

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**March 10, 1997 Hearing Room 357**

**1:00 P.M. Tapes 35 - 37**

**MEMBERS PRESENT:**

**Rep. Lane Shetterly, Chair**

**Rep. Judith Uherbelau, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Jo Ann Bowman**

**Rep. George Eighmey**

**Rep. Floyd Prozanski**

**Rep. Charles Starr**

**Rep. Larry Wells**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**David J. Amesbury, Counsel**

**Andrea Terry, Administrative Support**

**MEASURE/ISSUES HEARD:**

**SB 241**

**SB 252**

**SB 268**

**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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 35, A</b>		
	Chair	

004	Shetterly	opens meeting at 1:07
<b><u>SB 241--WORK SESSION</u></b>		
010	Shetterly	opens work session on SB 241
013	David Amesbury	explains SB 241
<b>025</b>	<b>Rep. Wells</b>	<b>MOTION: Moves SB 241 to the full committee with a DO PASS recommendation.</b>
028	Rep. Beyer	currently if an attorney is disbarred they have to stop practicing during the suspension
031	Shetterly	disbarment is the "yanking" of a license and you can never practice law again suspension is a temporary period of time that you don't practice law this only deals with suspensions
040	Shetterly	no other discussion; no objections SB 241 will go to the full committee Shetterly will carry close work session on SB 241
<b><u>SB 252--PUBLIC HEARING AND WORK SESSION</u></b>		
046	Shetterly	open public hearing on SB 252
045	Carl Myers	OSB
046	Myers	EXHIBIT A
079	Carter	President of OSB
080	Carter	we see SB 252 as a bill that will fill a gap
090	Eighmey	lawyers are being treated "special" here, no other business could this happen to if a business is "time sensitive" why don't we say in the statute of limitations that it may be suspended for 30 days or so
111	Uherbelau	why is this not written like a temporary restraining order
117	Myers	actually you do; this does not come into play until a petition has been filed
137	Myers	this section of the law deals with lawyers who have disappeared or have become incapacitated

145	Rep. Wells	one of his constituents (an attorney) is opposed to this bill
153	Myers	this bill just looks at the temporary procedure there are safeguards in place--the courts won't order the temporary guardianship unless a petition has been filed
172	Myers	the Bar needs to step in and handle the practice so that there is no damage to the clients
190	Uherbelau	the bar now sends out an inquiry of the attorney in question
202	Eighney	it is time sensitive material the other attorney in the case might also be affected
216	Beyer	why is this such an immediate problem why do we need this at this point in time
221	Carter	when someone tries to come into a practice and "clean-up", notice needs to be served to some one we need a formal tool this is not a broad problem, but one that needs to be addressed
244	Shetterly	question about line 6: what is contemplated by "specific action"
261	Myers	there are specific actions that need to be taken, example money that is owed
267	Eighmey	what about a statute of limitations that is expiring the very next day
273	Myers	we would take any action that would need to be taken to protect a client
293	Carter	OSB will try to find local lawyers who will try to come in and pick up the cases
307	Prozanski	if we did not do anything, what would happen
320	Myers	if this bill does not pass, then the client still has the right to sue the attorney of can get their losses recouped from the Client Security Fund our concern is that there may be cases where monetary damages do not remedy the situation
349	Myers	representative between client and lawyer is a special one this really only has to do with sole practitioner law firms
384	Beyer	what is the scope of this problem
387	Carter	we don't have statistics on this

