

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

March 01, 1999 Hearing Room 357

1:00 p.m. Tapes 50 - 51

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2237

HB 2313

HB 2314

SB 42A

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 |
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| TAPE 50, A | | |

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| 004 | Vice Chair Williams | Call meeting to order at 1:10 p.m. |
| HB 2313 & SB 42A- PUBLIC HEARING | | |
| 012 | Barbara Ross | State Representative, House District 35 Testifies and submits testimony on behalf of Clint Kolar in support of SB 42A (EXHIBIT A). Discusses why Mr. Kolar wanted her to introduce this bill and why this bill needs to be passed. |
| 040 | Rep. Wells | What amount is SB 42A raising the award limit to in small claims court? |
| 047 | Counsel Felton | Currently, the jurisdictional limit is \$3,000, will be phased in to \$5,000. |
| 051 | Rep. Wells | Asks if that is the reason some <u>Oregon Laws</u> are being amended. |
| 053 | Counsel Felton | That is correct. |
| 055 | Rep. Wells | Asks if we are currently phasing in the award limit of \$4,000. |
| 059 | Counsel Felton | That is correct. |
| 059 | Rep. Ross | The reason this higher money limit is needed is so that more people can represent themselves in small claims court. |
| 066 | Rep. Edwards | Would this new increase in jurisdictional limit decrease more cases in the small claims court? |
| 068 | Rep. Ross | This higher limit would increase the small claims court workload because it would allow more people to use this system. |
| 080 | Rep. Edwards | Asks if the decrease in the case workload of the small claims court was a direct cause of increasing the jurisdictional limit. |
| 084 | Counsel Felton | States that there was a decrease in small claim cases after the raise in jurisdictional limit. It is not known whether this was in direct correlation to raising the jurisdictional limit. |
| 091 | Vice Chair Williams | Asks about the reduced amount in filing fees as result of more people filing in small claims court. |
| 113 | Bradd Swank | Oregon State Court Administeris Office |

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| | | Testifies and submits written testimony in support of SB 42A (EXHIBIT B). Speaks in favor of Section 8 & 10 of the bill because of the policy issue and speaks in neutrality because of the technical issue. Discusses and explains the prevailing party fee changes in the bill. States that the Executive Committee of the Oregon Judicial Conference has not reviewed the proposal of raising the jurisdictional limit. Discusses the effects of decreased revenue in District Court because of this bill. Discusses the differences in HB 2313 and SB 42A. |
| 243 | Rep. Uherbelau | States that one of the differences between the two bills is that HB 2313 applies to small claims court and SB 42A applies to small claim justice courts. Asks what the feelings of the Court Administrators Office are regarding this higher award limit. |
| 256 | Swank | Discusses the procedures in the small claim justice courts regarding the changes in revenues. |
| 273 | Rep. Uherbelau | Asks if the Court Administrator's Office takes a position on whether this would be an appropriate raise in jurisdictional amount for a justice court and a small claims court. |
| 276 | Swank | Discusses the concern if the jurisdictional amount was raised in one court and not the other. |
| 299 | Rep. Wells | Asks about the difference in the two bills regarding the different jurisdictional amounts. |
| 313 | Swank | Explains why there were different amounts in the two bills. |
| 334 | Rep. Wells | States that during the last session, there was a member who was against the fees that were directed to the legal system. Asks if the revenue increased because of the fees? |
| 343 | Swank | States that there are a number of reasons to cause revenues to increase other than increasing fees. Discusses the different fees involved in the court system. |
| 367 | Matt Markee | Oregon Collectors Association Testifies and submits written testimony in support of SB 42A (EXHIBIT C). Discusses why the association is in favor of the bill. |
| 393 | Counsel Felton | Clarifies that in 1997 the original bill proposed raising the jurisdictional limit to \$5,000.00, but was amended to \$3,500.00. |
| 398 | Markee | That is correct |
| 400 | Vice Chair Williams | Discusses the history of HB 2313. |

