

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

April 01, 1999 Hearing Room 357

1:00 p.m. Tapes 85 - 88

**MEMBERS PRESENT:** Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, 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 2759 Public Hearing

HB 2760 Public Hearing

HB 3036 Public Hearing

HB 2717 Work Session

HB 2317 Work Session

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 85, A**

004	Chair Shetterly	Calls meeting to order at 1:05 p.m.
<b><u>HB 2317 WORK SESSION</u></b>		
013	<b>Kingsley Click</b>	<b>State Court Administrator's Office</b> Expresses the State Court Administrator's Office's support for HB 2317.
<b>018</b>	<b>Rep. Williams</b>	<b>MOTION: Moves to ADOPT HB 2317-3 amendments dated 03/29/99 (EXHIBIT A).</b>
		<b>VOTE: 6-0</b> <b>AYE: 6 - Backlund, Lowe, Uherbelau, Wells, Williams, Shetterly</b> <b>EXCUSED: 3 - Edwards, Walker, Witt</b>
	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b>
<b>021</b>	<b>Rep. Williams</b>	<b>MOTION: Moves HB 2317-3 to the floor with a DO PASS AS AMENDED recommendation and referral to the WAYS &amp; MEANS COMMITTEE.</b>
		<b>VOTE: 9-0</b> <b>AYE: 9 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Witt, Shetterly</b>
	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b>
<b><u>HB 3036 - PUBLIC HEARING</u></b>		
035	Counsel Felton	HB 3036 requires court to consider party's conviction of crime or violation of conditions of probation, parole or post-prison supervision a substantial change of circumstances on modification of judgment relating to custody or parenting time.
043	<b>Rep. Jeff Kropf</b>	<b>State Representative, House District 37</b> Testifies in support of HB 3036. Explains why HB 3036 was created.

067	<b>Linda Polley</b>	<b>Citizen, State of Oregon</b>  Testifies and submits written testimony in support of HB 3036 ( <b>EXHIBIT B</b> ). Discusses her personal experience which led to the proposal of HB 3036.
123	Chair Shetterly	Was your husband prosecuted for the crimes committed against you and your son?
128	Polley	No. States that the district attorney refused to press charges. Discusses how civil rights were denied to her and her son.
135	Rep. Kropf	Discusses the husband's criminal background.
144	Chair Shetterly	Was your husband in Oregon when he obtained custody of your son?
146	Polley	No, the custody was granted in California, but there were problems in Oregon as well.
148	Rep. Uherbelau	Who had custody of your son in the divorce decree?
152	Polley	I did.
156	Rep. Lowe	Was there any subsequent custody orders after the divorce decree?
158	Polley	No, everything was the same.
162	Rep. Lowe	Asks about the custody of the child, Oregon custody law, and the relationship of HB 3036.
187	Rep. Kropf	Explains the intent of HB 3036 is to protect all persons involved in custody cases when a parent has been convicted of a crime.
213	<b>Phil Yarnall</b>	<b>Adult and Family Services</b>  Testifies and submits written testimony in support of HB 3036 ( <b>EXHIBIT C</b> ). Discusses the pilot program where there is assistance with visitation and parenting planning issues.
229	Chair Shetterly	Has the Family Law Section of the Oregon Bar looked at HB 3036?
231	Counsel Felton	They have reviewed it.
234	Chair Shetterly	Closes public hearing.

