

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

April 20, 1993 Hearing Room 357 1:00 p.m. Tapes 79 - 80

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson
Rep. Tom Mason

STAFF PRESENT: Carole Souvenir, Committee Counsel Melanie
Thompson, Committee Clerk

MEASURES CONSIDERED: HB 2062 - Relating to student records

HB 3521 - Relating to real property recordings HB 3522 - Relating to
real property recordings

HB 3523 - Relating to real property recordings

HB 3601 - Relating to title to real property

[--- Unable To Translate Graphic ---] These minutes contain materials
which paraphrase and/or summarize statements made during this session.
Only text enclosed in quotation marks report a speaker's exact
words. For complete contents of the proceedings, please refer to the
tapes. [--- Unable To Translate Graphic ---]

TAPE 79, SIDE A

001 CHAIR BRIAN: Calls the meeting to order at 1:14 p.m.

HB 3523 - PUBLIC HEARING

Witnesses: Kevin Hanway, Oregon Land Title Association

Alan Brickley, Chicago Title

005 KEVIN HANWAY, OREGON LAND TITLE ASSOCIATION: Testifies in
support of HB 3523.

013 ALAN BRICKLEY, GENERAL COUNSEL, CHICAGO TITLE: Testifies in
support of HB 3523.

031 HANWAY: Discusses HB 3523 amendments. Addresses specific
concerns raised in letter from law firm, Furrer & Scott. (See EXHIBIT A)

039 MICHAEL SCOTT, ATTORNEY: Testifies in opposition to HB 3523.
Submits memo in opposition to bill (EXHIBIT B). Addresses various ORS.

079 REP. BAKER: Great distinction between construction liens and

civil litigation; regarding notice--it's optional.

086 SCOTT: Only notice requirement would be the service of the summons and complaint, versus lien area--take one out and there are still six left.

108 CHAIR BRIAN: Asks Hanway and Brickley if the action being sought is already included in ORS 740.

113 CAROLE SOUVENIR, COMMITTEE COUNSEL: ORS 740 refers to title or interest to property, wouldn't it already include a construction lien?

115 BRICKLEY: At the time, yes, but outside counsel suggests that it may not because of the nature of construction lien filing. Purpose is to clean this up.

123 CAROLE SOUVENIR, COMMITTEE COUNSEL: Are you aware of any case law based on an actual case?

124 BRICKLEY: None in Oregon, but could furnish a copy of outside counsel's opinion.

128 HANWAY: Refers to listing of various notices on Scott's testimony.

141 REP. EDMUNSON: Don't you check addresses?

143 BRICKLEY: Yes, but Oregon statutes don't provide that addresses are sufficient legal descriptions to provide constructive notice. Explains

why addresses are inadequate.

151 REP. EDMUNSON: Construction lien on property filed by careful title search would find an address known to exist.

155 BRICKLEY: Newer address doesn't always coincide with property; availability of current records to confirm existence can be a problem.

165 REP. BAKER: Double check on grantor and grantee index.

167 BRICKLEY: There are a number of ways to match them up, not always accurate. Not the best way to encumber property.

HB 3522 - PUBLIC HEARING

Witnesses: Kevin Hanway, Oregon Land Title Association Alan Brickley, Chicago Title

177 KEVIN HANWAY, OREGON LAND TITLE ASSOCIATION: Testifies and submits written testimony in support of HB 3522. (EXHIBIT B)

188 ALAN BRICKLEY, CHICAGO TITLE: Testifies in support of HB 3522. Explains purpose of bill, and indicates time limit can be modified.

254 HANWAY: Summarizes.

266 REP. EDMUNSON: Concern about using postal service as an agent for legal service; no way to prove where the mail went. Any objection requiring

certified mail, notification effective upon receipt?

287 BRICKLEY: No problem with that. Would give more certainty to the process.

292 REP. BAKER: Creating another document, a release of trust deed. What is that document?

294 BRICKLEY: Functional equivalent of deed of reconveyance trust deed. It seemed appropriate to show distinction between deed of reconveyance which comes directly from the lender and a document recorded under this statute.

