

**HOUSE COMMITTEE ON AGRICULTURE AND FORESTRY**

**March 25, 1999 Hearing Room D**

**8:30 A.M. Tapes 34 - 35**

**MEMBERS PRESENT: Rep. Larry Wells, Chair**

**Rep. Terry Thompson, Vice-Chair**

**Rep. Jeff Kropf, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Ryan Deckert**

**Rep. Jim Hill**

**Rep. Elaine Hopson**

**Rep. Jerry Krummel**

**Rep. Judy Uherbelau**

**MEMBER EXCUSED:**

**STAFF PRESENT: B. Harrison Conley, Administrator**

**Samantha Demchak, Administrative Support**

**MEASURE/ISSUES HEARD: SB 234-A Public Hearing and Work Session**

**HB 2339 Work Session**

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 34, A**

016	Chair Wells	Opens Public Hearing on SB 234A.
<b><u>SB 234-A PUBLIC HEARING</u></b>		
		Staff distributes fiscal analysis of SB 234A ( <b>EXHIBIT A</b> ).
021	Chuck Craig	Oregon Department of Agriculture (ODA). Indicates SB 234A was introduced by ODA to "overhaul" the Oregon Dairy statutes which date back to the 1950is. Notes there is no known opposition to SB 234A.
026	Ron McKay	Administrator, Food Safety Division, Oregon Department of Agriculture. Testifies in support of SB 234A. Reads from written testimony ( <b>EXHIBIT B</b> ).
071	Chair Wells	Asks why there was a need for eight amendments.
076	Craig	Responds there were more amendments than necessary. Adds Legislative Counsel found issues that the ODA missed after the bill had been printed. Notes there were some issues from Senate Agriculture and Natural Resources that required amendments.
079	McKay	Continues reading from testimony.
082	Rep. Hill	Asks if there is a practical effect to SB 234A.
092	McKay	Answers there are portions of SB 234-A that effect all parts of the dairy industry. Notes there are no changes in licensing requirements. Indicates Section 12 clarifies language recommended by Legislative Counsel.
105	Rep. Hill	Asks if producers also distribute, do they need two licenses.
111	McKay	Indicates there needs to be a license for each activity.
134	Rep. Hill	Asks if a producer could sell milk even if they are in violation.
143	McKay	Answers there needs to be a clarification rather than a change in language.
149	Chair Wells	Asks if it is legal to produce unpasteurized milk and sell it in Oregon.
155	McKay	Answers it is legal to sell raw milk.

163	Rep. Hill	Questions if "may" is permissive and "shall" is mandatory.
173	Craig	Notes Legislative Counsel recommended changing the words to "may not".
177	Rep. Hill	Suggests the wording is "wishy-washy."
182	Rep. Uherbelau	Notes it is unusual to use the word "may not".
191	Rep. Hill	States he would be more comfortable retaining the "shall" rather than the "may".
204	Rep. Krummel	Notes the same issue was raised before Legislative Counsel. Legislative Counsel answered that "shall" is directive and "may" is permissive.
218	McKay	Continues reading from testimony.
246	Wells	Asks about the placards that are required in restaurants stating what butter substitute is used.
252	McKay	Notes the placards are required in restaurants. Indicates that is not currently being enforced.
271	Rep. Uherbelau	Asks if the penalty in Section 5 would require a fine of \$1000 dollars or more that a year in jail.
286	Chair Wells	Asks if the penalties have been changed.
290	McKay	Answers nothing new is covered by a penalty. Adds the penalty may have increased.
311	Rep. Hopson	Reiterates no penalties have been changed, just incorporated into one level.
319	McKay	Responds affirmatively.
321	Rep. Uherbelau	Indicates that is not completely correct. Emphasizes the penalties are still a concern.
335	Craig	Notes there were some offences that now may carry a larger fine.
345	Rep. Uherbelau	Asks about deleting the usual safeguards such as giving notice to the producer the injunction is against.

