

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**March 17, 1997 Hearing Room 357**

**1:00 P.M. Tapes 40 - 41**

**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**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Lisa Fritz, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 3001 - Public Hearing**

**HB 3002 - Public Hearing**

**HB 2410 - Public Hearing**

**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 40, A</b>		

005	Chair Shetterly	Calls the meeting to order at 1:04 p.m.
<b><u>OPENS PUBLIC HEARING ON HB 3001</u></b>		
014	John Brennamen	Oregon Funeral Directors Association We're really here to listen to proponents of the bill. We don't feel there is any need for HB 3001.
021	Chair Shetterly	Opts to recess hearing until Rep. Prozanski is present.
038	Chair Shetterly	Calls for a recess of the meeting.
039	Chair Shetterly	Reconvenes.
<b><u>OPENS PUBLIC HEARING ON HB 2410</u></b>		
040	Paul Helikson	President of the Oregon Association of Process Servers Testifies in opposition of HB 2410. We feel the law should stay the same as it is. The insurance is already at a cost we feel is a minimum operation amount. It's already based on the size of the company. We're already trying to regulate the process serving industry through HB 3366, which we will introduce this year. We feel this HB 2410 is a step back; without insurance, where are people going to turn? I don't think this would benefit many people, but it would probably affect a large number of people.
063	Mark Comstock	Oregon State Bar Debtor-Creditor Section, Salem attorney in private practice Submits written testimony in opposition to HB 2410 ( <b>EXHIBIT A</b> ).
099	Chair Shetterly	Closes Public Hearing on HB 2410.
<b><u>OPENS PUBLIC HEARING</u></b>		

<b>ON HB 3001</b>		
108	Rep. Prozanski	District 40 Testifies in favor of HB 3001. Discusses background on, reasons for, and intent of the bill.
137	Chair Shetterly	Asks about discrepancies, between two lines, regarding language surrounding "48 hours" (line six, line 15).
140	Rep. Prozanski	It should be 48 hours.
142	Chair Shetterly	So, it should say what line 15 says down below.
143	Rep. Prozanski	There are some inconsistencies. I have no problem changing the language. This is just setting up a grace period. Relates an example of purchasing an automobile.
153	Rep. Beyer	You just made a statement that a person, buying an automobile, can rescind their contract. Would you clarify?
155	Rep. Prozanski	My understanding is there is a 72-hour grace period where individuals have the ability to rescind.
157	Rep. Beyer	I've had testimony contrary to that in my Business Subcommittee. Witnesses have testified that is not the law. The only thing that applies to, under current Oregon law, is home and telephone solicitations, or if they come to your door.
161	Chair Shetterly	I think there is a bill up now to create a right of rescission.
164	Bill Taylor	Committee Counsel I take it this is not rescission revision. If the person signs the contract, they are bound by the contract. What it's saying is an individual can take the contract home and look at it for 48 hours.
169	Rep. Prozanski	That's right.
171	Rep. Eighmey	You said the reason this came up is because of an incident, regarding public testimony, last session, of someone who was not willing to honor a prearranged contract.
175	Rep. Prozanski	No. There was a constituent that had been following what was in the press, regarding some of the dialogue that occurred. He relayed to me a story about when he was trying to make these arrangements that the funeral home he was dealing with refused to give him a copy of the contract for his own review, outside the presence of a sales representative. He thought that was wrong, and it was one of those things that really stuck in the back of my mind. Of course, it was after session, so there was nothing that could be done then. My father passed away in 1994, and he had prearranged his service. I guess being close to that type of situation and being involved with people during a very high-emotion time, I feel it's not inappropriate to allow someone that opportunity to reflect. The impression I received from this constituent was it was definitely the policy of that funeral home and

