

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.

Measures Heard HB 2376 (Public) HB 2353 (Public) HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

January 24, 1991Hearing Room 357 3:30 p.m.Tapes 4-5

MEMBERS PRESENT:Rep. Ray Baum, Chair Rep. Marie Bell Rep. Kelly Clark Rep. Jim Edmunson Rep. Kevin Mannix Rep. Randy Miller

MEMBER EXCUSED: Rep. Tom Brian Rep. Rod Johnson

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: Lawrence E. Thorp, OSB (HB 2353) Tom Aasum (HB 2353) Gary Buell (HB 2353) Win Calkins, OSB (HB 2376)

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TAPE 4, SIDE A

004 REPRESENTATIVE BAUM, CHAIR: Calls the meeting to order at 3:45.

PUBLIC HEARING ON HB 2376

005 GREG CHAIMOV: Describes and explains HB 2376. This bill allows people to register with the company issuing the stock who they want to have the shares when they die. There is no revenue impact. Discusses items in the packet regarding this bill. Discusses HB 2353. There is no fiscal or revenue impact on HB 2353.

021 WIN CALKINS, OREGON STATE BAR AND COMMISSION ON UNIFORM STATE LAWS: Introduces himself and provides testimony in favor of HB 2376. See Exhibit A. This act was developed in the 1989 session of the National Conference on Commissioners on Uniform State Laws. Provides history on practice regarding bank accounts placing those accounts on death in the name of another beneficiary. This act would extend that concept to securities registration. This uniform act has been promulgated in the same form as other provisions of the Uniform Probate Code already established dealing with transfer on death bank accounts in multiple party bank account systems. Does not know of opposition to this bill. It is an improvement.

050 REP. MANNIX: There is reference to an amendment which has been drafted but is not at Legislative Counsel yet.

GREG CHAIMOV: For the bill following this one, HB 2353.

CHAIR BAUM: The registration form is with the securities dealer, the broker?

058 WIN CALKINS: It is handled by transfer agents who make the decision. They have to accept the transfer to proceed with the registration.

060 CHAIR BAUM: Who is the transfer agent?

WIN CALKINS: Each company will designate a transfer agent, which is a large bank or financial institution or some other representative. That agent handles the transaction as far as the securities registration is concerned.

074 CHAIR BAUM: Is this a consumer friendly measure?

079 WIN CALKINS: Yes.

CHAIR BAUM: If the appropriate forms are sent via the stock broker, how does that work? Are they required to change the forms of ownership as designated? Does this allow the owner of the stock to require the broker, upon owner's death, to give it to the designated beneficiary if form is filed?

WIN CALKINS: Currently, the transfer agent won't accept it. This is a cooperative effort across the country. The uniform bill allows the agent to send it in and it is accepted.

087 REP. MANNIX: Arguendo, assumes the law is enacted. If a security is held as tenants in common not as joint tenants with rights of survivorship, can this type of registration be arranged or are there intermediate steps? Curious about the transition.

093 WIN CALKINS: Regarding joint tenants, does not operate like a bank account. If there is a dissolution or some reason the original owner wants to take it out of joint ownership, have to get other owners to sign. People are trying to use this as a probate substitute and it is not working. Once the act goes into effect, they will need to get the certificate re-registered in the new form.

102 REP. MANNIX: Simple as that. When the new law is enacted new securities can simply go into this form but others have re-register.

106 WIN CALKINS: Yes. It will not change the current legal effect.

110 REP. CLARK: Can this been done in a will now?

WIN CALKINS: Yes. Giving securities away through the will operates the same. If in joint tenants with right of survivorship, it is outside of the will, and is an added step of consumer legislation to keep it current.

120 REP. BAUM: Who will prepare the form?

122 WIN CALKINS: The securities dealer will be assisting.

CHAIR BAUM: Closes hearing and opens work session.

WORK SESSION

149 REP. MANNIX: Moves this bill to full committee with a do pass recommendation. It is a good bill.

CHAIR BAUM: Calls for the vote on the motion.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Bell: Aye Rep. Brian: excused Rep. Clark: Aye Rep. Edmunson:  
Aye Rep. Johnson: excused Rep. Mannix: Aye Rep. Miller: excused Chair  
Baum: Aye

CHAIR BAUM: The bill passes to full committee with a do pass  
recommendation. Asks Rep. Mannix to carry it.

PUBLIC HEARING ON HB 2353

173 CHAIR BAUM: Comments on the bill.

174 GREG CHAIMOV: Gives a brief overview of the bill. This bill would  
rework existing laws to make it clear who decides how to dispose human  
remains.