**HB 2759 and HB 2760 n PUBLIC HEARING**

246	Counsel Felton	HB 2759 modifies laws relating to appointment of fiduciaries in protective proceedings. HB 2760 requires hearing on petition seeking appointment of guardian in specified cases.
267	<b>David Nebel</b>	<b>Oregon Law Center</b> Testifies and submits written testimony in support of HB 2759 ( <b>EXHIBIT D</b> ). Discusses the history of HB 2759. States that HB 2759 deals with the court monitoring conflicts of interest by professional fiduciaries in regards to guardianship. Explains the circumstances when a person needs guardianship. Discusses and gives examples of when a fiduciary acts in the best interest of the ward or acts in their own best interest. Discusses sections 3 & 4 of HB 2759 regarding professional fiduciaries. Describes the functions of a work group that worked with elderly and disabled individuals for protection of their rights.
409	Rep. Witt	Asks about the language in section 2 (2), line 26, page 1 of HB 2759 regarding the court's involvement with guardians.
415	Nebel	Explains line 26 regarding the fiduciaries providing guardianship services.
431	Rep. Witt	Asks about the language on page 2, line 13 of HB 2759.
434	Nebel	Explains line 13 regarding any direct or indirect ownership of a person's interest.
448	Chair Shetterly	Asks about the meaning of a "person's interest".
450	Nebel	Explains "person's interest" as a corporation to which he or she is related to.
464	Chair Shetterly	Asks about page 3, lines 18-20 of HB 2759 regarding the professional fiduciary and staff that must undergo a criminal records check.
480	Nebel	Explains that one records check would suffice for a number of petitions.
<b>Tape 86, A</b>		
035	<b>David Nebel</b>	<b>Oregon Law Center</b> Testifies and submits written testimony in support of HB 2760 ( <b>EXHIBIT E</b> ). Discusses that HB 2760 increases the fairness of guardianship proceedings for respondents and for protecting persons.
135	Rep. Uherbelau	Asks about the Elder Law Section of the Oregon State Bar opposing HB 2760.

142	Nebel	Explains why the Elder Law Section supports HB 2760.
155	<b>Holly Robinson</b>	<b>Senior and Disabled Services Division (SDSD)</b> Testifies and submits written testimony in support of HB 2760 ( <b>EXHIBITS F &amp; G</b> ). Discusses the guardianship process regarding rights of the respondent. Discusses the uardianship work groupís survey results regarding individual rights in guardianship. Discusses the recommendation of the SDSD for changes to HB 2760.
318	<b>Bob Joondeph</b>	<b>Oregon Advocacy Center (OAC)</b> Testifies and submits written testimony in support of HB 2760 ( <b>EXHIBITS H &amp; I</b> ). Discusses the three conclusions of OAC regarding guardianship procedures in Oregon. Discusses the additional protection needed for people under guardianship. Explains why the OAC opposes HB 2760.
<b>Tape 85, B</b>		
043	Joondeph	Discusses the work groupís process regarding guardianship issues.
072	<b>Jeff Brandon</b>	<b>Citizen, State of Oregon</b> Testifies and submits written testimony in opposition of HB 2760 ( <b>EXHIBIT J</b> ). Discusses the historical context of Oregonís guardianship law. Discusses the need for all agencies to have input regarding guardian/conservator law. Discusses why HB 2760 should not be passed as law.
216	Rep. Uherbelau	Asks about the agenda of the work group that brought forth HB 2760.
223	Brandon	Explains the work groupís agenda.
231	Rep. Uherbelau	Would you want safeguards and due process of guardianship before a guardian was appointed to a member of your family?
234	Brandon	States that the safeguards and due process of guardianship is in Chapter 125.
237	<b>Chris Farley</b>	<b>Professional Guardian</b> Testifies and submits written testimony in opposition to HB 2760 ( <b>EXHIBITS K &amp; L</b> ). Discusses why HB 2760 is unnecessary. Discusses the different costs involved if HB 2760 passes regarding hearings for guardianship. Discusses the length of time to get a guardianship hearing if HB 2760 passes.
355	Chair Shetterly	Closes public hearing.

