.
082	Chair Shetterly	Closes meeting at 2:40.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 2290, Written testimony, Carl Myers for Bernie Vail and Cinda M. Conroyd, p. 1

B ñ HB 2290, Written testimony, Carl Myers for OSB Estate Planning and Trust Section, p. 1

C ñ HB 2291, Written testimony, Carl Myers for Bernie Vail and Cinda M. Conroyd, p. 1

D ñ HB 2291, Written testimony, Carl Myers OSB Estate Planning and Administration Section, p. 1

E ñ HB 2292, Written testimony, Carl Myers for OSB Estate Planning and Administration Section, p. 1