SB 42A - WORK SESSION

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| 445 | Rep. Uherbelau | Expresses her concern with the higher jurisdictional limit and that it would cause more complicated cases in the justice court level which has less legal experience. |
| 472 | Rep. Williams | States his support of SB 42A because of the many court cases where the legal fees are higher than the claim this bill would allow more people to handle their own cases with no legal fee. |
| Tape 51, A | | |
| 037 | Rep. Witt | States his support of SB 42A because it provides a way to settle disputes without burden of legal fees. Also, supports the second part of the bill that allows the prevailing party to get awarded costs. |
| 049 | Rep. Wells | Asks why the legal fees are so high to handle a \$5,000.00 case. |
| 053 | Chair Shetterly | Discusses the costs of the lawyers' overhead and are like any other business. |
| 063 | Rep. Wells | How often do cases of \$750.00 go to a jury trial? |
| 066 | Chair Shetterly | Answers that jury trial cases in small claim courts are almost unheard of. |
| 071 | Rep. Lowe | Expresses her support of SB 42A, but has concerns about the public nuisance bill influencing more small claim court cases. Asks about this bill causing an increased workload on the small claims court. |
| 087 | Chair Shetterly | States that small claims cases are processed faster, resulting in improved court room efficiency. |
| 098 | Rep. Uherbelau | Expresses her support of SB 42A. Discusses the concern with the justice court getting more complex cases and their ability to handle these cases. |
| 113 | Rep. Edwards | Expresses his support of SB 42A. Would the revenue impact of this bill have a negative impact on courts? |
| 121 | Rep. Williams | States that Mr. Swank's testimony expressed a very small impact on the revenue. |
| 129 | Rep. Backlund | Expresses his support of SB 42A. States that the overall principle improvement of the statute is worth some overall loss of revenue. |
| 136 | Rep. Witt | Discusses the goal of the bill should be to allow more justice for citizens and not revenue impacts on the courts. |

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| 150 | Rep. Edwards | MOTION: Moves SB 42A to the floor with a DO PASS recommendation. |
| | | VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye. |
| | Chair Shetterly | The motion CARRIES. REP. SHETTERLY will lead discussion on the floor. |
| <u>HB 2237 n PUBLIC HEARING</u> | | |
| 162 | Counsel Felton | HB 2237 clarifies procedure when paternity is established by administrative determination. |
| 172 | Ronelle Shankle | Department of Justice, Support Enforcement Division (SED) Testifies and submits written testimony in support of HB 2237 (EXHIBIT D). Discusses how this bill clarifies that administrative orders have the same force and effect as judicial orders regarding a child's legal paternity. |
| 208 | Rep. Uherbelau | Asks whether district attorneys make paternity determinations. |
| 215 | Shankle | Not as often as the SED, but they do have that authority. |
| 220 | Chair Shetterly | Asks about the conceptual amendment for HB 2237. |
| 225 | Shankle | Discusses the phrase in the conceptual amendment that would cross-reference back to a statute that addresses issues of paternity. |
| 230 | Chair Shetterly | Where would this amendment be inserted into the bill? |
| 232 | Shankle | It would be inserted on page 2, line 27 of HB 2237. Explains the conceptual amendment. |
| 241 | Chair Shetterly | Are district attorneys in court proceedings included under this change? |
| 243 | Shankle | Yes, they are. |
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| 236 | Maureen McKnight | Department of Justice, Support Enforcement Division (SED) Discusses the purposes of the amendment to HB 2237 regarding the authority of the administrator within the administrative process. |
| <u>HB 2314 Public Hearing</u> | | |
| 267 | Counsel Felton | HB 2314 repeals provisions limiting buyer and borrower liability on deficiency after default in retail installment contract, charge agreement or unpaid loan. |
| 287 | Jim Markee | Oregon Collectors Association Testifies in support of HB 2314. Discusses what HB 2314 does for the debtor and creditor regarding the sale of goods. Discusses legislative history concerning this bill. Discusses the statute of limitation in the bill and the problem that arises from this statute. |
| 400 | Rep. Uherbelau | Did anyone from the Debtor/ Creditor Section contact you concerning HB 2314? |
| 406 | Chair Shetterly | No, I have not heard from anybody. |
| 407 | Rep. Uherbelau | Are you assuming that the bill will provide a 6-year statute of limitation for contracts? |
| 416 | Markee | It is clear in the HB 2314 amendment that it would be a 6-year statute of limitation. |
| 417 | Rep. Uherbelau | States that more experienced practitioners will know that it will be a 6- year limitation, but the concern is that the newer practitioners won't know unless it is clearly stated. |
| 429 | Chair Shetterly | States that unless a different statute is specified, it is a 6-year limitation on contracts. |
| 436 | Rep. Witt | Do you support removing the \$1,250 exclusion in the bill? |
| 440 | Markee | Yes, I certainly would. |
| 442 | Rep. Witt | Regarding the exception in the bill where some people do not have to pay their obligations, what influence is this on the cost of financing? |
| 448 | Markee | Anytime, you have a loss by a creditor, the cost of the loss is spread among those who use credit. |
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| 463 | Rep. Witt | Asks if other states have this provision. |
| 468 | Markee | Discusses conversations with other national organizations in regards to the finding no such provision. |
| 490 | Rep. Witt | Who are these creditors that the bill refers to? |
| 502 | Markee | Most of the clients that my agency represents are small businesses. |
| Tape 50, B | | |
| 044 | Rep. Walker | States that according to my notes from the 02-25-99 hearing regarding HB 2314, Paul Cosgrove testified that the bill will effect small businesses. |
| 052 | Paul Cosgrove | Oregon Financial Services Association States that it is the small businesses that use retail installment contracts for sale of goods and these businesses are the ones effected by this bill. |
| 057 | Rep. Uherbelau | Expresses her belief that many of these creditors are large car dealers. |
| 060 | Rep. Walker | Asks if HB 2314 creates a malpractice trap for lawyers because the time line is too short. |
| 064 | Cosgrove | Discusses the time line issue of the bill regarding malpractice suits. |
| 076 | Markee | States that lawyers are not the only ones to worry about the statute of limitations. |
| 083 | Chair Shetterly | Do you have any idea how financing costs for these types of consumer goods compare to other states? |
| 095 | Cosgrove | Discusses how the finance losses accrued are built into the cost of goods. |
| 103 | Rep. Witt | States that it is the creditor, or the general public, who is paying for these costs. |
| 106 | Chair Shetterly | Expresses his concern whether this is a big enough factor in financing consumer debt. |
| 110 | Monty King | Executive Director, Independent Auto Dealers Association States that the small business owners are paying for the financing costs. and they do have to pass it on to someone else. Oregon has higher interest rates than most states. Discusses and explains the standards of dealers who have very small car |

