

HOUSE COMMITTEE ON JUDICIARY

February 7, 1997 Hearing Room 357

3:15 P.M. Tapes 4 - 5

MEMBERS PRESENT:

Rep. John Minnis, Chair

Rep. Floyd Prozanski, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. Peter Courtney

Rep. George Eighmey

Rep. Lane Shetterly

Rep. Charles Starr

Rep. Ron Sunseri

Rep. Judy Uherbelau

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

Bill Introduction - LC 2303

HB 2329 - Work Session SB 259 - Work Session

HB 2262 - Work Session SB 261 - Work Session

HB 2247 - Work Session SB 262 - Work Session

HB 2248 - Work Session SB 265 - Work Session

HB 2298 - 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 4, A		
002	Chair Minnis	Calls meeting to order 3:20 P.M.
010	Chair Minnis	MOTION: Moves LC 2303 BE INTRODUCED as a committee bill.
012		VOTE: 11-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED. (LC 2303 introduced as HB 2652)
<u>OPENS WORK SESSION ON HB 2329</u>		
023	Chair Minnis	Opens work session on HB 2329.
024	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2329.
042	Rep. Prozanski	MOTION: Moves to ADOPT HB 2329-1 amendments dated 02/04/97.
057		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES.
060	Rep. Prozanski	MOTION: Moves HB 2329 to the floor with a DO PASS AS AMENDED recommendation.
065		VOTE: 10-0 AYE: In a roll call vote, all members present vote Aye. ABSENT: 1 - REP. BOWMAN
	Chair Minnis	The motion CARRIES. REP. COURTNEY will lead discussion on the floor.
071	Chair Minnis	Closes work session on HB 2329.

<u>OPENS WORK SESSION ON HB 2262</u>		
072	Chair Minnis	Opens work session on HB 2262.
075	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2262. (Amendment 2262-1 amends HB 2261 into HB 2262)
092	Rep. Shetterly	MOTION: Moves HB 2262 to the floor with a DO PASS AS AMENDED recommendation.
095		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. SHETTERLY will lead discussion on the floor.
102	Chair Minnis	Closes hearing on work session on HB 2262.
<u>OPENS WORK SESSION ON HB 2247</u>		
105	Chair Minnis	Opens work session on HB 2247.
118	Taylor	Reads a Preliminary Staff Measure Summary on HB 2247.
128	Chair Minnis	The purpose of the bill was to remedy what kind of problems?
130	Taylor	It clarifies that the attorneys can get the money directly rather than having to go to the garnishor. The garnishee could pay the money to his attorney. Also, clarifies the attorney may hold the money.
135	Rep. Prozanski	MOTION: Moves HB 2247 to the floor with a DO PASS recommendation.
136		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. UHERBELAU will lead discussion on the floor.

140	Chair Minnis	Closes the work session on HB 2247.
<u>OPENS WORK SESSION ON HB 2248</u>		
153	Chair Minnis	Opens the work session on HB 2248.
155	Taylor	Reads a Preliminary Staff Measure Summary on HB 2248. >-1 amendment attached limits to the fiduciary duties of the Trustee by stating that a Trustee or a Successor Trustee under the trust has no fiduciary obligation to the grantor of the trust deed.
163	Chair Minnis	What does that mean?
164	Taylor	Under a normal trustee situation you have a beneficiary under the trust and the trustee has an obligation to the beneficiary. When lending of money often times the trust deed is used as collateral where the beneficiary would then be the lender. The person giving the trust would be the person who is borrowing the money. So you don't have your normal situation. Often times the Trustee will be the agent of the lender, the lawyer, or an escrow company. This limits the duties and obligations of a Trustee in the trust situation. Its a way of financing.
172	Chair Minnis	This wasn't done before?
174	Rep. Uherbelau	In a normal situation the Trustee may owe a duty to many people. In this case we are trying to clarify that the Trustee only owes a duty to the beneficiary.
180	Rep. Wells	Provides an example for clarification purposes.
195	Rep. Shetterly	Further provides clarification. A trustee of a trust deed is in the middle of two parties - one the borrower and one the lender. It is an impossible situation. You can not owe a duty to both parties if ever a conflict should come up between the borrower and the lender. Convention is that the trustee really owes a duty to the lender and not to the borrower. There was a footnote or some off hand comment in the Court of Appeals opinion that suggested otherwise and if it was ever acted upon could throw the whole trust deed business into a turmoil. This measure is designed to keep the off hand comment as an off hand comment.

