

Testimony in Support of HB 2569
Before the House Consumer Protection and Government Efficiency
Committee
February 21, 2013

Chair Holvey and Members of the Committee:

My name is Patrick W. Wade. I have been a member of the Oregon State Bar since 1984, and I practice in Eugene. My practice has focused primarily on representation of creditors in state and bankruptcy courts and enforcement of secured interests in both real and personal property and to some extent on representation of debtors in state court and out of court workouts. I appear before you today as a representative of the Oregon State Bar Debtor-Creditor Section as a proponent of HB 2569.

The membership of the Debtor-Creditor Section of the Oregon State Bar includes over 700 practitioners who focus on representing debtors, creditors, or both. The Legislation Committee of this Section is composed of members representative of the Debtor-Creditor Section as a whole. The primary purpose of the Legislation Committee is to propose new legislation to improve the administration of justice in connection with debtor-creditor issues in Oregon. The Legislation Committee also reviews and comments on legislation proposed by others that affects the adjustment of debtor-creditor relations in Oregon.

HB 2569 addresses the limitations resulting from the appointment of a single lawyer in a law firm as a trustee in a trust deed. It amends both ORS 86.705 and 86.790.

Current law permits certain categories of entities to serve as a trustee under a trust deed pursuant to ORS 86.709. For example, the statute allows financial institutions, trust companies, and title insurance companies to be appointed as trustees. Nothing in the statute prescribes who may act on behalf of such an entity when the entity is serving as a trustee under a trust deed, and so any person authorized by such an entity may execute documents and take necessary actions to perform the duties of a trustee.

The statute also permits individual attorneys who are members of the Oregon State Bar to serve as trustees. Under current law, if an individual trustee is temporarily away from the individual's place of business, becomes incapacitated or otherwise cannot continue to serve for any reason, formal action with respect to the trust deed must await the trustee's return or restoration of the trustee's ability to serve. If the trustee never can again serve, the beneficiary must appoint a successor trustee, and in such event no action may be taken until the appointment of the next trustee has been recorded.

The proposed change to ORS 86.790 would permit a law practice to serve as a trustee. Once a law practice has been appointed as trustee, then any necessary action could be taken by an authorized member of the firm. This would eliminate delay and confusion resulting under the current statute. The proposal would not change any essential characteristic of the limited types of individuals and entities that are qualified to act as trustee, but would allow for reasonable flexibility to the same extent as trustees which

are financial institutions, trust companies, and title insurance companies now enjoy under the current statute.

The specific changes include new language providing a definition under ORS 86.705 of “law practice” and, in ORS 86.790, inclusion of a “law practice” as an entity that may be a trustee. A new provision designated as subsection (8) of ORS 86.790 describes the persons who may act on behalf of the law practice in its capacity as trustee.

After the bill was drafted by Legislative Counsel, comments were received which suggested that the proposed language might be improved for clarity. A proposed amendment is attached to this testimony to address those issues.

I urge the House Consumer Protection and Government Efficiency Committee to move this bill, with the proposed amendment, 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.