

Conference Committee on June 22, 1991 - Page

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 22, 1991Hearing Room E 8:30 a.m.Tape 3

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

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

MEMBERS EXCUSED: Rep. Mason

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

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TAPE 3, SIDE A

001 CHAIRS PARKS: Opens Conference Committee on HB 2266.

004 CHAIMOV: Mr. Deras said Section 5 needs to come out of the bill.

Section 4 of the B Engrossed bill provides an action has to be filed within four months of notice or one year of death of the decedent, whichever is earlier.

Recommends we achieve the limiting of the time limit by enacting subsection four, and making subsection 5 unnecessary.

022 CHAIRS PARKS: If we eliminate section 5 that would make the statute of limitations one year at the outside.

025 CHAIMOV: Under either version of the bill the statute of limitations is one year.

028 REP. JOHNSON: If our goal is to make it so that someone wants to bring a claim based on fraud, they are not touched by this.

038 CHAIMOV: Understands that it is the understanding of the proponent and the intention of the House Committee that the language on lines 16

and 17 be a description for the conduct that would be alleged in an action or fraud.

048 SEN. SHOEMAKER: Wants to make sure that under the Senate version a fraud action has the benefit of the later of one year after the death or four months after the petition is filed.

Is everyone satisfied it does?

058 CHAIRS PARKS: I am not.

059 CHAIMOV: It does not under the current language.

064 SEN. SHOEMAKER: Does it under the House language?

065 CHAIMOV: Under either version it is the earliest of four months notice or one year from the death.

069 CHAIRS PARKS: The Senate wanted to have the longest possible access. The House wanted to have a short access. A compromise between those two positions will be to make it the longer rather than the earlier.

070 SEN. SHOEMAKER: Is concerned that in a fraud action, since there is no deadline for filing a probate petition, as I read the statute, if you want to carry out your fraud you simply postpone the filing of the petition for a year after the death and you have made it. Do not think we can allow that to happen.

072 CHAIR PARKS: That is why I did not like the earlier. As a practical matter, if you use the later date, you don't expand it beyond the time of the administration of the estate because you don't have a viable defendant to sue.

079 SEN. SHOEMAKER: Can simply go with "the later of" for all these actions.

084 CHAIRS PARKS: Are you willing to accept "the later"?

Concerning the issue of failure to abide by the agreement to make the will, thinks the House would accept changing "earlier" to "later".

100 SEN. COHEN: Believes the Senate would accept that.

102 CHAIR PARKS: How does a person who contends that he is holding a will challenge another will at probate until it is filed?

103 CHAIMOV: Subsections 3 provides that if you want to bring one of those kind of claims, you have four months after notice. There is no one year time limit.

123 SEN. SHOEMAKER: Is there any risk that the person claiming that another will is the will would not receive that notice because it is not required to be delivered to them pursuant to the statute, nor was it required that they be named in the petition?

137 REP. JOHNSON: If you are a person who thinks you are going to get a great amount of money when someone dies, you might keep track of that person's health and death.

145 CHAIRS PARKS: The concern of the House was that they wanted a finality to the trauma of the family.

159 SEN. SHOEMAKER: Perhaps the one year should be available only to those not receiving notice.

175 REP. JOHNSON: Could also add same provision for those covered by paragraph four.

180 CHAIMOV: We first have to have the House concur in the Senate amendment taking out subsection five.

185 MOTION: SEN. SHOEMAKER: Moves conceptual amendment that the time limit for asserting an interest in the estate in each of the three situations described in paragraphs a, b, and c, of subsection 1 be the later of two four month choices, except that if the person asserting an interest did not receive the subsection a notice, that person would have up to a year from the date of death or the closure of the estate, whichever first occurs.

233 VOTE: Without objection, Chair Parks declares the motion adopted.

224 SEN. COHEN: Asks that the conceptual amendment be taken to Legislative Counsel and passed it by other appropriate people.

237 SEN. SHOEMAKER: There should be a cross reference to this within the statute of limitations.

MOTION: SEN. SHOEMAKER: Moves Mr. Chaimov's hand engrossed ORS 12.110 (1).

252 VOTE: Without objection, Chair Parks declares the motion adopted.

253 MOTION: SEN. SHOEMAKER: Moves to add the words "or revoke" after the word "make" on line 16.

Speaks to his motion. A contract to revoke a will would result in intestacy, but a contract to revoke a devise would not.

274 VOTE: Without objection, Chair Parks declares the motion passed.

277 REP. JOHNSON: Questions whether 1(c) is now adequate to cover intent.

294 CHAIMOV: Suggests taking out "entered into a contract" and putting in "agreed or represented that the decedent would".

Say "the decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate".

300 MOTION: REP. JOHNSON: Moves adoption of amendment previously stated by Counsel.

313 VOTE: Without objection, Chair Parks declares the amendment adopted.

319 MOTION: CHAIRS PARKS: Moves that the House concur in the Senate amendments dated 6/10/91 and that the bill be further amended and repassed.

331 CHAIMOV: Restates amendments.

That page 2, lines 16 and 17 of the bill be rewritten to say "the decedent agreed, promised, or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise or die intestate". That we add a new line at the beginning of ORS 12.110 that states "except as provided in ORS 113.075 (3). That lines 22 through 38 on page 2 of the B Engrossed bill be rewritten so that any of the claims alleged in this section would be brought the later of four months after the date of delivery or mailing of notice, four months after publication, except that if you did not get the delivery or mailed notice, you would have one year from the date of death of the decedent or the closure of the estate whichever occurs first.

359 REP. JOHNSON: Does not think publication has meaning since the amendments.

360 CHAIR PARKS: Accepts that as a friendly amendment.

380 VOTE: On a roll call vote, motion passes with Sen. Cohen, Sen. Hill, Rep. R. Johnson, Sen. Shoemaker, Chair Parks voting Aye. Rep. Mason is excused.

386 CHAIRS PARKS: Adjourns Conference Committee on HB 2266.

Transcribed by,

Pat Zwick