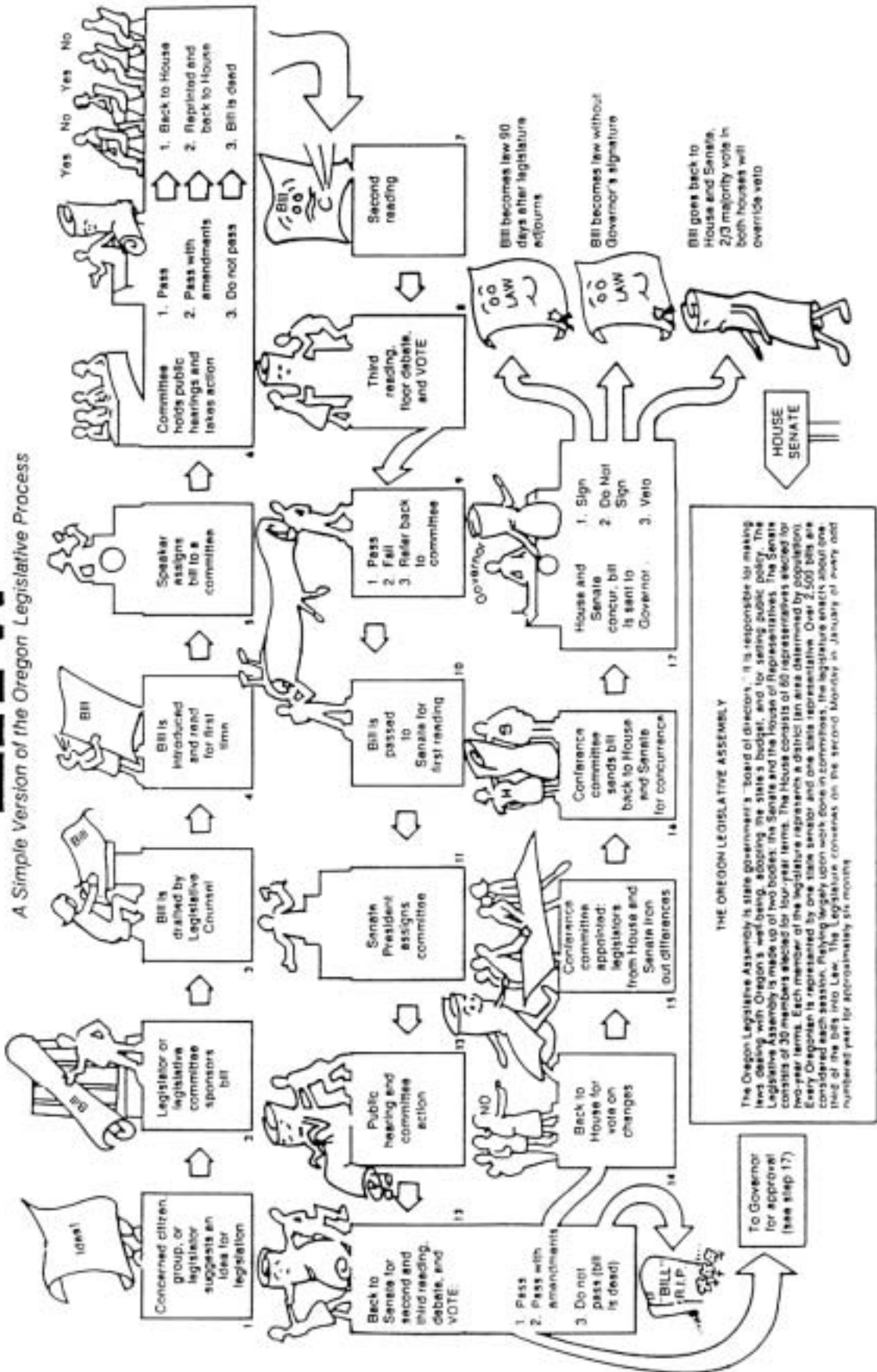


How An Idea Becomes LAW



Legislative Summary Format

This is a suggested legislative summary format for bar group sponsored legislation. The legislative summary will be the cornerstone of communications with other legal interest groups as well as the basis for future written and oral testimony provided to legislative committees during session. It may also serve as a useful format to analyze bills under consideration during the session. The summary should be no more than 1-2 pages in length. More in-depth measure analysis may be attached as an additional document if necessary.

