Oregon State Bar

Testimony in support of SB 522
House Judiciary Committee
On behalf of the OSB Family Law Section

April 24, 2017

Dear Chair Barker and Members of the Committee:

My name is Ryan Carty. I am an attorney in private practice limited to family law. I am the legislative liaison for the Family Law Section of the Oregon State Bar for the current legislative session and am currently serving as Chair of the Family Law Section's Legislative Subcommittee. I appear today in that capacity. The Family Law Section was originally formed in 1978, and today is made of up of over 1,000 attorneys who practice family law throughout Oregon. We have members from 30 different Oregon counties, representing a wide variety of clients each with their own unique problems and concerns. Our executive committee is comprised of 12 members from 7 different counties, spanning from the lively streets of Pendleton, through the fertile fields of the Willamette Valley, and spanning down to the heart of the Rogue River in Grants Pass.

The Problem

ORS 107.810 through 107.830 establish the court's authority to order an obligor of child or spousal support to obtain life insurance to provide continuing support in the event of the obligor's death. SB 522 addresses a problem that arises in this context when:

1. A spousal or child support obligor (i.e., the person paying support) is required by court order to provide life insurance for the benefit of the obligee (i.e., the person receiving support); and
2. The obligor obtains life insurance; but
3. The obligor names a beneficiary other than the individual designated in the court's order (i.e., a child, child's parent, or the former spouse); and then
4. The obligor dies.

Under current law, the court-ordered beneficiary has no recourse against the actual beneficiary unless the court-ordered beneficiary can prove that the actual beneficiary had knowledge of the court-ordered obligation. That is a difficult burden to meet.

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The purpose of SB 522 is to avoid the practical problem of forcing a court-ordered beneficiary to prove a lack of knowledge on the part of the actual beneficiary. SB 522 places a premium on the value of a judgment and imputes notice to third parties when an obligation to provide life insurance is set forth in a judgment that is entered in a circuit court in this state. This concept is consistent with the well-established concept of constructive notice. See, for example, ORS 93.730 (recordation statute), *Belt v. Matson*, 120 OR 313, 323-24 (1927).

The provisions proposed in SB 522 are consistent with well-established principles of unjust enrichment and will provide an equitable solution to a patently unfair problem that faces Oregonians. One amendment was made to the bill in the Senate to address concerns raised by the insurance industry. The bill now clarifies that entry of a judgment ordering a life insurance policy only constitutes constructive notice as to any named third-party beneficiary. We are happy to work with this committee and other parties to address any additional concerns that might arise.

Thank you for your time and your consideration, and I will be happy to answer any questions that you might have.

Sincerely,

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