210	Chair Sunseri	Who then does it favor the grantor or the beneficiary?
211	Rep. Shetterly	It favors the beneficiary, the lender as it always has.
218	Chair Sunseri	The grantor, who is the borrower who has in fact paid his obligation and shouldn't then the responsibility be to grantor rather than to the beneficiary?
220	Rep. Shetterly	There is a separate statutory duty which says a Trustee shall reconvey property to the grantor upon satisfaction of the debt. In Rep. Well's scenario, if there is a dispute to whether the debt has been paid or there is a default on the loan this is where it will usually come up. For instance, the borrower has failed to pay and now the beneficiary wants to foreclose, that is a situation where the trustee owes the duty to the lender who is the beneficiary. But it is true that there is an absolute statutory duty that upon payment of the underlying debt the trustee is to convey that property to the grantor. So there is recourse under that statute.
230	Chair Sunseri	No effect on the 120 day right of redemption, correct?
231	Rep. Shetterly	No.
234	Taylor	The amendments clarify that the Trustee or the Successor Trustee shall not be relieved of a duty to reconvey the property subject to a trust deed or to the grantor upon request for reconveyance by the beneficiary.
242	Rep. Prozanski	MOTION: Moves HB 2248 to the floor with a DO PASS AS AMENDED recommendation.
243		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. STARR will lead discussion on the floor.
254	Chair Minnis	Closes the work session on HB 2248.
<u>OPENS A WORK SESSION ON HB 2298</u>		
256	Chair Minnis	Opens a work session on HB 2298.
258	Taylor	Reads a Preliminary Staff Measure Summary on HB 2298.
279	Chair Sunseri	Is a facsimile signature valid in the law? If someone signs an invoice or an earnest money agreement and faxes it through is it valid in the law?
		I would say it is for most purposes. For recording purposes at the court

285	Rep. Shetterly	house it would not. For contract law holding a party to a document with a facsimile signature would be sufficient.
291	Rep. Beyer	States that the -2 amendment are not accurate as I believe they were adopted in the subcommittee. The way I had it was that on page 1 of the printed bill line 12 where it says "Any reasonable recipient ..." we inserted instead " A reasonable recipient..."
305	Taylor	On the -2 amendment it shows as "A reasonable person"
306	Rep. Beyer	It should be "A reasonable recipient."
308	Taylor	We had originally in the -1 amendment it stated "A person" and the we merely inserted "reasonable" before "person."
313	Rep. Uherbelau	Discussion in the subcommittee came back to stating - "A reasonable recipient."
319	Rep. Beyer	The reason was that on Page 2 of the printed bill Line 20 there is a reference to "by a reasonable recipient." We felt we wanted to be consistent in <u>Section 2</u> and <u>Section 5</u> .
331	Taylor	We were referring to Line 21 of <u>Section 5</u> of the printed bill where it begins with "A person." I believe this is why we changed the language to "A reasonable person."
340	Rep. Eighmey	I purposely checked on Line 20 on Page 2 of the printed bill and we want to correspond with "A reasonable recipient" on Line 12 of Page 1. Let me point out in Line 11 <u>Section 2</u> starts out that "It is unlawful for any person to utter ..." Thus the "person" is already addressed in the measure. The discussion was then for "recipient" not "person."
360	Rep. Shetterly	MOTION: Moves to AMEND HB 2298-2 amendment on line 2, after "reasonable," delete "person ," and insert "recipient".
362		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES.
383	Rep. Beyer	MOTION: Moves to ADOPT HB 2298-2 amendments as amended dated 02/06/97.
386		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES.
394	Rep. Bowman	MOTION: Moves HB 2298 to the floor with a DO PASS AS AMENDED recommendation.
397		VOTE: 11-0

		AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. WELLS will lead discussion on the floor.
407	Chair Minnis	Closes the work session on HB 2298.
<u>OPENS WORK SESSION ON SB 259</u>		
410	Chair Minnis	Opens a work session on SB 259.
412	Taylor	Reads a Preliminary Staff Measure Summary on SB 259.
431	Rep. Prozanski	MOTION: Moves SB 259 to the floor with a DO PASS AS AMENDED recommendation.
434		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. UHERBELAU will lead discussion on the floor.
025	Chair Minnis	Closes the work session on SB 259.
Tape 5, A		
<u>OPENS WORK SESSION ON SB 261</u>		
030	Chair Minnis	Opens a work session on SB 261.
031	Taylor	Reads a Preliminary Staff Measure Summary on SB 261
038	Rep. Beyer	MOTION: Moves SB 261 to the floor with a DO PASS AS AMENDED recommendation.
041	Rep. Bowman	Is there any way to separate out annulments vs. dissolution or separations when we're looking at this bill. I was wondering when you have been married less than a year why you would be entitled to compensation on the enhanced earnings?
047	Taylor	The parenthetic language references what is currently in Chapter 107. This bill makes a one word change only. It changes "shall" to "may" on Page 3 of the printed bill. It simply gives the judge discretion to consider the issue in regards to marital assets not require him to do so.
051		VOTE: 11-0

		AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. BEYER will lead discussion on the floor.
055	Chair Minnis	Closes the work session on SB 261.
<u>OPENS WORK SESSION ON SB 262</u>		
060	Chair Minnis	Opens a work session on SB 262.
061	Taylor	Reads a Preliminary Staff Measure Summary on SB 262.
070	Rep. Sunseri	MOTION: Moves SB 262 to the floor with a DO PASS AS AMENDED recommendation.
071		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. EIGHMEY will lead discussion on the floor.
073	Chair Minnis	Closes the work session on SB 262.
<u>OPENS WORK SESSION ON SB 265</u>		
080	Chair Minnis	Opens a work session on SB 265.
081	Taylor	Reads a Preliminary Staff Measure Summary on SB 265.
090	Rep. Prozanski	MOTION: Moves SB 265 to the floor with a DO PASS AS AMENDED recommendation.
092		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. STARR will lead discussion on the floor.
091	Chair Minnis	Closes the work session on SB 265.
111	Chair Minnis	Adjourns meeting at 4:02 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

NO EXHIBITS PRESENTED TO THE COMMITTEE AT THIS MEETING