180 LAWRENCE THORP, OREGON STATE BAR: Offers testimony on HB 2352 and  
its history. There are problems with the clarity of the current  
provisions and a conflict regarding anatomical gifts and the disposition  
of human remains. This is an attempt to come up with one section to  
determine who has responsibility for dispose of human remains and make  
it read the same as anatomical gifts. States there is an error in  
Section 2 as drafted. It refers to "cemetery authority" and under  
existing law that is defined narrowly as "only an organization that has  
connection with a cemetery." There are freestanding crematoriums in  
funeral homes that are not under the present law. Wants to revise  
Section 2 by adding the phrase "or licensed funeral practitioner".

236 REP. MANNIX: The change is on page 2, line 8 and will insert "or  
licensed funeral practitioner".

LAWRENCE THORP: Correct. Discusses the change and how it relates to  
current law. This cleans up a mess in the current law. There are some  
directors who believe this changes the law on who has priority. States  
this is an improvement.

268 REP. CLARK: On page 2, subsection 4, please clarify lines 3 through  
6.

LAWRENCE THORP: "A donation of anatomical gifts shall take priority."  
That simply says that if an anatomical gift is designated, it takes  
priority over disposition.

281 REP. CLARK: The language about "only if the person making the  
donation is of a priority under subsection 1 or 2 under this Section the  
same as or higher than the priority of the person directing...".

LAWRENCE THORP: Correct. It creates the same priority system.

REP. CLARK: Someone else has authority to make an anatomical gift?

LAWRENCE THORP: Yes. The list of who has the authority is identical  
with proposed revision to Section 97.130.

297 REP. MANNIX: Shouldn't the amendment read: "or licensed funeral  
service practitioner" since that is the phrase used in other places of  
the law?

LAWRENCE THORP: Has no objection. Wants to make it clear that this is  
not restrictive to someone who is associated with a cemetery. It should  
be "licensed funeral service practitioner".

311 TOM AASUM, FUNERAL DIRECTOR: Offers testimony against HB 2353. Is

concerned about the first line. "Any individual of sound mind and 18 years of age or older may direct any lawful manner of disposition of such individual remains by a writ instrument signed by the individual." It could take the right to designate what happens to the body for funeral services away from the family. Refers to Mr. Thorp's testimony regarding anatomical gifts. Discusses ramification of this section if passed into law. It means that a girlfriend could specify a boyfriend to take care of her body rather than the family. Does not think that is the intent of the law. The family should have the right to decide. The funeral service is done for the living not the dead.

367 CHAIR BAUM: Restates Mr. Aasum's testimony. Gives examples of a problem with the decedent making the decision.

390 TOM AASUM: Discusses cremation as a final destination not a funeral service. This does not prevent from having a funeral service.

405 REP. MANNIX: The burial is a final destination. Under current law, a member of the family may make the decision for the final destination?

TOM AASUM: Yes.

TAPE 5, SIDE A

010 TOM AASUM: The essence of this conversation is the funeral service is for the living and discusses what he recommends to clients.

012 CHAIR BAUM: The policy issue facing the committee is whether the decedent can decide in writing what can happen, or should it be left as is.

TOM AASUM: Does not believe it conflicts with anatomical laws.

022 REP. MANNIX: Discusses the anatomical law.

TOM AASUM: The only way this is beneficial is if there is no one of interest left.

033 REP. CLARK: Asks for a response to the following observation. A lot of time was spent last session in Family Justice subcommittee discussing power of attorney for health care directed to physicians that if a person is terminally ill, a list of thing will be done or not done. The movement to give individuals increasing authority over what happens to them when they become incapable of making decisions on their own. It seems that a two tier system might develop where a person can decide what will happen to them while alive but after passing on, their wishes will be ignored and family members are in a more powerful position. Looking for some consistency or logic between what happens the moment before death and the moment after regarding who calls the shots.

055 TOM AASUM: As the law now states, after death the spouse is the first person to have responsibility.

062 REP. MANNIX: Believes the directors concerned about this bill are protected anyway. If they do not have actual notice they can do what they are told by the spouse. Does not see a potential liability problem. It is a social issue.

071 CHAIR BAUM: The point is who the funeral is for.

REP. MANNIX: This has to do with the ultimate disposition of the body not ceremonies.

REP. BELL: Comments on ways of disposal.

080 CHAIR BAUM: Asks for further questions.

084 GARY BUELL, BUELL CHAPEL: Agrees with Mr. Aasum's testimony. Does not agree with his conclusions that this bill will change the main thrust of the law. The intent was to clarify who makes the decision if pre-named next of kin are not available.