OREGON STATE BAR Legislative Summary of Proposal

RE: Legislative Concept

FROM: Committee or Group proposing legislation

Legislative Contact:

Name:

Telephone:

Fax:

Email:

This bill would amend ORS _____

1. PROBLEM PRESENTED

Briefly state the PROBLEM PRESENTED (include ORS or case citation if applicable)

2. SOLUTION

Identify the SOLUTION to the problem (include proposed language change)

3. PUBLIC POLICY IMPLICATION

Identify any PUBLIC POLICY IMPLICATIONS (this includes legal, constitutional, financial, and any other issues as well as potential sources of opposition)

Sample of Legislative Summary

OREGON STATE BAR Legislative Summary of Proposal

RE: Requirement that trustee under the Oregon Trust Deed Act file notice of amount necessary to cure or pay off 15 days prior to foreclosure sale. (LC 443)

FROM: OSB – Debtor/Creditor

Legislative Contact:

Name:

Phone Number:

Fax:

Email:

This bill would amend ORS 86.705, et. seq., the Oregon Trust Deed Act and, specifically, we anticipate amending 86.750(3).

1. PROBLEM PRESENTED

The problem arises in that more and more out-of-state “trustee services companies” are conducting non-judicial foreclosures in Oregon. These “foreclosure mills” are nearly inaccessible to borrowers, holders of junior encumbrances and potential investors wishing to bid at foreclosure sales, to obtain information on the amounts necessary to cure or the minimum bid at the sale. Some of these trustee services companies do not even list their telephone numbers on the trustee’s notices of sale. Most have automated phone systems that give parties endless options to choose, where a live person cannot be reached. Some have actually disseminated recorded information that is incorrect. Despite repeated requests, it is often difficult for borrowers to obtain cure amounts or payoffs, if they have refinances or sales of their property. Their only alternative is to file an action to enjoin the sale or file for bankruptcy protection.

2. SOLUTION

The solution to the problem is to require the trustee to record an affidavit prior to the sale that sets forth the information that a borrower, junior encumbrancer or investor may need to tender a cure or pay off the loan. In this way, a tender may be made prior to the sale.

3. PUBLIC POLICY IMPLICATION

The requirement to record the affidavit will not significantly burden the trustee nor the existing procedures for non-judicial sales. While the “foreclosure mills” may oppose this additional requirement, it is generally within the contemplations of the act. Currently, ORS 86.753 allows a borrower or its successor in interest to cure the defaults at any time prior to five days before the last date set for the sale. That statute currently does not require the trustee or the beneficiary to give the borrower the amount necessary to cure. In many cases, due to complex interest accruals, late charges, foreclosure costs and attorney’s fees, the borrower may not know the amount necessary to tender. We believe that this change will conform with current public policy.

Sample Letter to Legislator

LANE
POWELL
SPEARS
LUBERSKY
LLP

Christopher P. Cline
(503) 778-2103
clinec@lanepowell.com

June 14, 2001

VIA FACSIMILE (503) 986-1778

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Senator John Minnis
900 Court Street NE, S-311
Salem, OR 97301

Dear Senator Minnis:

I am writing to you on behalf of the Executive Committee of the Oregon State Bar’s Estate Planning Section. I previously had testified before your committee on behalf of two bills which our committee had sponsored. I am writing to you today to express our committee’s support for that portion of SB 166 relating to so-called “pet trusts.” Our committee previously had supported HB 2739, which incorporated this legislation. I realize that, at first blush, such legislation appears trivial. However, our committee believes that it is nevertheless substantial legislation for the following reasons.

First, believe it or not, many of our clients ask that trusts be established for their pets, and it is not clear under current Oregon law whether such trusts are allowed. Second, this legislation is being introduced together with federal legislation that would provide a charitable income tax deduction for trusts that are created for pets, where the remainder interest on the pet’s death passes to charity. Adopting the Oregon “pet trust” bill would allow Oregon residents to create such charitable trusts once the federal legislation is passed. For these reasons, our committee endorses that portion of SB 166 relating to pet trusts, and we respectfully ask for your support and approval as well. If you have any questions, please feel free to contact me.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP



Christopher P. Cline

CPC:jrm
cc: J. Alan Jensen, Esq.
Susan Grabe, Esq.
Craig Heath, Esq.

999999.2001/325984.1

Anchorage, AK
Mount Vernon, WA
Olympia, WA
Portland, OR
Seattle, WA
London, England

Sample Legislation

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

House Bill 2372

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Judiciary Committee for the Procedure and Practice Committee of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows taking of testimony in civil jury trial by simultaneous transmission from different location. Requires showing of compelling need.

A BILL FOR AN ACT

1 Relating to testimony in civil trials; creating new provisions; and amending ORS 45.010.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. In civil jury trials the court may, on timely notice and for good cause shown,**
4 **in compelling circumstances and with appropriate safeguards, permit presentation of testi-**
5 **mony in open court by simultaneous transmission from a different location.**

6 **SECTION 2. ORS 45.010 is amended to read:**

7 45.010. The testimony of a witness is taken by [*five*] **six** modes:

8 (1) Affidavit.

9 (2) Deposition.

10 (3) Oral examination.

11 (4) Telephone examination under ORS 45.400.

12 (5) Examination before a grand jury by means of simultaneous television transmission under
13 ORS 132.320.