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| | | lots and how these finance losses hurt these businesses. |
| 158 | Rep. Uherbelau | Expresses concern about the progression of HB 2314. Addresses the issue about who pays for the finance losses. Discusses and explains five cases that states dealers who sell the car for considerably more than the car is worth. |
| 213 | Rep. Wells | Asks if the 6-year limitation on judgments against what is owed on a repossessed vehicle, is a fair amount of time. |
| 246 | Markee | States the Oregon Collection Agency's support on this time limitation. |
| 260 | Rep. Wells | Asks about the unknown debt on a resold repossessed car for the debtor. |
| 267 | Markee | Discusses the procedure of selling these repossessed goods and the notice given the debtor. |
| 278 | Rep. Wells | Expresses his concern that the debtor would not have knowledge of what these repossessed consumer goods sell for. |
| 282 | Markee | There should be no concern. |
| 285 | Rep. Witt | Refers to the change in the law and how this would help the dealers make money by collecting on the deficiency after they sell property at an unfair value. Will losses accrue when a creditor repossesses property? |
| 299 | King | Yes, that is my experience. Gives example regarding losing money on a repossessed car. |
| 322 | Rep. Uherbelau | Discusses the possibility, due to the change of the law, of holding onto repossessed property for several years, effecting the resale value of the property. |
| 339 | Chair Shetterly | States that holding repossessed property would raise the issue of reasonableness according to the statute in HB 2314. |
| 343 | Rep. Witt | States that business people don't make money by sitting on assets. |
| 350 | Chair Shetterly | Recesses meeting at 2:26 p.m. |
| 356 | Chair Shetterly | Reconvenes meeting at 2:35 p.m. |
| 369 | Rep. Williams | MOTION: Moves HB 2314 to the floor with a DO PASS recommendation. |
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| 372 | Rep. Uherbelau | Most of these retail installment contracts are for very large interest rates and for a very long time, where the payment is mostly interest. States that by the time the property is repossessed, there is a substantial interest already paid to the creditor. Expresses her objection to this bill. |
| 403 | Rep. Witt | Discusses competitive markets and how this effects the interest rates. States that if we allow some debtors to escape part of their liability, this will raise the cost of goods for everybody else. States that justice should be for all people involved, including those paying higher interest. |
| 425 | Rep. Walker | Discusses warranty protection to consumers. States that consumers have the right of bankruptcy. Expresses support of HB 2314. |
| 450 | Chair Shetterly | VOTE: 8-1 AYE: 8 - Backlund, Edwards, Lowe, Walker, Wells, Williams, Witt, Shetterly NAY: 1 - Uherbelau |
| | Chair Shetterly | The motion CARRIES. REP. WITT will lead discussion on the floor. |
| 464 | Chair Shetterly | Adjourns meeting at 2:55 p.m. |

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A - SB 42A & HB 2313, Written testimony, Clint Kolar, p. 2

B - SB 42A, Written testimony, Bradd Swank, p. 5

C - SB 42A, Written testimony, Matt Markee, p. 1

D - HB 2237, Written testimony, Ronelle Shankle, p. 1