

SENATE COMMITTEE ON
JUDICIARY

May 7, 1993 Hearing Room C
1:00 p.m. Tapes 148 - 149

MEMBERS PRESENT: Sen. Dick Springer, Chair
Sen. Bob Shoemaker, Vice-Chair
Sen. Jeannette Hamby
Sen. Karsten Rasmussen
Sen. Gordon Smith
Sen. Catherine Webber

STAFF PRESENT: Karen Quigley, Legislative Counsel
Bill Taylor, Legislative Counsel
Kate Wrightson, Committee Administrator
Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Work Session on SB 867, SB 301, SB 621, SB 461, SB
640 ,
SB 689
Public Hearing and Possible Work Session on SB
110 5.

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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.

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TAPE 148, SIDE A

003 CHAIR SPRINGER: Opens hearing at 1:20 p.m.

WORK SESSION

SB 867:

Grants cooperative corporation security interest in certain capital
credits, capital credit accounts or other evidence of equity to secure
debts owed cooperative.

003 QUIGLEY: Gives overview of the bill.

027 MOTION: SEN. G. SMITH: Moves that SB 867 be sent to the Floor with a
DO
PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Rasmussen
is EXCUSED.

032 The motion is ADOPTED. Sen. G. Smith will CARRY.

SB 301:

Expands prohibition on use of Motor Vehicles Division accident reports
for commercial purposes.

036 QUIGLEY: Gives overview of SB 301-A2 (4-19-93) and
Hand-engrossed
(4-24-93) amendments. (EXHIBIT A, B)

055 CHAIR SPRINGER: Has Senator Dwyer had a chance to participate in
the
preparation of these amendments?

QUIGLEY: He has approved them and they were put together by Charlie
Williamson and Karl Myers.

068 CHAIR SPRINGER: This legislation intended to refer to ambulance
chasers.

Would this get at an auto body repair business for using this for
solicitation?

CHARLES WILLIAMSON: Yes, it would.

076 CHAIR SPRINGER: How about a investigator who was acting on behalf of
an
Attorney who was retained by a client who is attempting to gather
information, such as witnesses?

WILLIAMSON: They'd be entitled to the report and to use it for that
purpose.

083 SEN. SHOEMAKER: On line 8, we should add "or reports" since
we're
distinguishing between records of reports and reports themselves.

092 MOTION: SEN. SHOEMAKER: Moves to ADOPT on line 8 "or reports" to
appear
after "records".

VOTE: Hearing no objection the amendment is ADOPTED.

094 MOTION: CHAIR SPRINGER: Moves to ADOPT the hand-engrossed amendments
as
amended.

VOTE: Hearing no objection the amendments are ADOPTED.

096 MOTION: SEN. SHOEMAKER: Moves that SB 301-A2 as amended be sent to
the
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Rasmussen

is EXCUSED.

101 The motion is ADOPTED.

SB 621:

Modifies list describing order of priority for application of assets of financial institution when financial institution becomes solvent or goes into liquidation.

105 QUIGLEY: Gives overview of bill.

113 MOTION: SEN. SHOEMAKER: Moves that SB 621 be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Rasmussen is EXCUSED.

122 The motion is ADOPTED. Sen. Webber will CARRY.

SB 461: Defines "person" to include trusts for purposes of Uniform Partnership Law.

132 QUIGLEY: Gives overview of SB 461-1 amendments. (EXHIBIT C, D)
- There is an emergency clause effective on passage, but we haven't heard testimony on this aspect.

140 CHARLES WILLIAMSON, OTLA: Testifies in support of SB 461-1 amendments.
- OTLA has no objection to trusts being able to engage in partnerships.
- We're concerned that Subsection 1 of Section 5 changes common law and that has been deleted.

214 FRANK BRAUNER, OREGON BANKERS'ASSOCIATION: Testifies in support of SB 461-1 amendments.

243 WILLIAMSON: I don't think there are any malpractice traps in the bill.

BRAUNER: I prefer that we remove the emergency clause and come back to you at a later date with it.

269 MOTION: CHAIR SPRINGER: Moves to ADOPT the deletion of Section 7.

VOTE: Hearing no objection the amendments are ADOPTED.

288 MOTION: SEN. SHOEMAKER: Moves to ADOPT the additional language on line

23 of the printed bill adding "or other wrong doing" after the word negligence.

VOTE: Hearing no objections the amendment is ADOPTED.

294 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 461-1 amendments
as
further amended, including the handwritten amendment at the top of the
-1 amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

298 MOTION: CHAIR SPRINGER: Moves that SB 461 as amended be sent to
the
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

309 The motion is ADOPTED. Sen. G. Smith will CARRY.

SB 689:

Excludes charitable remainder annuity trusts and charitable
remainder

unitrusts from definition of annuity in Insurance Code.

315 QUIGLEY: Gives overview of SB 689-1 amendments. (EXHIBIT E)

338 WAYNE PETERSON, LEWIS & CLARK COLLEGE: Testifies in support of SB
689 -1
amendments.

357 CHAIR SPRINGER: Recently we passed another bill on the Floor
that
expands the number of organizations that are eligible to participate
in
this form of annuity. Is that correct?

355 TERRY, DEPARTMENT OF INSURANCE & FINANCE: That's SB 994. I don't
recall
if our division supported it. No one can offer or issue such annuities
unless permitted in the statutes.

385 SEN. HAMBY: I Had a problem in filing the annual report. Can you
get
your annual report together in 60 days?

TERRY: We usually have 120 days following the close of any Fiscal
year.
A later reporting date would be helpful for my constituents.

