

SENATE COMMITTEE ON JUDICIARY

June 11, 2003
8:00 a.m.

Hearing Room 343
Tapes 160 - 161

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Ginny Burdick, Vice-Chair
 Sen. Ted Ferrioli
 Sen. Charlie Ringo
 Sen. Charles Starr

MEMBER EXCUSED: **Sen. Vicki Walker**

STAFF PRESENT: **Craig Prins, Counsel**
 Bill Taylor, Counsel
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2409A Public Hearing and Work Session**
 HB 2865A Work Session
 HB 2094A Public Hearing
 HB 2368B Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 160, A		
003	Chair Minnis	Calls the meeting to order at 8:24 a.m. Opens a public hearing on HB 2409A.
<u>HB 2409A PUBLIC HEARING</u>		
009	Craig Prins	Committee Counsel. Introduces HB 2409A which provides that Supreme Court has exclusive jurisdiction to decide appeal of certain actions filed before January 1, 2003, in which one or more cities or counties are plaintiffs, State of Oregon is defendant and appeal relates to decision of trial court on one or more claims challenging manner in which Public Employees Retirement System is administered.
0024	Chair Minnis	Closes the public hearing on HB 2409A and opens a work session.
<u>HB 2409A WORK SESSION</u>		
026	Vice Chair Burdick	MOTION: Moves HB 2409A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0-2
		EXCUSED: 2 - Ringo, Walker
030	Chair Minnis	Hearing no objection, declares the motion CARRIED.
		SEN. MINNIS will lead discussion on the floor.
031	Chair Minnis	Closes the work session on HB 2409A and opens a work session on HB 2865A.
<u>HB 2865A WORK SESSION</u>		
032	Craig Prins	Committee Counsel. Introduces HB 2865A which allows district attorney to treat certain nonperson felonies as Class A

040 Chuck French misdemeanors. Discusses the –A7 amendments (**EXHIBIT A**). District Attorney, Multnomah County District Attorneys Office. Testifies in support of HB 2865A.

069 Kelly Skye Oregon Criminal Defense Lawyers Association. Says she is satisfied with the –A7 amendments.

080 Vice Chair Burdick MOTION: Moves to ADOPT HB 2865A-7 amendments dated 06/06/03.

VOTE: 5-0-1

EXCUSED: 1 - Walker

081 Chair Minnis Hearing no objection, declares the motion CARRIED.

083 Vice Chair Burdick MOTION: Moves HB 2865A to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 5-0-1

EXCUSED: 1 - Walker

085 Chair Minnis Hearing no objection, declares the motion CARRIED. SEN. RINGO will lead discussion on the floor.

094 Chair Minnis Closes the work session on HB 2865A and opens a public hearing on HB 2368B and HB 2094A.

HB 2094A and HB 2368B PUBLIC HEARING

101 Rep. Phil Barnhart Representative, House District 11. Testifies in support of HB 2368B which makes technical and administrative changes to cigarette and tobacco products taxes to facilitate administration and enforcement.

158 Pete Shepherd Deputy Attorney General, Department of Justice. Submits testimony and testifies on HB 2368B. Discusses the –B15, -B16, -B17, -B18, -B19, and –B20 amendments to HB 2368B (**EXHIBITS B-G**).

Submits testimony and testifies on HB 2094A which requires tobacco product manufacturers to report certain information to Attorney General. Discusses the -A5, -A6, -A7 amendments and says the -A8 amendments have been superceded by the -A9 amendments (**EXHIBITS H-K**). Explains charts for both bills (**EXHIBITS L & M**).

300 Matt Macauley Assistant Attorney General, Department of Justice, Organized Crime Section. Submits testimony and testifies on HB 2368B and talks about the Oregon Tobacco Compliance Task Force (**EXHIBIT N**).

339 Sen. Ferrioli Discusses bill. Asks about loss of revenue from tobacco products.

384 Macauley Says that he would like to discuss that later. Continues his testimony.

390 Sen. Ferrioli Comments that someday that discussion needs to happen.

393 Macauley Says that the task force has confirmed that we are losing between 30 and 40 percent in revenue in contraband products. Discusses loss of revenue from intrastate smuggling, Internet and transnational organized crime elements.

TAPE 161, A

003 Macauley Continues his testimony on HB 2368B.

015 Sen. Ferrioli Says that the contraband products must not have been in mainstream distribution channels.

019 Macauley Answers that the problem with other tobacco products is that they are not stamped.

042 Shepherd Addresses the other issues of the bill. Talks about funding for the

task force.

179 Shepherd Testifies on HB 2094A. Discusses Non-Participating Manufacturer Law (NPM). Says they strongly support the –A9 amendments (**Exhibit K**).

276 Chair Minnis Asks if they are talking about retailers.

282 Shepherd Answers that this marketplace includes fairly distinct levels of distributors.

288 Chair Minnis Asks if these penalties are applicable to a store that sells contraband products.

293 Macauley Answers, yes.

302 Sen. Ferrioli Asks if this case was approached from a RICO (Racketeer Influenced and Corrupt Organization) standpoint or as an isolated incident.

312 Macauley Answers that this was an isolated incident.

339 Chair Minnis Asks about the laws created in 2001 and sentencing of these crimes.

347 Macauley Explains that there were felonies created last session, but this bill enhances the penalties.

389 Vice Chair Burdick Asks about the –A5 amendments regarding an allocable share cap (**Exhibit H**).

399 Shepherd Talks about the –A5 amendments.

432 Vice Chair Burdick Says she appreciates Shepherd’s clear presentation. Asks about the private cause of action.

TAPE 160, B

010 Vice Chair Burdick Asks about large companies driving small companies out of business.

014 Shepherd Answers that if the companies are driven out of the marketplace because they are not complying then that would produce the positive public benefit of helping to enforce those statutes.