303 REP. BAKER: Moral equivalent of a quick claim deed?

306 BRICKLEY: Can't argue with it.

308 REP. BAKER: Gives an example. Who is liable?

311 BRICKLEY: Statute provides that whoever executes release of that obligation would be liable to any party for damages including attorney's fees.

314 REP. BAKER: Escrow company, too?

315 BRICKLEY: If escrow company prepared it. Inappropriate to ask borrower to indemnify escrow company for acts undertaken by them.

327 CAROLE SOUVENIR, COMMITTEE COUNSEL: On page 3 of -1 amendments, Section 10, lines 6 through 10...Can escrow company be the agent? What about an attorney who prepares the agreement?

333 BRICKLEY: Yes, in this case. Limited to either title insurance company or agent; no attorneys.

347 BRICKLEY: Explains other ways to clear liens from record.

HB 3522 - WORK SESSION

372 MOTION: REP. EDMUNSON: MOVES to AMEND HB 3522-1 by deleting "mailing" and inserting "receipt" on page 1, line 16; deleting "first class mail" and inserting "certified mail,

return receipt requested" on page 1, line 22; deleting "mailing" inserting "receipt" on page 2, line 11; adding any conforming changes for the concept being that notice is accomplished upon receipt.

VOTE: Hearing no objections, the amendments are ADOPTED. Rep. Mason is excused.

402 MOTION: REP. EDMUNSON: Moves to further AMEND HB 3522-1 by

inserting "release of trust deed" on page 2, line 14; deleting "deed of trust" and inserting "trust deed" on page 2, line 31.

408 VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

409 MOTION: REP. EDMUNSON: Moves to further AMEND HB 3522-1 by inserting quotation marks to "release of trust deed" on page 3, lines 2 and 7.

414 VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

417 MOTION: REP. EDMUNSON: Moves HB 3522-1 AMENDMENTS AS AMENDED.

421 VOTE: Hearing no objections the motion passes. Rep. Mason is excused.

422 MOTION: REP. EDMUNSON: Moves HB 3522 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

425 VOTE: 3-0 MOTION PASSES AYE: Baker, Edmunson, Brian NO: None EXCUSED: Mason

HB 3521 - WORK SESSION

Witnesses: Alan Brickley, Chicago Title Kevin Hanway, Oregon Land Title Association

437 ALAN BRICKLEY, CHICAGO TITLE: Testifies in support of HB 3521. Proposal is that the judgment lien not attach to newly acquired property following the bankruptcy discharge.

TAPE 80, SIDE A

026 KEVIN HANWAY, OREGON LAND TITLE ASSOCIATION: Addresses concerns with

lines 9 and 10 of the bill. Suggests amendments. (EXHIBIT D)

041 REP. EDMUNSON: Asks to clarify how the bill will work.

043 BRICKLEY: Explains. Gives an example of discharging the lien.

066 REP. EDMUNSON: Asks if there is confusion over the method of discharging a lien in bankruptcy proceedings.

071 HANWAY: Confusion even among lawyers...distinction between discharge of the obligation and discharge of the lien.

075 REP. EDMUNSON: Still doesn't understand.

079 BRICKLEY: Explains that as soon as bankrupt person buys real property, the lien arguably attaches to the new real property.

080 REP. EDMUNSON: Problem comes when they try to sell it with the lien on the after-acquired property.

081 BRICKLEY: Correct.

082 REP. BAKER: Comments.

085 REP. EDMUNSON: Why do you need to reopen the bankruptcy?

088 BRICKLEY: Can proceed under ORS 18.420 to have state court release the lien.

090 REP. EDMUNSON: Cites example as a question.

097 HANWAY: Cleared up through the bankruptcy.

098 REP. EDMUNSON: Emphasizes that burden of clearing name and financial record rests with the debtor.

103 BRICKLEY: Problem arises when trying to purchase property. Title reports show the liens that were thought to have been discharged from prior bankruptcy action, continue to potentially encumber property which they are now going to purchase.

108 REP. EDMUNSON: Shouldn't the seller of the property know who he's dealing with, that these liens exist?

111 CHAIR BRIAN: Weren't these liens that should have been discharged?

112 BRICKLEY: Correct. The obligation has been discharged.

116 REP. EDMUNSON: This bill is saying, don't worry about it, the state will take care of it? 126 HANWAY: We're trying to match up expectations with results.