		we looked at this initially on one particular case, this bill would have been a great remedy to this problem
Tape 36, A		
002	Myers	about two or three times a year the Bar has to step in and take over, usually in the cases of death
014	Shetterly	number of cases may not be great, but the magnitude of one case could be very great
020	Bowman	the bill is very broad
027	Myers	yes we are asking for a very broad discretion, but this discretion lies with the court
039	Shetterly	is there a due process here, is this a problem
045	Myers	it is not up to the Bar to make that decision, it is up to the Court
065	Carter	the way I viewed this as a sole practitioner is that there is no one else in my office who can pick up the pieces; I see this as a very good policy
<b><u>SB 269--PUBLIC HEARING</u></b>		
097	Shetterly	close public hearing on SB 252; open public hearing on SB 269
104	Bob Oleson	OSB
106	Oleson	this bill allows the Bar to have dove tail congressional district representation  EXHIBIT B
128	Shetterly	close public hearing on SB 269
<b><u>SB 268--PUBLIC HEARING</u></b>		
130	Shetterly	open public hearing on SB 268
150	Jim Kennedy	attorney with Kennedy and Kennedy
152	Kennedy	revised uniform partnership act (see EXHIBIT C)
184	Culpepper	general overview of the bill
201	Culpepper	EXHIBIT C  EXHIBIT D
246	Kennedy	discussing EXHIBIT D
257	Uherbelau	making LLP and entity, does this have any tax problems
260	Culpepper	no tax problems
273	Kennedy	discussing EXHIBIT D
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		liable for acts of the other partners
300	Culpepper	partnership agreement is a contractual or consensual agreement
350	Culpepper	ability to change things in a partnership
376	Culpepper	SB 268 makes very clear what can be modified and what can't
Tape 35, B		
003	Kennedy	explains how to form a partnership there are unintentional partnerships there are a number of gray areas that can be gotten into
045	Culpepper	in a partnership the rights to shares of the partnership are spelled out in a contract
092	Kennedy	fiduciary duties see #4 on EXHIBIT D
139	Kennedy	a number of people have complained about the fiduciary duties being attached to the beginning of a partnership; because the partnership has not yet begun
176	Kennedy	the partners and the partnerships are required to disclose information to each other this is a proactive move
180	Uherbelau	how would you know what information to pass on to the other partners
197	Kennedy	a partner has a right to demand anything related to the partnership
201	Uherbelau	is all info available to all partners
207	Culpepper	one of the problems is that the partnerships is not all in the office, it is sometimes items just known by a partner
221	Eighmey	if I know of a business transaction and do not tell my partners (that is related directly to the partnership) then am I obligated to tell them
253	Kennedy	you are correct, it is a balance
268	Eighmey	what am I going to do with this on a regular basis (2 options) 1. tell them everything 2. not to do anything
282	Kennedy	this is the default rule

294	Beyer	section 19, sub 2 providing access to former partners, is there a statute of limitation
307	Kennedy	a former partner can be liable
318	Culpepper	there may be an "exit" payment that the former partner may be receiving
330	Shetterley	the word "agents" would this include personal representatives of deceased partners
332	Kennedy	yes
350	Culpepper	we don't want a partner liable for something he/she didn't even know about
378	Shetterley	"knowledge" is defined to include that a person has "reason to know"
390	Kennedy	we have limited knowledge to actually "knowing"
Tape 36, B		
011	Kennedy	discussion on the question of liabilities
040	Eighmey	I want to flag the accounting for discussion later on
054	Kennedy	one other area that has changed is the bill provides that there is an exhaustion requirement  the exhaustion requirement becomes important because the partnership is now treated as an entity
071	Culpepper	Limited Liability Partnerships were introduced in 1995
093	Culpepper	title insurance  the new bill revamps the whole approach
101	Culpepper	any partner can withdraw at any time; that person would have the right to pull out at any time
116	Shetterley	question about a new partnership
142	Uherbelau	sections dealing with creditors
154	Shetterly	we will get there it may not be today, but we will get there
161	Kennedy	we are done with our overview
172	Wells	why are we doing this again, we had all the work about partnerships done in 1994
185	Culpepper	the 1994 NCCUSL not yet in effect
201	Uherbelau	the section on repeals  the law as it is now is in effect until 2003
209	Kennedy	new partnerships will be governed by SB268 after January 1998

223	Uherbelau	questions about creditors puts a terrific burden on creditors
251	Kennedy	the uniform act had public filing to put creditors on notice we are working with the Sec. of State's office to work on public reporting
285	Uherbelau	the six months would make sense if there was a "clearinghouse" for checking
304	Kennedy	newspaper filing
314	Culpepper	there is no central filing place set up
328	Culpepper	now we don't want partnerships not to have to register
338	Uherbelau	is six months long enough
359	Culpepper	there is no magic in the six months
364	Uherbelau	partner/creditor on the same level as third party creditor this comes out of the "jingle" rule
Tape 37, A		
007	Uherbelau	the priority of distribution
018	Kennedy	ORS section that deals with this
022	Uherbelau	priority to creditors because of the risk factors is different with different creditors
030	Kennedy	that was thrown out in 1985 with respect to Limited Partnerships we have followed RUPA based on their concern
056	Shetterly	adjourns meeting at 2:58 pm

Submitted By, Reviewed By,

Andrea Terry, David J. Amesbury,

Administrative Support Counsel

### **EXHIBIT SUMMARY**

**A - Testimony on SB 252 - introduced by Oregon State Bar - 1 page**

**B - Testimony on SB 269 - introduced by Oregon State Bar - 2 pages**

**C- Oregon Task Force Report: Oregon Revised Partnership Act - introduced by Jim Kennedy - 26 pages**

**D - Senate Bill 268: Oregon Revised Partnership Act - introduced by Jim Kennedy - 3 pages**