044 Vice Chair Burdick Says that if they are just going out after the noncompliant companies and don’t want to harm the compliant companies, then why shouldn’t the responsibility be to file these suits with the Attorney General.

048 Shepherd Explains that the original conception of HB 2368 did not include a private cause of action.

061 Vice Chair Burdick Asks where the recoveries would go if an action is taken by the attorney general.

063 Shepherd Responds that the recoveries would go into the general fund.

083 Sen. Ringo Asks if Mr. Shepherd can quantify how important it is to enforce the laws with a private cause of action.

089 Shepherd Explains that there are 3 ways in which a private cause of action would add some value to our enforcement effort.

120 Sen. Ringo Asks for other examples of private rights of action.

122 Shepherd Answers that another example would be the state’s unlawful trade practices act and the racketeering statute.

157 Chair Minnis Recesses the public hearing on HB 2094A and HB 2368B and opens a work session on HB 2865A.

HB 2865A WORK SESSION

159 Craig Prins Committee Counsel. Says that they need to adopt the –A5 amendments (**EXHIBIT O**).

168 Vice Chair Burdick **MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING the vote on HB 2865A.**
VOTE: 5-0-1
EXCUSED: 1 - Walker

170	Chair Minnis	Hearing no objection, declares the motion CARRIED.
175	Vice Chair Burdick	MOTION: Moves to RECONSIDER the vote by which HB 2865A was sent to the floor with a DO PASS AS AMENDED recommendation.
177		VOTE: 5-0-1 EXCUSED: 1 - Walker
179	Chair Minnis	Hearing no objection, declares the motion CARRIED.
179	Vice Chair Burdick	MOTION: Moves to ADOPT HB 2865A-5 amendments dated 05/28/03.
182	Bill Taylor	Committee Counsel. Discusses –A5 amendments.
190		VOTE: 4-0-2 EXCUSED: 2 - Ferrioli, Walker
191	Chair Minnis	Hearing no objection, declares the motion CARRIED.
193	Vice Chair Burdick	MOTION: Moves HB 2365A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-1 EXCUSED: 1 - Walker
195	Chair Minnis	Hearing no objection, declares the motion CARRIED. SEN. RINGO will lead discussion on the floor.
197	Chair Minnis	Closes the work session on HB 2865A and re-opens the public hearing on HB 2094A and HB 2368B.
<u>HB 2094A and HB 2368B PUBLIC HEARING RE-OPENED</u>		
210	Marshall Coba	Council of Independent Tobacco Manufacturers of America (CITMA). Submits testimony and testifies on HB 2094A and HB 2368B (EXHIBITS P & Q).
224	Mr. Jim Deer	Legal Counsel, Singlestick Tobacco Company and USA Tobacco Distributing. Submits testimony and testifies on HB 2094A and HB 2368B (EXHIBIT R).
348	Deer	Continues his testimony on HB 2094A and HB 2368B.
TAPE 161, B		
010	Deer	Continues his testimony on bill. Reads from Exhibit R .
133	Chair Minnis	Asks if the provision in Section 82, page 33, line 21 of HB 2368B would apply to his company. Asks why he would not want that power.
140	Deer	Addresses that question. Says that they are a small tobacco company and his litigation budget is small.
180	Chair Minnis	Closes the public hearing on HB 2094A and HB 2368B. Adjourns the meeting at 10:00 a.m.

EXHIBIT SUMMARY

A – HB 2865A, -A7 amendments, submitted by staff, dated 6/6/03, 2 pgs.
B – HB 2368B, -B15 amendments, submitted by staff, dated 5/27/03, 1 pg.
C – HB 2368B, -B16 amendments, submitted by staff, dated 5/27/03, 1 pg.
D – HB 2368B, -B17 amendments, submitted by staff, dated 5/28/03, 1 pg.
E – HB 2368B, -B18 amendments, submitted by staff, dated 5/28/03, 3 pgs.
F – HB 2368B, -B19 amendments, submitted by staff, dated 6/3/03, 2 pgs.
G – HB 2368B, -B20 amendments, submitted by staff, dated 6/6/03, 1 pg.
H – HB 2094A, -A5 amendments, submitted by staff, dated 5/12/03, 6 pgs.
I – HB 2094A, -A6 amendments, submitted by staff, dated 5/20/03, 1 pg.
J – HB 2094A, -A7 amendments, submitted by staff, dated 5/27/03, 1 pg.

- K – HB 2094A, -A9 amendments, submitted by staff, dated 6/11/03, 2 pgs.**
- L – HB 2368A, chart, submitted by Pete Shepherd, 2 pgs.**
- M – HB 2094A, chart, submitted by Pete Shepherd, 1 pg.**
- N – HB 2368B, press release, submitted by Matt Macauley, dated 6/10/03, 2 pgs.**
- O – HB 2865A, -A5 amendments, submitted by staff, dated 5/28/03, 1 pg.**
- P – HB 2094A, written testimony, submitted by Marshall Coba, 2 pgs.**
- Q – HB 2368B, written testimony, submitted by Marshall Coba, 2 pgs.**
- R – HB 2094A, application for enforcement order, submitted by Jim Deer, 2 pgs.**