

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 19, 1999 Hearing Room 357

8:00 a.m. Tapes 145 - 146

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 3287 Public Hearing and Work Session

HB 3377 Public Hearing and Work Session

HB 3378 Public Hearing

HB 3265 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 145, A		

004	Chair Mannix	Calls meeting to order at 8:07 a.m.
<u>HB 3287 PUBLIC HEARING</u>		
005	Counsel Horton	HB 3287 creates the crimes of trademark counterfeiting in the first, second and third degrees.
015	Chair Mannix	We do have the ñ1 amendments (EXHIBIT A), and a letter from Michael Schrunk, Multnomah County District Attorney, in support of HB 3287 (EXHIBIT B).
026	Rep. Ken Strobeck	State Representative, House District 6 Testifies in support of HB 3287.
034	Chair Mannix	Will there be amendments other than the ñ1 amendments?
035	Rep. Strobeck	No. Explains why counterfeiting is becoming a state problem when it appears to be a federal problem. The threshold before the federal government will prosecute is \$1 million dollars. Counterfeiting is easy to set up and run in one state so the operation doesn't have to cross state lines. Discusses the consumer protection issue of getting quality goods when you buy a name brand item. Because Oregon is emerging as a national leader in several famous brands like Nike, Adidas, Columbia Sportswear, and the Portland Trailblazers, it is easy to become a victim of counterfeiting.
073	Paul Phillips	International AntiCounterfeiting Coalition (IACC) Testifies in support of HB 3287. Submits written testimony from Carl Davis, Vice President, Columbia Sportswear Co. (EXHIBIT C). In the past six years, Columbia Sportswear has successfully kept more than 50 companies from selling knockoffs of our popular outdoor apparel and footwear products in the U. S. and abroad.
110	John Bliss	President, International AntiCounterfeiting Coalition (IACC) Testifies and submits written testimony in support of HB 3287 (EXHIBITS D & E). We have discovered that counterfeiters gravitate to states where counterfeiting is only a misdemeanor and stay away from the states where it is a felony. Washington state is making this a felony crime, so a greater influx of counterfeiters will be moving into Oregon where it is only a misdemeanor crime. Discusses three themes: the increased incidence of organized crime, the health and safety factor and the increased economic impact. Discusses the bacteria that has been found in fake shampoo and baby food in grocery stores around the country. Discusses the enormous profits being lost to manufacturers and communities by counterfeiting.
215	Chair Mannix	Mentions identity theft and how difficult it is to recover your good name once that has been compromised.

223	Bliss	IZOD had to declare bankruptcy in the U.S. because of counterfeiting.
231	Rep. Prozanski	Discusses working in Texas looking for patent infringements. When you mention products that pose a serious health risk, I would be very surprised if the FDA is not involved in investigating these items.
249	Bliss	The FDA takes an active role in policing counterfeit items, but they are very under-funded and under-manned. There are only six investigators who investigate the whole country for counterfeiting. We need a state compliment to the federal enforcement.
260	Rep. Prozanski	Would we be able to prosecute these individuals with counterfeiting if they were not manufacturing counterfeit items in our state?
271	David Simpson	Director of Security, Nike, Inc. Testifies and submits written testimony in support of HB 3287 (EXHIBIT F). An in-state indictment could be procured if counterfeit merchandise was brought into Oregon for sale, even though it was not manufactured in Oregon.
286	Rep. Prozanski	Just because you get the indictment on paper, you may not be able to bring someone into our jurisdiction for prosecution.
293	Simpson	That is always an obstacle for anyone in law enforcement to overcome.
296	Rep. Prozanski	Mr. Bliss stated that passing HB 3287 would deter crime. There is federal legislation that carries a more severe penalty than HB 3287, so how will HB 3287 deter crime if the individuals are not manufacturing the counterfeit items in Oregon?
307	Simpson	We see three victims with this type of crime: the consumer, the business who loses sales, and finally the trademark or patent holder. We have found that state and federal laws are needed because federal law goes to different jurisdictions for enforcement. The biggest offenders we see are flea markets, street vendors and state fairs.
350	Rep. Bowman	You talk about wanting to stop high-tech operations from making millions of dollars on counterfeit goods with HB 3287, but it looks like you will be catching the low-level criminals in this state who are selling bogus items on the street corner.
370	Simpson	We attack on all levels. By getting the low-level person we can try and move up the ladder to capture the manufacturer or distributor of these counterfeit items. These counterfeit items are not imported goods; they are being manufactured in the U.S.
392	Chair Mannix	Describes the tiered approach of sanction for each level of charge to trademark counterfeiting.