**HB 2717 n WORK SESSION**

364	Counsel Felton	HB 2717 exempts from prohibition on false political publication owner, licensee or operator of radio or television station broadcasting advertisement provided by candidate or political committee. Presents the -2 amendment ( <b>EXHIBIT M</b> ).
378	<b>Pat Eagen</b>	<b>Oregon Association of Broadcasters</b>  Explains that the general intent of the -2 amendments is to take the liability out of the act of broadcasting concerning political advertising.
405	Rep. Edwards	Asks about candidate not being able to seek a legal remedy for slanderous campaign advertisements.
412	Eagen	Explains how a lawsuit would proceed when there is a slanderous campaign ad.
423	Rep. Witt	Asks about pulling slanderous campaign ads off the air through some legal process.
438	<b>Duane Bosworth</b>	<b>Private Attorney</b>  Explains the legal process a candidate would use to pull slanderous ads. Discusses the purpose of HB 2717 regarding the author of slanderous statements.
470	Rep. Witt	Asks specifically about prepaid slanderous ads that have been accepted by the broadcaster and the chance of canceling these ads.
486	Bosworth	States that the current law would not allow a Temporary Restraining Order (TRO) to be directed to the broadcaster. Discusses how to stop the slanderous ad.
<b>Tape 86, B</b>		
037	Rep. Witt	Asks about the candidate having the right to pull a slanderous ad if the ad was prepaid.
041	Bosworth	Explains that slanderous ads can be pulled even though they are prepaid.
056	Chair Shetterly	States that the candidate who fails to comply with the court order to pull their own slanderous ad would be subject to contempt sanctions.
060	Rep. Witt	States that the broadcaster has already accepted the ads so legally the only way to pull the ad would be to direct the judgment order to the broadcaster, not to the author of the slanderous ad..

066	Eagen	Explains the broadcaster subjects themselves to liability if there was a TRO against the campaign.
075	Rep. Witt	States that the issue is not liability, the issue is stopping the slander.
077	Rep. Uherbelau	Expresses disbelief that a broadcaster would not pull a slanderous ad if given a judgment order.
084	Bosworth	States that broadcasters receive enough advertisement revenue besides campaign ads.
090	Rep. Edwards	Asks if HB 2085 would hinder the process of pulling a slanderous ad at the end of a campaign.
110	Bosworth	Discusses the Federal Communications Commission's (FCC) rule for campaign ads.
132	Rep. Edwards	Asks about HB 2085 taking the liability away from the broadcaster regarding slanderous ads.
151	Eagen	Discusses that there are some broadcasters that do not take on campaign ads.
170	Rep. Edwards	States that TV and radio are a very powerful tool for campaign ads. Asks about campaign ads being protected by the FCC. Expresses concern about HB 2085 protecting the broadcaster from lawsuits regarding slanderous ads.
196	Rep. Williams	Would using TROs violate civil rights?
207	Bosworth	Discusses the cases regarding Temporary Restraining Orders.
224	Chair Shetterly	States that if a candidate obtained a TRO against another candidate based on slander this would cause the broadcaster to pull the ads.
241	Rep. Witt	States that HB 2085 does not require the broadcaster to pull the slanderous ads. The issue is not compensatory damages, the issue is to get a TRO to prohibit damages that might occur because of the slander in the ads. Is the cost of defending the lawsuits the concern with the broadcasters? Why are broadcasters not here to testify about how many campaign ads are run, the revenue received due to political campaigns, and why they would pass up those dollars?
264	Eagen	Discusses smaller broadcasters that refuse to accept campaign ads.
281	<b>Clint Sline</b>	<b>Jaycor Broadcasting</b>

		Discusses the tactics of political campaigns that makes it hard for the broadcasters to determine the validity of some campaign ads. Gives an example of a campaign ad that was questioned by the broadcaster. Discusses the need for protection from lawsuits regarding campaign ads.
321	Rep. Witt	What protection are the broadcasters asking for?
322	Clint	If broadcasters run slanderous ads, they want to be protected against lawsuits.
329	Rep. Witt	Are the broadcasters considering not doing political ads according to current law?
331	Clint	States that all broadcasters are greatly concerned because slanderous ads seem to be effective, therefore are used more often.
339	Rep. Witt	Asks about the revenues received for campaign ads.
344	Clint	In 1998, about \$700,000-\$800,000 were received.
346	Rep. Edwards	Is it a legal decision to not accept contracts for campaign ads?
351	Clint	Broadcasters do not have to run a campaign ad. Explains that a broadcaster has to accept everyone's ads that are running for the same office.
371	Rep. Witt	States that the broadcaster does not have to take every campaign ad.
379	<b>Dominic Monahan</b>	<b>Oregon Association of Broadcasters (OAB)</b> Explains federal law regarding broadcasters taking campaign ads. Discusses the legislation needed to protect broadcasters from frivolous lawsuits.
485	Rep. Witt	Couldn't we solve the problem of protecting the broadcasters by passing legislation stating that broadcasters are exempt from any kind of compensatory or punitive damage when it involves a political ad and action is brought against them with a TRO or compensatory damages.
<b>Tape 87, A</b>		
037	Dominic	Explains the need for a statute to protect the broadcaster from the burden of time and money in defending frivolous lawsuits.
055	Chair Shetterly	Does HB 2717 provide a TRO against a broadcaster to stop them from running slanderous ads?



