

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

February 17, 1997 Hearing Room 357

1:00 P.M. Tapes 22 - 23

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. JoAnn Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

STAFF PRESENT:

David J. Amesbury, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing: HB 2349

HB 2306

SB 256

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 22, A		
002	Chair Shetterly	Opens meeting at 1:20 p.m.

		>HB 2325 won't be heard today
<u>OPENS WORK PUBLIC HEARING ON HB 2349</u>		
010	Chair Shetterly	Summarizes bill
019	Rep. Eighmey	Sponsor of HB 2349. Discusses basic concept: >should be prohibited in cases of rape prosecution for the defense to enter into evidence what a woman wore as evidence that she consented in anyway to the rape or sexual attack. >clothing irrelevant >there may be times when clothing should be admissible >rebuttable except where showing consent
051	Rep. Prozanski	Asks for clarification. >what were reasons for clothing to be admissible
	Rep. Eighmey	Replies
061	Rep. Beyer	Questions statue references >other crimes in those sections
	Rep. Eighmey	No
070	Chair Shetterly	Each of those but in varying degrees
075	David Amesbury	Committee Counsel - refers Committee to the Staff Measure Summary in the packet
079	Rep. Beyer	Measure 11 offenses?
	Rep. Prozanski	Some would be. Explains
086	Rep. Beyer	Definition of "in camera"
	Rep. Eighmey	In the chambers of the judge. Explains
097	Rep. Uherbelau	Explains who might be in "chambers" during this time.
103	Rep. Prozanski	Questions limitations to where rule of evidence would apply. Continues

114	Rep. Eighmey	Replies: No reason other than LC directed it that way. Wanted it all inclusive.
121	Rep. Uherbelau	Points out that statute in question is any type of harassment. Continues
126	Chair Shetterly	Suggests Rep. Eighmey and LC look at items discussed, coming back with answers for future work session. >States his concerns. Could be made clearer. Continues.
138	Ingrid Swenson	Oregon Criminal Defense Lawyer's Association - Testifies in opposition to HB 2349 >circumstances under which clothing might indicate subjective consent on the part of that individual >recognizes what Rep. Eighmey is trying to accomplish >inciting crimes and consenting to conduct; these are different concepts >evidence of clothing is not admissible - gives example >discusses drafting changes and gives reasons
211	Rep. Prozanski	Discusses his concern with subjective consent.
236	Swenson	Replies. >suggests Committee include "consent" in the second part of the bill
252	Rep. Uherbelau	Expresses her difficulty with "subjective intent". Continues >asks for better example
274	Swenson	Explains "consent" vs. "motive" >gives an example >should not be barred under all circumstances
	Rep. Uherbelau	Continues looking for clarification. >not stranger crimes >in intimate relationship there may be signals
307	Rep. Bowman	Believes there is a big difference between consent and no consent. Troubled understanding the opposition to this bill.
337	Swenson	Explains her opposition to Rep. Bowman
346	Chair Shetterly	Your example raises interesting issues.

	Rep. Eighmey	It was my intent to prohibit the introduction of particular evidence that the inferred was always there. >more than willing to work with Swenson to incorporate her concerns
398	Chair Shetterly	Encourages the revisions
<u>CLOSES PUBLIC HEARING ON HB 2349</u>		
<u>OPENS PUBLIC HEARING ON HB 2386</u>		
430	Chair Shetterly	Reviews substance of bill
TAPE 23, A		
018	David Hicks	Lawyer, Oregon Department of Justice testifies in support of HB 2386. Historically the winner of a law suit recovers costs from the loser including costs of service as long as they are reasonable and necessary. Under current law, the costs of service are capped at \$20 which is often below market thus making it impossible for full recovery of expenses. HB 2306 would rely on market forces, a party's perceived self interests, and a judge's discretion to assure the losers aren't gouged with service expenses. Continues >5 problem areas where additional costs should be passed on: >out-of-state service >mileage >routine service is unsuccessful >State's contract >circumstances where litigants have a contract that permits the successful party recover costs
138	Hicks	Discusses safeguards for losing parties >control rates >indifference to fees paid; hold down expenses >Rule 68 still applies

		<p>Calls attention to problem with the "relating to" clause</p> <p>>poorly worded - narrow</p> <p>>amendment proposed by LC [Exhibit B]</p>
161	Rep. Uherbelau	When compared to HB 2416, does your bill give more protection?
	Hicks	<p>Two differences between the bill. Explains.</p> <p>>we identified real problem areas</p>
205	Rep. Uherbelau	Do you have limits for mileage recovery?
	Hicks	<p>We didn't draft one, but could. Explains</p> <p>>75 miles from court house should be in there</p> <p>>judge would limit to what is reasonable</p>
224	Rep. Uherbelau	<p>Discusses another concern:</p> <p>>service is time sensitive, no other choice but to go to a private server</p>
	Hicks	Considered that one. Continues
237	Rep. Wells	Questions sheriff's rates. Why not raise their fees?
	Hicks	We are concerned about private arena only.
251	Chair Shetterly	Discusses costs in light of Measure 47
258	Rep. Bowman	If a process server was needed, how would I know that the sheriff was available for a minimal fee versus a private server.
	Hicks	You might not know. Explains.
277	Rep. Bowman	Expresses her concern regarding the shifting of the legal profession to where a regular citizen has no affordable legal representation
	Hicks	<p>Replies. Question very broad but important. Comments.</p> <p>>policy decision already made</p> <p>>pay actual costs</p>
331	Rep. Eighmey	<p>Expresses concerns about passing along costs. Explains.</p> <p>>wording important</p> <p>>"may" with discretion of the courts</p>
375	Hicks	Comments on further amendments. Refers to Rep. Uherbelau's suggestion regarding time sensitive service.