407	Bliss	The legitimate manufacturer and the prosecutor are not interested in incarcerating the low-level vendor. They want that vendor's cooperation to get to the manufacturer of the bogus goods.
421	Simpson	Discusses the second page of his letter to Sr. Probation Officer Elisabeth Ervin (EXHIBIT F) where he describes the revenue dollars lost to the trademark holder and retail businesses from the distribution of counterfeit Nike socks.
TAPE 146, A		
005	Rep. Bowman	A counterfeit product has less value than the real item. Are the values in HB 3286 based on what the real product will bring in or revenue the counterfeit item will generate?
009	Simpson	Based on what the counterfeit product would be selling for.
014	Rep. Bowman	What is the process of getting to the manufacturer when you apprehend the person selling the product on the street? Who actually goes to jail and forfeits their property?
024	Simpson	We would work backwards from the person caught selling the product to try to find the people distributing and manufacturing the product.
038	Michael Heilbronner	Associate Counsel, Adidas America, Inc. Testifies and submits written testimony in support of HB 3287 (EXHIBIT G) . A large counterfeiting operation can't function properly without people at the lower levels selling the products. We are hoping that HB 3287 will show that lower-level individual that trademark counterfeiting is going to be taken seriously in Oregon.
057	Chair Mannix	Would you like the word on the street to say that this type of operation is illegal in Oregon?
058	Heilbronner	Yes.
059	Simpson	Discusses counterfeit items purchased at flea markets in Portland since the first of the year. Counterfeiters will also produce bogus labels to insert in the products they pass off as legitimate.
071	Rep. Prozanski	How many of those items you just displayed were manufactured or produced in Oregon?
074	Simpson	I don't know. Many are manufactured in Los Angeles or Seattle.

083	Rep. Prozanski	Discusses the small number of people in Oregon that would be impacted with this legislation because no lengthy investigation will be done if the manufacturing is taking place outside the state.
096	Simpson	We may not have a big problem in Oregon with the manufacturers yet, but going after the street vendor will hopefully lead to the manufacturers.
121	Bliss	Trademark counterfeiting is less of a problem in this state, but we are trying to prevent this from becoming a major problem. With the absence of legislation here, you will probably see an influx of manufacturing coming into Oregon. The felony statute is now being passed in Washington state which may push counterfeiters here where there is no felony law against trademark counterfeiting.
139	Rep. Prozanski	Why should HB 3287 be put into the RICO (racketeering) statutes?
146	Bliss	Counterfeiters are fearful of going to jail and having their assets seized. A forfeiture statute would have a significant deterrent effect in warding off this criminal activity. A civil fine for these individuals is ridiculous because they can make more money selling fake Oakley sunglasses in one day than selling crack cocaine.
162	Rep. Prozanski	Are we talking about using the RICO statutes to take the street vendor's car because it was used to move the fake product from point A to point B?
170	Simpson	The local prosecutors will have to decide when to use these statutes. We do see people driving to Los Angeles to pick up vans full of fake goods and bringing those back to a state fair.
188	Rep. Hansen	I have concerns about the small t-shirt operator getting busted when he didn't know the goods he was selling were counterfeit, so I'm glad the amendment stresses "knowingly" sells counterfeit product.
241	Bliss	To prove knowledge, you approach them saying "we have knowledge to believe that you are selling counterfeit items", and make them aware that we are watching them to stop this behavior or be prosecuted.
252	Rep. Bowman	This legislation is necessary, but the way HB 3287 is written it will catch the street vendor, the lowest level of criminal on the street, rather than the manufacturer.
271	Simpson	Discusses that the first time offender will receive a warning or may get arrested once that "knowledge" is made known to the counterfeiter. Most of what we see is someone with a van full of fake merchandise trying to sell the items on the street corner and these items are seized.
303	James Rice	Oregon Criminal Defense Lawyers Association Testifies as neutral to HB 3287. Discusses how Microsoft goes after big