060	Bosworth	No one can legislate a Temporary Restraining Order.
065	Rep. Witt	Asks about an ad that related to racial bigotry or religious bigotry.
068	Dominic	Describes a case where a bigotry ad that was still aired because of federal law.
079	Rep. Witt	States that the case was thirty one years ago.
086	Rep. Uherbelau	<b>MOTION: Moves to ADOPT HB 2717-2 amendments dated 03/19/99.</b>
		<b>VOTE: 7-2</b> <b>AYE: 7 - Backlund, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>NAY: 2 - Edwards, Witt</b>
	Chair Shetterly	The motion <b>CARRIES</b> .
096	Rep. Uherbelau	<b>MOTION: Moves HB 2717-2 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-2</b> <b>AYE: 7 - Backlund, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>NAY: 2 - Edwards, Witt</b>
	Chair Shetterly	The motion <b>CARRIES</b> .  <b>REP. WILLIAMS will lead discussion on the floor.</b>
<b><u>HB 2317 - WORK SESSION</u></b>		
103	Chair Shetterly	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. WALKER, and REP. EDWARDS to BE RECORDED as voting AYE and REP. WITT as voting NAY on HB 2317 for a DO PASS RECOMMENDATION AS AMENDED to WAYS &amp; MEANS.</b>  <b>VOTE: 8-1</b>

114	Chair Shetterly	Closes work session.
<b>HB 2759 and HB 2760 n PUBLIC HEARINGS</b>		
134	<b>Meredith Cote</b>	<b>The Office of the Long Term Care Ombudsman (OLTCO)</b>  Testifies and submits written testimony in support of HB 2759 ( <b>EXHIBIT N</b> ). Discusses why OLTCO recognizes the importance of guardianships. Discusses and give examples of cases of the time and effort involved in investigation and resolution of guardianship. Explains how HB 2759 & 2760 help protect the civil rights for those that need guardians.
269	<b>Rita Knapp</b>	<b>American Association of Retired Persons (AARP)</b>  Testifies and submits written testimony in support of HB 2759 & HB 2760 ( <b>EXHIBIT O</b> ). Discusses the AARP study regarding guardianship of the elderly. Discusses the findings that the Associated Press discovered regarding the state guardianship systems. Discusses that Oregon is the only state where an individual has to request a hearing regarding guardianship. Discusses the need for an amendment requiring a hearing for every guardianship petition.
375	<b>Rita Cobb</b>	<b>Pro Tem Judge, Washington County</b>  Testifies and submits written testimony in support of HB 2760 ( <b>EXHIBIT P</b> ). Discusses the funding that should be available for appointment of counsel, creation of the new investigator position, and additional court clerks. Explains the changes to the Court visitor provisions that would require extra funding.
<b>Tape 88, A</b>		
008	<b>Jennifer Todd</b>	<b>Protem Judge, Marion County Circuit Court</b>  Testifies and submits written testimony in opposition of HB 2759 & HB 2760 ( <b>EXHIBITS Q &amp; R</b> ). Discusses the civil rights taken away with guardianship statutes. Discusses complexity that HB 2759 would create regarding court time. Gives examples of cases regarding appointed guardianships. States that current statutes are not appropriately applied to guardianship protection situations.
072	<b>Ann Christian</b>	<b>Indigent Defense Services Division, State Court Administrators Office</b>  Testifies neutrality on HB 2760. Discusses the fiscal impact that HB 2760 would have to the Indigent Defense Services Division.
156	<b>May Dasch</b>	<b>Oregon Chapters of the Alzheimer's Association</b>  Testifies and submits written testimony in support of HB 2759 & HB 2760 ( <b>EXHIBITS S &amp; T</b> ). States that current law lacks provisions for regulating the operations of professional fiduciaries and that HB 2759 will provide those provisions. Oregon is one of the few states that do not require a hearing before an impaired person is assigned a guardian. HB 2760 will help require that an impartial, well-trained court visitor be assigned to every guardianship case.