128 REP. BAKER: Most people thought they had done that. Explains judgments, discharge, no known liens.

140 REP. EDMUNSON: Expresses frustration that people aren't aware of the

consequences of the judgments against them.

149 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Testifies in support of 3521. Doesn't happen very often. Just when you are about to close, discharge isn't taken care of.

165 REP. EDMUNSON: Do you agree that customers can have judgment, liens removed, etc. by just taking care of it ahead of time at the courthouse?

169 BRAUNER: Yes. Customers have felt they have already taken care of it. They can do it, but there's no set procedure for them to follow. There

is some counseling that ought to go on at the conclusion of the bankruptcy.

189 REP. EDMUNSON: It looks like a bill to protect people from themselves.

195 REP. BAKER: Typical person going through bankruptcy owes large

amount to medical bills, divorce, they don't own property, debts are discharged, no lien against property. Three or four years later it pops up for the first time. Creditors hold up the sale to coerce back payments. It's harassment.

216 CHARLES ZENNACHE, ATTORNEY, OREGON STATE BAR: Submits and reviews testimony in opposition to HB 3521. (EXHIBIT C)

274 REP. EDMUNSON: Asks if witness handles bankruptcies. Is it standard

practice to not inform people when they file these petitions that they need to make sure their judgments are all cleared up?

279 ZENNACHE: Handles commercial bankruptcies, Chapter 11. Can answer the question in regards to corporate debtors: they are not granted a discharge of their debts.

297 REP. BAKER: The dispute is with the issue of later liens, after the bankruptcy judgment.

298 REP. EDMUNSON: Quotes ORS 18.350.

302 ZENNACHE: But the judgment has been discharged.

305 REP. EDMUNSON: No judgment to attach to subsequently acquired property. Are you aware of any penalty for attempting to record a judgment lien against subsequently acquired property where the judgment has been discharged?

312 ZENNACHE: Provisions in real estate law which allow a party to clear

title to property and seek damages for...placed on clear title. If lien wrongly placed on property you have recourse.

327 REP. EDMUNSON: Judgment recorded for all world to know even though the federal bankruptcy court discharged it.

329 ZENNACHE: Correct. As a debtor there is a procedure, properly placed upon him, to discharge debts. The statute is silent as to who bears the burden of establishing the discharge.

336 REP. EDMUNSON: Would the judgment remain on the books?

343 ZENNACHE: Judgment is docketed with the county clerk. Reducing the lien happens automatically upon docketing, unless it's being conveyed to another county. Explains docketing procedure.

354 REP. EDMUNSON: Clarification regarding recording judgments, liens, and discharging debts.

367 ZENNACHE: Explains interpretation of current law.

378 CHAIR BRIAN: Comments on lines 9 and 10 of the bill.

387 ZENNACHE: Talks of problems determining which debts have been discharged.

394 CHAIR BRIAN: Discusses bill's language and to whom it applies.
397 ZENNACHE: Disagrees with language's intent.
403 CHAIR: Fair if debtor being helped out with problem.
412 ZENNACHE: More discussion about procedure proving discharge.
427 CHAIR BRIAN: Addressing Hanway and Brickley, you may not want to do this?
430 HANWAY: Explains point of bill.
449 REP. BAKER: If debtor walks in with copy of schedule and copy of discharge, you'll take it off the exceptions on your...report?
455 BRICKLEY: Correct. We review the bankruptcy proceeding ourselves. Dealing with all the people and the problems are a headache.
476 HANWAY: ORS 18.420 is there to clear things up. Point is that purchaser should not have to go to that expense when it's clear on the face of the record that the lien was discharged.

TAPE 79, SIDE B

028 CHAIR BRIAN: You agree that buyer has burden of proof to show discharge? Work with counsel to clarify burden of proof issue so this is tighter.

HB 3601 - WORK SESSION

Witnesses: Bill Perry, Oregon Farm Bureau Paul Snider, Association of Oregon Counties

045 CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses -1 amendments to HB 360 1. Asks why counties are not included in subsection 1. (EXHIBIT E)

062 BILL PERRY, OREGON FARM BUREAU: Explains it is included at bottom of bill.

067 CAROLE SOUVENIR, COMMITTEE COUNSEL: Clarifies.

072 PERRY: Doesn't know why it wasn't included.

075 CHAIR BRIAN: Amendments to -1 regarding governmental units.

081 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Creates a remedy; doesn't affect rights to sue to quiet title.