407 SEN. HAMBY: One-hundred & twenty days would be the outside. Would
that
fit with the department?

TERRY: We could live with that.

TAPE 148, SIDE B

003 TERRY: We picked 60 days as being the time allowed for all other insurers to file statements with us.

SEN. HAMBY: How would 90 days work?

010 TERRY: That would be fine. This was the period for the actual report, not the audited report. The audited one would be filed 6 months after the close of the period.

049 GARY ANDINE, OREGON INDEPENDENT COLLEGES ASSOCIATION: Perhaps a 75 day period (September 15) would be good.

058 MOTION: SEN. HAMBY: Moves to ADOPT September 15 for line 17.

VOTE: Hearing no objection the amendment is ADOPTED.

061 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 689-1 amendments as amended.

VOTE: Hearing no objection the amendments are ADOPTED.

065 MOTION: SEN. HAMBY: Moves that SB 689 as amended be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

069 The motion is ADOPTED.

073 SEN. RASMUSSEN: I would like to be reflected as an AYE vote on SB 867 .

PUBLIC HEARING AND POSSIBLE WORK SESSION

SB 1105:

Authorizes Motor Vehicles Division to conduct administrative review, rather than hearing, when certain suspension or cancellation actions of division are challenged.

085 JOAN PLANK, DEPARTMENT OF TRANSPORTATION-DMV: Submits and reviews

written testimony in support of SB 1105. (EXHIBIT F)

- The bill clarifies which actions the DMV can use the administrative review process on.

102 RANDY FRASER, DEPARTMENT OF TRANSPORTATION-DMV: Submits and reviews

written testimony in support of SB 1105. (EXHIBIT G)

147 CHAIR SPRINGER: So, we're conceptually proposing to provide for

administrative review for identification card cancellation resulting

from a conviction.

- What's an example of "other action" by the court?

FRASER: We would be considering judgement filed by the court and an individual is subject as a condition of that judgement to file financial responsibility.

PLANK: We are getting at "Fail to appear, fail to comply" actions by the court.

179 MOTION: CHAIR SPRINGER: Moves to ADOPT the proposed amendments to
SB 1105 outlined in the April 27, 1993 letter and read into the record.

VOTE: Hearing no objection the amendments are ADOPTED.

190 CHAIR SPRINGER: Has Senator Dukes advised you of her interest in
the bill?

PLANK: No, she hasn't. This didn't go through the Transportation Committee, but they were made aware of the bill.

200 MOTION: SEN. HAMBY: Moves that SB 1105 as amended be sent to the
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

209 The motion is ADOPTED. Sen. Shoemaker will CARRY.

WORK SESSION

SB 640:

Provides that person convicted of aggravated murder is not subject to death penalty if person is mentally retarded.

221 TAYLOR: Gives overview of the SB 640-1 amendments. (EXHIBIT H)

236 SEN. RASMUSSEN: Do the amendments also address the concerns about
the proposed legislation becoming a defense for aggravated murder cases?

TAYLOR: That was the intent.

250 SEN. G. SMITH: How can someone retarded have criminal intent? Have
we convicted an MR person?

270 JANACE STARR, ARC: Many have been executed in other states. The fact

is
that the blame worthiness isn't there.

277 BRENDA PETERSON, DEPARTMENT OF JUSTICE: The concern was that a lot
of
non-MR defendants would use this pre-trial proceeding as a defense,
which carries a huge fiscal impact and delay of sentencing
proceedings.

- There is only a need for post-trial determination of mental
retardation.

311 SEN. G. SMITH: There is big difference in terms of deciding if
someone
is mentally retarded. Wouldn't one know up front?

320 STARR: There are objective standing tests to determine
mental
retardation.

SEN. SHOEMAKER: If a person is MR can they have the necessary intent?

331 STARR: I would not say that someone with mental retardation could
not
have necessary intent.
- We've limited the definition of mental retardation.
- Its very unlikely that someone with an IQ under 70 would manifest
necessary intent.

SEN. SHOEMAKER: If that's true and a person was successful in
post-conviction proceeding, could we not then expect an appeal from
the
basis that the conviction itself was flawed because there couldn't
have
been the necessary intent?

346 PETERSON: I don't think anyone in Oregon has ever claimed, since
198 4
when the death penalty was re-enacted, that they were mentally
retarded.

STARR: The determination of MR has been done Pre-trial. If not for
Fiscal Impact people would want this determination to be made
pre-trial.

384 SEN. SHOEMAKER: From what I understand, determination is reached, if
not
pre-trial, during trial. It does call for an additional procedure.
CHAIR SPRINGER: We can carry this over to Monday.

404 SEN. SHOEMAKER: If I could be shown that this would have any
real
application, and not just another device to post-pone things, I would
vote yes.

415 CHAIR SPRINGER adjourns hearing at 2:20 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Karen Quigley
Bill Taylor
Administrator

EXHIBIT LOG

- A - Proposed SB 301-A2 amendments-staff-2 pgs.
- B - Hand-engrossed SB 301 amendments-staff-1 pg.
- C - Hand-engrossed SB 461 amendments-staff-1 pg.
- D - Proposed SB 461-1 amendments-staff-1 pg.
- E - Proposed SB 689-1 amendments-staff-1 pg.
- F - Testimony on SB 1105-Joan Plank-1 pg.
- G - Testimony on SB 1105-Fraser-1 pg.
- H - Proposed SB 640-1 amendments-staff-1pg.