		Expresses the concerns of the Alzheimeris Association about the rights of the indigent needing protection.
219	<b>Cheryl Feuerstein</b>	<b>Life Care Associates</b> Testifies and submits written testimony in opposition to HB 2760 ( <b>EXHIBIT U</b> ). Discusses the reasons why Life Care Associates is opposed to HB 2760.
250	<b>Virginia Quimby</b>	<b>Citizen, Washington County</b> Testifies and submits written testimony in opposition to HB 2760 ( <b>EXHIBIT V</b> ). Discusses and gives examples of abusive financial guardianship cases handled by those with power of attorney.
312	<b>Nancy MacDonald</b>	<b>Guardian Conservators Association (GCA)</b> Testifies and submits written testimony in opposition to HB 2759 ( <b>EXHIBIT W</b> ). Discusses the position of GCA regarding HB 2759.
346	<b>Gary Beagle</b>	<b>Professional Fiduciary, State of Washington</b> Testifies and submits written testimony in opposition to HB 2759 ( <b>EXHIBIT X</b> ). Discusses the two issues of HB 2759 relating to fiduciaries in protective proceedings. Discusses the alternatives to HB 2759 regarding section 4 relating to required disclosure of information. States that due process has become too cumbersome and overload the court system.
433	<b>Chair Shetterly</b>	Adjourns meeting at 3:55 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,

Administrative Support Counsel

## EXHIBIT SUMMARY

- A - HB 2317, Proposed -3 amendments, Counsel, 10
- B - HB 3036, Written testimony, Linda Polley, p. 1
- C - HB 3036, Written testimony, Phil Yarnell, p. 1
- D - HB 2759, Written testimony, David Nebel, p. 2
- E - HB 2760, Written testimony, David Nebel, p. 2
- F - HB 2760, Written testimony, Holly Robinson, p. 3
- G - HB 2760, A survey, "Adult Guardianships in Oregon: A Survey of Court Practices, Holly Robinson, booklet
- H - HB 2759, Written testimony, Bob Joondeph, p. 1
- I - HB 2760, Written testimony, Bob Joondeph, p. 1
- J - HB 2760, Written testimony, Jeff Brandon, p. 3
- K - HB 2760, Written testimony, Chris Farley, p. 3
- L - HB 2760, Copy of the OALFA Bulletin, Chris Farley, p. 2
- M - HB 2717, Proposed -2 amendments, Counsel, p. 1
- N - HB 2759 & HB 2760, Written testimony, Meredith Cote, p. 8
- O - HB 2759 & HB 2760, Written testimony, Rita Knapp, p. 3
- P - HB 2760, Written testimony, Rita Cobb, p. 1
- Q - HB 2759, Written testimony, Jennifer Todd, p. 2
- R - HB 2760, Written testimony, Jennifer Todd, p. 3
- S - HB 2759, Written testimony, May Dasch, p. 1
- T - HB 2760, Written testimony, May Dasch, p. 1
- U - HB 2760, Written testimony, Cheryl Feuerstein, p. 2
- V - HB 2760, Written testimony, Virginia Quimby, p. 1
- W - HB 2759, Written testimony, Nancy McDonald, p. 3
- X - HB 2759, Written testimony, Gary Beagle, p. 25