089 REP. BAKER: No adverse possession against the county?

090 SNIDER: Refers to other statutes which restricts rights to challenge a deed or title under foreclosure...bill is not going to

affect ORS 312.230.

101 CHAIR BRIAN: Purpose not to actually own it, but allows private citizen to go to court.

103 PERRY: Concur.

108 CHAIR: Asks if this bill is retroactive. Reason to do it different?

115 REP. MASON: (Unintelligible answer), unfair to pass the bill and not

solve the problem....unless we hear strong opposition, we should make it retroactive.

126 REP. BAKER: If retroactive, for how long?

127 CHAIR BRIAN: In regard to case brought to the committee, asks what a date would be.

130 PERRY: Under the assumption of the last two years.

138 REP. MASON: Question of statute of limitations and quiet title.

140 SNIDER: Anyone could file an action after the effective date of the bill with respect to any parcel of land that the county claims an interest in.

147 REP. BAKER: Issues affecting the land usually don't have an ultimate

effective date.

153 PERRY: Adverse possession less than 10 years.

161 CHAIR BRIAN: Dates are in 1992.

164 SNIDER: If statute didn't run in original case, it won't now.

174 REP. BAKER: Still has a valid claim; bring in under this remedy.

177 CHAIR BRIAN: Cites ORS 12.050.

185 REP. MASON: Quiet title possession?

188 CHAIR BRIAN: Discusses quiet title possession

197 MOTION: REP. BAKER: Moves to AMEND HB 3601-1 AMENDMENTS by deleting "state" or "state agency" on lines 4, 5, 6 and 9, and inserting "governmental unit."

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Edmunson excused.

212 MOTION: REP. BAKER: Moves to ADOPT HB 3601-1 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Edmunson excused.

214 MOTION: REP. BAKER: Moves HB 3601 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Mason, Brian,

NO: None EXCUSED: Edmunson

HB 2062 - PUBLIC HEARING

Witnesses: Connie Bull, Department of Education Kathryn Murdock, Department of Education

230 CONNIE BULL, DEPARTMENT OF EDUCATION: Addresses amendments to HB 206 2, Federal Educational Rights and Privacy Act (FERPA). Testifies in support of amendments, explains purpose of bill. (EXHIBIT F)

284 REP. EDMUNSON: Asks if FERPA applies to post secondary.

285 BULL: Any student. Goes section by section, addresses various parts of the -1 amendments. 338 CHAIR BRIAN: Asks for clarification of the levels of schooling amendment applies to.

349 BULL: Section 3.

HB 2062 - WORK SESSION

361 CHAIR BRIAN: Would like to get this conceptually firmed up. We should delete the phrase "0-21 years of age" in Section 3, line 1?

375 BULL: Reiterates various changes. Leave the word "and" but delete the word "that."

385 CHAIR BRIAN: What was the next point...that you have language for?

387 BULL: Recommended language is "an educational agency or institution," at the end of line 5, on page 2.

400 MOTION: REP. BAKER: Moves the language read into the record by the witness be ADOPTED.

VOTE: Hearing no objections it is ADOPTED. All members present.

408 BULL: Addresses Section 4 regarding rights of parents.

417 REP. BAKER: Asks if Section 4 correlates to statute already in existence.

422 KATHRYN MURDOCK, DIRECTOR OF LEGAL SERVICES, DEPARTMENT OF EDUCATION (DOE): Yes. Allows non-custodial parent to consult with school staff

to the same extent as custodial parent. (EXHIBIT G)

430 REP. BAKER: Is it more restrictive language?

431 MURDOCK: No. It absolutely reflects the federal law that allows inspection of records. No conflict; the Oregon statute is simply broader.

438 BULL: Page 5, Section 6 sets forth the rights for inspection and review of educational records.

441 CHAIR BRIAN: Again, FERPA language? 443 BULL: Yes. Ms. Murdock will clarify reason for modifying federal requirement.