14 **(6) Examination by simultaneous communication device under section 1 of this 2001 Act.**

15
16

Sample of Testimony Before House Judiciary Committee

Wednesday January 22, 2003

In Support of HB 2064

Chair Williams, members of the committee, my name is Kevin Chames. I have been a lawyer since 1987. I currently maintain an office in Wilsonville and have practiced in the Portland metropolitan area since admission to the bar. I am here as a member of the Oregon State Bars' Procedure and Practice Committee as a whole and the subcommittee assigned to study HB 2064.

The Procedure and Practice Committee is composed of attorneys throughout the state, including Pendleton, Bend, Corvallis, Eugene, Medford and Wilsonville as well as Portland. The Committee prides itself on maintaining an evenly balanced membership of attorneys who represent both defendants and plaintiffs in civil litigation. In my practice I represent both. Our committee works hard to build a consensus on each issue we look at. We are charged with assessing the practical impact on the day-to-day workings of our civil judicial system, posed by bills presented to the legislature. Today, I am here to comment on HB 2064 on behalf of our committee.

Currently, ORS allows for testimony to be given in certain situations by means of a notarized affidavit. The notary requirement increases the time and expense of litigation, especially in less populated areas of Oregon where there are a limited number of public notaries. Even where the number of notaries is more plentiful, the notary requirement still increases the time spent by both the lawyer and the client; which, ultimately costs the client more in the form of attorney fees and both the lawyers and client's productivity in having to take the time to get statements notarized.

HB 2064 would amend statutes to allow for the use of a "declaration," subject to the penalty of perjury, as an additional mode of offering testimony. The types of declarations are currently used in federal courts in Oregon.

I urge the Judiciary Committee to move this bill to the full House with a "do pass" recommendation. Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

Sample of Legislative Testimony Before the Senate Judiciary Committee – Civil

May 14, 2001
In Favor of HB 2363

My name is Ruth Simonis. I am co-chair of the Legislative Committee of the Elder Law Section of the Oregon State Bar Association.

During the 1998 legislative session, new notice requirements were added in cases involving a petition for guardianship over an allegedly incapacitated adult. These requirements were codified in ORS 125.070(3), which included a statutorily prescribed notice form. The intent was that the traditional notice requirements in ORS 125.070(2) be given in *addition to* the new notice form in ORS 125.070(3).

Unfortunately, due to inartful drafting, the notice requirements under ORS 125.070(2), which was originally required to be given to *all* respondent's in a guardianship are now only required for *minor* respondents in a guardianship. Adult respondents are required to receive *only* the statutory notice form created last session under ORS 125.070(3).

Experienced elder law attorneys have continued to give both the traditional notice information and the new notice form to adult respondents, but the statute itself is unclear. Attorneys unfamiliar with this area of law would not know that both kinds of notice should be provided.

This bill would solve this problem by providing that the pre-1998 traditional notice requirements in ORS 125.070(2) would apply only to the appointment of a conservator for a financially incapable respondent, or for a guardian/conservator of a *minor* respondent. The new notice requirements passed last session and codified, as ORS 125.070(3), would be amended to include those notice requirements listed in ORS 125.070(2) which were not included in subsection (3). The result would be one standardized, comprehensive statutory notice form to all adult respondents in a guardianship. The consolidation of notice requirements into ORS 125.070(3) will provide clear direction to practitioners and ensure that the important information about the guardianship proceeding is provided in a readable and uniform manner to all adult respondents in a guardianship.

Sample Letter Requesting a Hearing



B.B. Bouneff • John Chally
Sandra Hodgson*

*Admitted in Oregon and Montana

Legal Assistants
Leslie East
Shelly Reynolds

March 26, 2001

Senator Bill Fisher
Chair, Senate Health and Human Services Committee
900 Court Street NE S-209
Salem, OR 97301

RE: Senate Bill 125

Dear Senator Fisher:

I am writing to request you to schedule a hearing on Senate Bill 125. I am a member of the Standing Committee on Adoption for the Family Law Section of the Oregon State Bar. Our committee worked with the Coalition of Oregon Adoption Agencies on this bill, and we believe it provides a needed service for birth parents who are placing their children for adoption.

SB 125 adds a new section to the adoption statutes that would require written notice to a birth parent who is voluntarily relinquishing a child for adoption that he or she has the right to receive adoption related counseling in either an independent or agency adoption. The prospective adoptive parents would be required to pay for the uninsured costs of the counseling. The counseling would be limited to three sessions prior to relinquishment and three sessions after relinquishment.

There is no financial or constitutional impact from this bill.

It is currently standard practice in adoption situations for the adoptive parents to pay for birth parents' adoption counseling. This bill would insure that all consenting birth parents were notified of the availability of counseling.

Please schedule a hearing on SB 125 so that it can be considered this session. Thanks for your attention to this matter.

Very truly yours,

Sandra Hodgson

SH:srr
Enclosures
cc: Susan Grabe, Oregon State Bar

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Telephone: 503/238-9720 • FAX: 503/239-3989