		that funeral home was trying to persuade the individual into believing this is standard practice.
196	Rep. Beyer	There's nothing in the law now that says, if I want to, I can take a contract home and look at it for two days, is there?
200	Rep. Prozanski	That's right, there is nothing in law. But, in common practice, at least as it was relayed to me, there are some institutions that are refusing to allow that to happen. I guess you could say, "Then take your business elsewhere." However, in many cases you may not have the choice, depending on the size of community you are in and availability of other services.
210	John Brennamen	President of Oregon Funeral Directors Association It's our feeling that you can't force a burial.
223	Rep. Uherbelau	This is not backing out of a contract. This is before you ever sign the contract. This allows you to take it home and read over the terms. I think that needs to be made clear.
229	Gary Simon	Oregon Funeral Director, operates funeral home in Woodburn Explains contract policy. We don't see where there is a need.
251	Rep. Bowman	If I understand you correctly, the prepaid plans that we see on TV and read in the newspaper, don't involve people coming in, paying a fee, and receiving a contract that says, "Upon their death, they will receive ___ and be buried at ___, etc." That doesn't happen through those prepaid plans?
254	Simon	Yes it does.
259	Rep. Bowman	But, you're saying that you collect the money and put it into a trust, and the trust is held until that person needs your services. Is that correct?
260	Simon	Correct.
261	Rep. Uherbelau	You said there are two prepaid plan methods: a funeral trust and an insurance policy. Is that correct?
263	Brennamen	Yes.
264	Rep. Uherbelau	Is the insurance policy a standard policy? Is it the same wherever you go in Oregon?
266	Simon	The policies are all different, but they are all regulated by the Insurance Commissioner's Office, and they all have that "cooling off" period in them.
272	Rep. Uherbelau	With the funeral trust, in addition to putting money into a trust, is there an actual document that the people sign?
273	Simon	Yes.
274	Rep. Uherbelau	Is that a standardized document?
275	Simon	Pretty much so, yes.
276	Rep. Uherbelau	It doesn't differ from funeral business to funeral business.

281	Simon	There are two companies in Oregon that basically manage these trusts, and both operate almost exactly the same way. The part I'm talking about is a revised statute, for the state, that spells this out, and that law is in all these contracts.
283	Rep. Uherbelau	Do you know the statute number you are referring to?
287	Simon	ORS 128.430, subsection eight.
290	Rep. Uherbelau	I would like to have a copy of one of the two documents that are used.
294	Rep. Eighmey	Is there a board or organization that looks into allegations (such as the allegations Rep. Prozanski spoke about)?
299	Simon	The State Mortuary and Cemetery Board is the consumer advocate for these affairs. I don't quite understand the problem there -- why the people weren't given a blank contract. There are no secrets in them, and they're almost all standard. That doesn't make much sense to me.
308	Rep. Beyer	If a person goes to revoke this trust, is there a fee?
311	Simon	No, he gets 100 percent of the interest and 100 percent of the principal.
318	Chair Shetterly	There aren't any trustee fees?
319	Simon	No.
320	Rep. Uherbelau	I have read that this is a problem in other areas, but I think I hear you saying that it's not a problem in Oregon. Is that correct?
327	Simon	Yes. Oregon presale people are licensed now, registered with the Mortuary Board. I think we're doing a good job.
337	Rep. Prozanski	Mr. Simon, it seems to me that you have no problem with people participating in this revocability of these type of contracts. It's puzzling me because, if the industry is allowing that and doesn't have a problem with that, why would you have a problem with letting someone look at a contract before they sign it? That would save you and your institution time.
350	Simon	I don't have a problem with it, but I don't think we need a law that says that is a good practice. I think it's already standard in the industry.
357	Chair Shetterly	And, you are telling us that there is a way out of either type of contract (trust or insurance) at no cost to the consumer.
360	Simon	Exactly.
363	Brennamen	The Mortuary and Cemetery Board made a proposal to keep tighter reins on those involved with these type of sales. Maybe they recognized the problem, and they decided to track, more closely, those involved.
378	Taylor	Does this bill also apply to other contracts with a funeral director?
380	Brennamen	I hope not.