374	Craig	Notes he is unsure of the answer.
390	McKay	States this change was made in Legislative Counsel not in the ODA.
400	Chair Wells	Asks what the process is if a violation is found.
410	McKay	Notes most violations are recorded and the farm is given time to correct the problem, unless it is a public health threat.
<b><u>TAPE 35, A</u></b>		
002	Chair Wells	Asks for the practical change of taking certain language out of the statute.
006	McKay	Indicates he is unsure of the answer.
010	Rep. Hill	Agrees with Rep. Uherbelau on the severity of the fine. Adds the penalties are too severe.
023	Chair Wells	Answers that maybe there should be a cap on the penalties.
036	Rep. Hill	States the standards need to be set before penalties can be imposed.
046	Craig	Notes that more severe violations would warrant more severe penalties.
053	Rep. Krummel	Asks if misdemeanors are a civil penalty rather than a criminal penalty.
054	Rep. Uherbelau	Indicates that is not always the case.
058	Craig	States there may be issues of criminal negligence and willful intent if the act was done with the intention of hurting others.
063	Rep. Hill	States the penalty should match the offence.
067	Craig	Indicates the interpretation would be made by the District Attorney and the judge in each case.
092	Harrison Conley	Committee Administrator. Notes there are three types of misdemeanors A, B, C, each with a different level of punishment.
103	Rep. Uherbelau	States items in the law need to be clear as to the violation and the penalty.

114	Conley	Indicates at least one penalty has been reduced.
129	Rep. Hopson	States she is more comfortable having people closer to the issue make the determinations.
139	Craig	Notes these penalties are never used as a practical matter. Adds there was talk of eliminating the criminal penalties, but since that was not done they were grouped together.
157	Chuck Taylor	Legislative Counsel. Notes ORS 621.010 was deleted because it is a duplication. Adds it is a bad idea to have the same law, in the Oregon Rules of Civil Procedure (ORCP) and Oregon Revised Statute (ORS).
191	Rep. Uherbelau	Notes this will confuse people. Indicates adding "pursuant to ORCP 79" would clear up the language.
201	Taylor	Notes there is not a cross reference because most attorneys would follow ORCP as a matter of course.
206	Rep. Uherbelau	States it would be clear if "pursuant to ORCP 70" were added.
223	Taylor	Indicates there is not a problem with adding a cross reference to ORCP.
230	Rep. Hill	Asks if the change from "shall" to "may" is a change suggested by Counsel.
236	Taylor	Notes "shall" is not used because the courts have interpreted it to mean "is required to." Continues it is used in certain circumstances.
250	Rep. Uherbelau	Notes "shall" is an absolute. Stresses the committee should keep "shall."
272	Taylor	Indicates "shall" is not used much because the Form and Style Manual does not recommend it.
281	Rep. Uherbelau	Asks if Legislative Counsel prepares the Form and Style Manual.
288	Taylor	Notes the Form and Style Manual is written and approved by the Legislative Counsel Committee.
293	Rep. Uherbelau	States the Form and Style Manual should be in line with normal usage, both legal and public.
312	Rep. Hill	Asks if Section 19 would be written the same way today as it was fifty years ago.

340	Conley	Answers in 1993 Legislative Counsel was using "shall" and it is a future tense.
355	Taylor	Indicates "may" is the preferred wording but the wording can be changed to "shall" if the committee desired.
367	Rep. Hill	States the courts could interpret the change from "shall" to " may" as an important change.
381	Rep. Hopson	Notes the important word is "not" in "shall not" and "may not".
<b><u>TAPE 34, B</u></b>		
017	Chair Wells	Asks who decides the fine schedules.
020	McKay	Answers the fines are decided on by the courts.
028	Taylor	Notes the word "fine" is referring to a criminal sanction by a court.
035	McKay	Notes the ñ8 amendment for SB 234A is for consistency. Reviews ñ8 amendments.
060	Rep. Kropf	Notes ODAís sanction power is more of a threat than the criminal penalties.
119	McKay	Answers that is true. Continues when the committee discussed this, it was important to have a way to address certain issues.
127	Rep. Thompson	Asks if this was put in for small farms with just a few cows.
130	McKay	Notes there is an exclusion from licensing for a farm with less than three dairy animals.
134	Rep. Kropf	Asks if the sale of products can be sanctioned under this law.
144	McKay	Answers not on small farms with under three dairy animals. Indicates SB 234A allows the ODA move things out of statute and into regulations. Continues that the bill allows the ODA to proceed with the adoption of the code of Federal Regulation. States this is mostly a house keeping modernization bill.
164	Chair Wells	States the main point of the committee discussion was whether the ORCP should be in SB 234-A.
174	Rep. Uherbelau	Asks if it can be done conceptually.

