

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.

CONFERENCE COMMITTEE ON HB 2266

June 20, 1991Hearing Room E 8:30 a.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Cohen Sen. J Hill Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Parks, Chair Rep. R Johnson Rep. Mason

STAFF PRESENT: Greg Chaimov, Committee Administrator Jeff Steve, Committee Assistant

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TAPE 1, SIDE A

Technical Difficulties

001 CHAIR PARKS: We are back on the record.

042 JOHNSON: For the record. Trying to identify where statute of limitations that deals with fraud is.

043 CHAIMOV: ORS 12.110(1). Which includes from date of discovery.

055 CHAIR PARKS: One year can expire and no estate have been filed and a claimant's rights can be barred. That is a departure from existing law.

073 CHAIMOV: In the original bill it did say the "earlier of" but in the original bill it was going to make it easier to bring this kind of law suit.

077 SEN. COHEN: The Senate wanted greater flexibility for people to come in and not have lawyers deal with another time line.

082 CHAIR PARKS: What is the reason for reducing the time line to one year?

085 GREG CHAIMOV: This was because these cases are hard on families and

the intent was to get these cases done as soon as possible.

087 CHAIR PARKS: Paints a scenario. A person comes to him and said he had an estate to probate. It is his uncle's, but has a niece who thinks that something should have been left to her. As a lawyer Parks would tell the person to wait a year and the niece's right to bring the case is barred. Does not understand why the claims could not be brought during the proceedings of the estate. Is that a compromise?

104 CHAIMOV: Is it your intention to have four months or whatever is later?

107 CHAIR PARKS: Yes.

110 SHOEMAKER: Not sure whether leaving it open for the entire length of the probate proceeding is the best way to do that. There should be some deadline within the probate proceeding to bring the claim against the will.

127 JOHNSON: It is possible under normal probate law for a creditor of an estate to initiate a probate proceeding.

135 SHOEMAKER: What was the problem with the law as it was?

137 COHEN: There was testimony that it presented an unwary trap for lawyers.

146 PARKS: Do you want to leave it at the one year?

148 JOHNSON: Understood that the rationale for the bill was to get around the problem of the statute of frauds.

165 CHAIMOV: There were originally two parts to the bill. The first part said that to make it easier to sue in these types of cases we should just bring breach of contract claims. The second part pertained to notice.

173 PARKS: Understands that when there is an approval of the final accounting as far as the estate goes that is it. This only addresses the issue of the estate. If the estate is closed, what difference does it make?

210 PARKS: 4 months is a realistic time.

227 CARL MEYERS, OSB : Warren Deras of the OSB asked that Section 5 be removed. Not sure what the rationale behind it was.

243 PARKS: When the estate is closed what is the difference if what is at issue is the right to sue the estate?

255 MEYERS: Understands that the assets are still attachable by a creditor who did not have actual knowledge.

268 CHAIMOV: Spoke with Deras. He wanted Subsection 5 out because he believed that claimants should be able to bring a fraud claim under the regular two year statute of limitations because that is what people were used to doing.

318 PARKS: What is the proposal?

319 SHOEMAKER: To leave Subsection 5 out and go with the Senate version.

330 CHAIMOV: The way these claims are brought now is a fraud claim. There is a two year statute of limitations on the fraud claim. Do it that way and don't shorten it.

332 JOHNSON: Understands that the ordinary contract statute of limitations is 6 years. If a person had a regular contract claim against a decedent not based upon any will, is it not true that that claimant under the regular existing law would have to bring it within 4 months, not six years. This is an established practice. Does not see that there would be much conflict in extending fraud claims out to 1 year.

374 MEYERS: Understands that is what Mr. Deras's intention is in asking the Senate to remove Section 5. This is a fraud claim and it should be brought like a fraud claim.

TAPE 2, SIDE A

005 MEYERS: A person may not know until an estate is filed.

014 MASON: Which version would limit or discourage litigation?

016 MEYERS: Cannot answer that.

019 PARKS: If we do nothing with HB 2266 then the statute of limitations stays at two years.

022 CHAIMOV: The bill needs to go forward in some form.

023 MASON: Should try to cut down on litigation.

038 SEN. HILL: We decided this on the basis of what was done by others who have studied the issue.

069 PARKS: Recesses hearing until later at 9:17 a.m.

Submitted by:

Reviewed by:

J. Kennedy Steve, Assistant

Pat Zwick, Office Manager

EXHIBITS LOG:

AWritten Material on HB 2266 - Staff - 4 pages.