<b>TAPE 41, A</b>		
010	Chair Shetterly	Closes Public Hearing on HB 3001.
<b><u>OPENS PUBLIC HEARING ON HB 3002</u></b>		
019	Rep. Prozanski	District 40 Discusses HB 3002 -- its background, purposes, and intent.
040	Doug Bray	Deputy State Court Administrator Submits proposed amendments to HB 3002 ( <b>EXHIBIT B</b> ). Explains amendments.
071	Chair Shetterly	They only address the juvenile piece of this.
072	Bray	That's correct.
074	Chair Shetterly	Are there forms in the juvenile statutes?
075	Bray	At this time, there are not.
082	Larry Redler	Resident of Medford, Oregon Testifies in opposition to the HB 3002. Gives example from his own experience, where he was arrested for violation of a restraining order.
116	Rep. Uherbelau	My firm represented Mr. Redler's spouse in their dissolution.
120	Redler	Rep. Uherbelau, I think you're in a very good position to see what damage this has done, unless there is abuse.
137	Rep. Prozanski	It sounds like you have a problem with the whole process -- the law right now -- rather than to the amendment I proposed.
140	Redler	The system needs to be changed. It gives more and more power to the noncustodial parent. I didn't really fight this case, but I never thought I'd lose my right to be a dad. That's exactly what happened.
150	Rep. Bowman	You were arrested because you were visiting your kids, and they said you had violated a restraining order. Is that correct?
152	Redler	Yes.
154	Rep. Bowman	Are you now visiting you children through your visitation rights?
155	Redler	Yes.
156	Rep.	So, you are, in fact, visiting your children?

	Bowman	
157	Redler	Yes.
158	Rep. Bowman	Are you visiting them away from home?
159	Redler	This started eight years ago.
160	Rep. Bowman	So, you don't have this problem today?
161	Redler	No. There's no longer a restraining order. The restraining order is only good for a year.
180	Layne Barlow	Oregon Men's Association Submits written testimony in opposition and proposed amendments to HB 3002 ( <b>EXHIBIT C</b> ). Explains amendments, their background, and what they are addressing.
230	Barlow	Continues testimony.
284	Rep. Uherbelau	Given your example, I can understand why you might be proposing the amendment here. I guess it's not nearly as clear to me how that can be used as an affirmative defense, as the situation of the restraining order goes to intimidating, molesting, etc. I can't think of any scenario where someone may entice someone to menace them. Maybe you can clarify that.
306	Barlow	If you're talking about an honest situation, we don't intend to change procedures for that. We intend to deal with a fairly common situation, where restraining orders are used as the first step of divorce. This is very wrong. I think any trier of fact should have a tool to say, "If you are so afraid of this man, why are you paging him? Why are you calling him?" This is the type of situation amendment two addresses.
351	Rex Barnett	Resident of Newberg, Oregon Testifies in opposition to HB 3003. Shares experience involving divorce, restraining orders, and custody of children. Explains that his wife lied and said he was abusive, got a restraining order on him, took the kids, fled the state, and killed herself and one of the children. She used state agencies to hide her mental illness.
<b>TAPE 40, B</b>		
018	Alvin Kuenzi	Families and Marriages Testifies in opposition to HB 3002. Explains, in detail, his personal experiences relating to restraining orders, divorce, and processes involved. Stresses that divorce damages children.
058	Kuenzi	Continues testimony.
108	Kuenzi	Continues testimony.
150	Chair Shetterly	Closes Public Hearing on HB 3002. Adjourns at 2:13 p.m.


Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - HB 2410, written testimony, Mark B. Comstock, Oregon State Bar Debtor-Creditor Section, 2 pages.**

**B - HB 3002, proposed amendments, Doug Bray, Deputy State Court Administrator, 1 page.**

**C - HB 3002, written testimony and proposed amendments, Layne Barlow, Oregon Men's Association, 6 pages.**