390	Rep. Beyer	We seem to have two bills doing the same thing. Which would you prefer?
	Hicks	The one we drafted, 2306
406	Rep. Beyer	Offers suggestions
	Rep. Prozanski	Not in favor of taking away sheriff's process serving powers.
TAPE 22, B		
025	Chair Shetterly	Do we want to look at these additional provisions?
	Rep. Eighmey	Should give local option to look at costs. >sheriff's recover costs >chance to be competitive as private
035	Rep. Uherbelau	Agrees with Rep. Eighmey's comments. >should be looking at all fees
042	Rep. Bowman	Supportive of bill if caps were set. Explains.
047	Rep. Prozanski	Final determination would be set by a judge. Continues. >checks & balances >could be appealed >not supportive of caps
055	Chair Shetterly	Asks Mr. Hicks to work with Committee Counsel regarding language. >schedule work session with HB 2416 at same time
<u>CLOSES PUBLIC HEARING ON HB 2306</u>		
<u>OPENS PUBLIC HEARING ON SB 256</u>		
	Chair Shetterly	Reviews substance of bill.
		Legislative Consultant, Oregon State Bar. Testifies in support of SB 256. Explains "In Terrorem" clause:

072	A. Carl Myers	<p>>challenge the will and loose, you get nothing</p> <p>>are "in terrorem clauses" valid [Exhibit A] Explains.</p> <p>> Bill is a half way point in allowing ALL in terrorem clauses being valid and allowing NO in terrorem clauses being valid</p>
136	Rep. Eighmey	<p>Expresses his concerns regarding first example:</p> <p>>If I challenge the validity of the will and am unsuccessful, I'm out.</p>
	Myers	<p>Replies.</p> <p>>unless you had probable cause to believe will was a forgery or that it had been revoked by a subsequent will</p> <p>>don't want to eliminate valid challenges to the will</p> <p>Continues with examples</p>
164	Rep. Eighmey	<p>Continues to express his concerns</p> <p>>cites examples</p>
	Myers	Answers: objection not made in good faith
177	Rep. Uherbelau	<p>States her concerns with wording of the bill</p> <p>>agrees with Rep. Eighmey's concerns</p>
	Myers	<p>Cannot address a drafting question. Continues</p> <p>>clauses are designed to keep people from unnecessarily challenging the testator's wishes</p>
222	Chair Shetterly	<p>Explains: Grounds we see for someone to contest the validity of a will are that the will was forged or the will had been revoked. There are others.</p> <p>>this bill has picked out only two examples but not others</p>
	Rep. Uherbelau	Would like to have someone from the section come and explain. Cites her reasons.
	Myers	Would be happy to make a certified expert from the section available. Continues.
283	Rep. Beyer	<p>Uncomfortable with bill</p> <p>>needs more information</p> <p>>What is the status of the law now?</p>
		Happy to attempt to answer first part of your question.

	Myers	>In Oregon, case mentioned [Exhibit A] says all "in terrorem" clauses are valid. Continues >what the section hoped to say was: We are going to respect the wishes of the testator but not completely close out valid objections to the will that may turn out to be unsuccessful. >Section 5 establishes an effective date
337	Rep. Beyer	Section 5 is very confusing. Explains.
	Rep. Wells	Comments - If I don't have any benefits from the will and I challenge it and lose, I don't lose anything. Correct?
	Myers	Correct. There may be other penalties.
363	Rep. Uherbelau	Questions for clarification.
	Myers	Cannot relate any of the discussions of the section.
375	Chair Shetterly	Interested to know policy decisions. >reschedule for another public hearing and possible work session to give the Bar time to review and be here to answer questions
402	Rep. Uherbelau	Comments on unclear language.
	Myers	The desires of the Committee will be passed on to the section.
<u>CLOSES PUBLIC HEARING ON SB 256</u>		
428	Chair Shetterly	Declares meeting adjourned at 2:40 p.m.

Submitted by, Reviewed by,

Julie Clemente, David J. Amesbury,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Memorandum written by Bernard Vail for SB 256 - Carl Myers - 2 pgs

B - Proposed -1 amendments to HB 2306 - Staff - 2 pgs