096 REP. MANNIX: Wouldn't the bill help funeral homes since a statement given to the home would be honored. There is some question about this in current law.

103 GARY BUELL: Agrees. Don't know of any instances under present law that it is has been done.

REP. MANNIX: This law would make what is presently happening a little clearer.

GARY BUELL: Exactly. Supports the bill.

124 CHAIR BAUM: Closes hearing on HB 2353 and opens work session.

CLOSES HEARING

CHAIR BAUM: Believes it is a basic public policy decision. Not anxious to move this bill at this moment.

REP. MANNIX: Likes the bill and is ready to move it.

127 REP. EDMUNSON: Would support the bill. Believes it would help families.

WORK SESSION

141 REP. BELL: Comments on the bill and the right to make a choice. There is an option the decedent could make to let the spouse or family make decisions. Supports the bill.

152 REP. MANNIX: In subsection 3: "the person authorized in subsection 2 may delegate to someone else". The person who is deceased is covered in subsection 1. Maybe it ought to say "the decedent or any person authorized in subsection 2 could designate".

REP. BELL: In Section 1, area 2 where it is listing the people, it says "in the absence of actual notice of a contrary direction by the decedent". Doesn't that cover it?

164 REP. MANNIX: Comments that the notice is for the manner of disposition rather than who is designated. Can make it clear by saying the "decedent or any person authorized may delegate" in line 29.

171 CHAIR BAUM: Do committee members feel there is problem that needs correction?

172 REP. CLARK: Asks counsel to give recitation of current law and the problem with the law.

178 GREG CHAIMOV: On the last page of the materials on HB 2353, there is a copy of ORS 97.130 and ORS 97.141. ORS 97.130 lists people who may dispose of remaining. ORS 97.141 discusses the cemetery authority not being liable for following the decedent's life time request. There is an implied authority for the decedent. Recalls the Uniform Anatomical Gift Act as permitting the decedent to specify what happens.

195 REP. MANNIX: Moves to amend page 1, line 29 to add "the decedent or" at the beginning.

210 CHAIR BAUM: Asks about trouble with a will.

REP. MANNIX: No problems.

CHAIR BAUM: Discusses the legal aspect of a will and personal representative with this regard.

REP. MANNIX: Could put in a phrase that says "this does not include any testamentary document" so it will exclude a will.

226 CHAIR BAUM: There may be a will with it in.

REP. MANNIX: That's not delegation of authority to an individual to do something.

CHAIR BAUM: Asks about another amendment.

REP. EDMUNSON: Would like to ask Mr. Thorp some questions.

237 LAWRENCE THORP: Does not think a will is a problem. Either the will is going to be known and followed or it is not known and there is no problem. The purpose of this Section is to honor direction from the highest known authority.

247 REP. BAUM: Do you see problem with the residuary clause?

LAWRENCE THORP: No, because the will is not looked at before the body is disposed of.

256 CHAIR BAUM: Any problem with the proposed amendment?

LAWRENCE THORP: No problem with the amendment. It's an improvement but redundant.

259 REP. MANNIX: Thought of a problem, the decedent might be a minor or not in sound mind. Withdraws amendment and proposes another one to say "any person authorized in subsection 1 or subsection 2 of this section".

268 CHAIR BAUM: Any objections. Hearing none, so ordered.

REP. MANNIX: Presents amendment. "any person authorized in subsection 1 or subsection 2 of this Section" on line 29 of page 1.

276 CHAIR BAUM: Any objection. Hearing none, so ordered.

279 REP. MANNIX: Moves to insert "or licensed funeral service practitioner" on page 2, line 8.

284 CHAIR BAUM: Any objections. Hearing none, so ordered.

281 REP. MANNIX: Moves HB 2353 as amended to full committee with a do pass recommendation.

290 CHAIR BAUM: Calls for the vote.

COMMITTEE ASSISTANT: Roll call vote:

Rep. Bell: Aye Rep. Brian: excused Rep. Clark: Aye Rep. Edmunson: Aye Rep. Johnson: excused Rep. Mannix: Aye Rep. Miller: Aye Chair Baum: Aye

CHAIR BAUM: Asks Rep. Mannix to carry the bill.

307 CHAIR BAUM: Adjourns the meeting a 4:40 p.m.

Submitted by:    Reviewed by:

Kathy Neely        David Harrell Assistant Office Manager

EXHIBIT LOG:

A            -        Testimony on HB 2376 - Win Calkins - 2 pages