188	Taylor	Answers that is not a problem.
	Chair Wells	Closes Public Hearing on SB 234-A. Opens Work Session on SB 234-A.
<b><u>SB 234-A WORK SESSION</u></b>		
225	Rep. Uherbelau	<b>MOTION: Moves to ADOPT SB 234A-8 amendments dated 3/24/99.</b>
		<b>VOTE: 9-0</b>
	Chair Wells	<b>Hearing no objection, declares the motion CARRIED.</b>
232	Rep. Uherbelau	<b>MOTION: Moves to CONCEPTUALLY AMEND SB 234A to refer to civil procedure.</b>
		<b>VOTE: 9-0</b>
	Chair Wells	<b>Hearing no objection, declares the motion CARRIED.</b>
240	Rep. Hill	<b>MOTION: Moves to CONCEPTUALLY AMEND SB 234A by deleting "shall not" and inserting "may not" throughout the bill.</b>
254	Taylor	States it is not a big change and it can be done.
261	Rep. Thompson	Asks if Rep. Hill can clarify his motion.
266	Rep. Hill	States that "may not" shall replace "shall not" throughout the bill.
272	Hopson	Asks if this change is being made to every bill or just this one.
283	Taylor	Answers the change is being made to all bills. Indicates both are acceptable one is preferred.
298	Rep. Uherbelau	Answers that there needs to be education in the legal system before the "may not", "shall not" changes are made.

316	Taylor	Clarifies Legislative Counsel is still following the traditional distinction between "may" and "shall."
340	Rep. Hill	States he has never seen "may not" used before.
348	Rep. Beyer	Asks if the motion was only to change the "may" to "shall."
371	Rep. Hill	Answers only in the places that Legislative Counsel has made changes from the 1950 nomenclature.
379		Committee members discuss possible conceptual amendments. Rep Hill withdraws motion for conceptual amendments.
382	Rep. Hill	<b>MOTION: Committee requests further Legislative Counsel amendments to SB 234A.</b>
		<b>VOTE: 6-2</b> <b>AYE: 6 - Beyer, Deckert, Hill, Kropf, Krummel, Uherbelau</b> <b>NAY: 2 - Hopson, Wells</b> <b>EXCUSED: 1 ñ Thompson</b>
	Chair Wells	<b>The motion CARRIES.</b>
405	Chair Wells	Closes work session on SB 234A. Opens work session on HB 2339.
<b><u>HB 2339 WORK SESSION</u></b>		
	Chair Wells	<b>MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on HB 2339.</b>
		<b>VOTE: 8-0</b> <b>EXCUSED: 1 ñ Thompson</b>
	Chair Wells	<b>Hearing no objection, declares the motion CARRIED.</b>
034	Rep. Hill	<b>MOTION: Moves HB 2339 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Revenue by</b>



		<b>prior reference.</b>
		<b>VOTE: 8-0</b> <b>EXCUSED: 1 - Thompson</b>
	<b>Chair Wells</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
	Chair Wells	Closes Work Session on HB 2339. Adjourns hearing.

Submitted By, Reviewed By,

Samantha Demchak, B. Harrison Conley,  
Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ SB 234A-8, fiscal analysis, staff, 1 p.**

**B ñ SB 234A-8, public letter, Andrew Clark, 4 pp.**