447 MURDOCK: Explains modification.

476 BULL: Continues Section 7.

481 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks if that is attachment B.

487 BULL: Correct.

489 CHAIR BRIAN: All of it?

491 BULL: Explains.

496 CAROLE SOUVENIR, COMMITTEE COUNSEL: Federal regulations, not statutes?

497 BULL: Exactly from it.

TAPE 80, SIDE B

030 CHAIR BRIAN: Does the committee want to add the language on attachment B at line 26, or is there a way to reference that without adding it all to the statutes?

033 REP. BAKER: Can we reference the Code of Federal Regulations (CFR)?

034 BULL: I'm sure you could.

036 CHAIR: Amended in section 3 already.

038 BULL: You'll need the proper CFR numbers...they're not on the document.

040 CHAIR BRIAN: Is the copy on that attachment B easily referenced by the CFR?

042 BULL: Yes.

044 CAROLE SOUVENIR, COMMITTEE COUNSEL: Problems with using numbers from

CFR is that sometimes numbers change; may want a conceptual change, consistent with federal law.

052 REP. EDMUNSON: Haven't decided vote on this bill, identify areas, etc. Opposed all bills dealing with public records. May be exception to that.

078 CHAIR BRIAN: Line 26, page 5.

080 BULL: Addresses section 8, 9.

086 CHAIR BRIAN: Family Office of Compliance? Must be a federal agency.

089 REP. EDMUNSON: What about disclosures of records for commercial solicitations. Is that a permissible use, mailing lists?

102 BULL: One exception called directory information, page 8 line 3.

119 REP. EDMUNSON: Asks about federal laws governing directory information.

123 BULL: Points out differences between state and federal government regarding directory information.

128 REP. EDMUNSON: Will we get to negative impact?

136 BULL: At least grant minimum, section 14. Additional language that may need to be added. Continues section by section analysis of 11, 12, 13, 14, 15, 16. Section 17 -- added by legislative counsel, recommend change wording from "pupil" to "student" and other minor changes. Sec. 18 applies to higher education.

193 REP. EDMUNSON: Where is penalty section?

195 BULL: Not in amendments, but is in FERPA.

198 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains.

201 BULL: Not in compliance.

203 REP. EDMUNSON: Gives example.

209 CAROLE SOUVENIR, COMMITTEE COUNSEL: Actually no private right action

with FERPA; some kind of tort claim.

214 REP. EDMUNSON: Torts hardest to succeed prevailing on.

226 REP. BAKER: Explains case, photographs are not listed.

231 BULL: Not sure photographs maintained by school.

236 BULL: FERPA has no remedy other than withdrawing federal funding.

238 REP. EDMUNSON: Should be something in there for a penalty.

245 BULL: Concern is broader, under public records, etc.

260 REP. EDMUNSON: Disclose a record once it is out. Cannot retrieve it.

Editorializes.

279 REP. BAKER: Statute before that disclosed welfare records.

283 REP. EDMUNSON: Comments again.

288 CAROLE SOUVENIR, COMMITTEE COUNSEL: Currently there is no remedy under Oregon statutes. Are you looking for a remedy? Do you want it to be a

civil remedy, or criminal?

294 REP. EDMUNSON: Should be both. Explains. Favors civil penalty.

314 REP. BAKER: Asks counsel to look at Section 14 proposing language that agency not disclose...

319 CHAIR BRIAN: Recommend best way to include FERPA references.

327 CHAIR BRIAN: Adjourns the meeting at 3:01 p.m.

Submitted by

Reviewed by

Laurie Baird
Coordinator

Anne May Committee Clerk

Committee

EXHIBIT LOG:

A - Proposed Amendments to HB 3522 - Kevin Hanway - 3 pages B -
Testimony on HB 3522 - Michael Scott - 4 pages C - Testimony on HB 3521
- Charles Zennache - 2 pages D - Testimony on HB 3521 - Kevin Hanway -
1 page E - Proposed Amendments to HB 3601 - Committee Counsel - 1 page
F - Proposed Amendments to HB 2062 - Committee Counsel - 16 pages G -
Testimony on HB 2062 - Kathryn Murdock - 3 pages