		counterfeiters with lawyers into federal court. We should let kids "take care of their own business" because selling counterfeit items is better than collecting welfare.
377	Chair Mannix	Closes the public hearing on HB 3287.
<u>HB 3287 WORK SESSION</u>		
381	Rep. Sunseri	MOTION: Moves to ADOPT HB 3287-1 amendments dated 03/22/99.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
387	Rep. Sunseri	MOTION: Moves HB 3287 to the floor with a DO PASS AS AMENDED recommendation.
392	Rep. Bowman	I am still concerned that HB 3287 as written will not get to the real people causing the problem, the manufacturers.
414	Rep. Sunseri	Whether it is selling drugs or counterfeit goods, the people on the street know that there is a risk involved when they agree to sell these items.
TAPE 145, B		
004	Rep. Prozanski	Discusses why he is voting "no" at this time with the right to change his vote. We could take existing law and modify it. My biggest concern is that we are talking about a lack of enforcement of existing statutes by the federal government.
034	Rep. Hansen	I respect the concerns that a lot of street vendors may be picked up on this legislation, but I don't see this street vendor selling becoming a high priority for local prosecution. I hope this legislation is used on a buyer for a retail chain that tries to cut corners by purchasing counterfeit baby food that turns out to be unsafe. We do have industries emerging in Oregon that could have a real problem if counterfeiters follow them into the state.
072	Rep. Gianella	I favor HB 3287 because if there is a crackdown on trademark counterfeiting in the state of Washington, it may cause more counterfeiting to come to Oregon.

077	Chair Mannix	I look at counterfeiting as "cheating" in many ways and cheating is morally wrong. The federal law does not seem to be adequate. I want to see enforcement at the state level regardless of what the federal government does. We need to strengthen and support those industries that do support our local communities by defending their good name.
129		VOTE: 5-2 AYE: 5 - Gianella, Hansen, Simmons, Sunseri, Mannix NAY: 2 - Bowman, Prozanski
	Chair Mannix	The motion CARRIES. REP. STROBECK will lead discussion on the floor.
136	Chair Mannix	Closes the work session on HB 3287.
<u>HB 3377 PUBLIC HEARING</u>		
142	Counsel Horton	HB 3377 allows the issuance of revenue bonds to finance prison work programs. There is a subsequent referral to the Revenue Committee.
154	Rollie Wisbrock	Oregon State Treasury Testifies as neutral to HB 3377. Discusses the importance of maintaining the credit worthiness of any debt that is issued under the State of Oregon. The source of revenue for support of the bonds (beyond prison industries) is important and if lottery dollars are chosen as a source of backup for this measure, then we would have to include SB 200, the bonding bill, as a standard for the credit quality of the lottery support.
179	Chuck Smith	Director, Debt Management Division, Oregon State Treasury Testifies and submits written testimony as neutral to HB 3377 (EXHIBIT H). Discusses four factors to consider in HB 3377: the need for bond credit enhancement, the need for a thorough tax analysis respecting the bonds tax status, the need for identifying an agency to provide support, and the need for statutory authorization to sell the bonds during the 1999-2001 biennium.
252	Chair Mannix	Perhaps you could work with people from the DOC on what they would like to do to strengthen their prison programs.
266	Rep. Bowman	Did you state that these revenue bonds would be backed with lottery funds?

272	Smith	I suggested the lottery could be used to back the bonds. The idea is to replace the underlying credit of these new bonds with something that is established in the marketplace like lottery-backed revenue bonds.
278	Chair Mannix	Lottery proceeds will serve as a guarantor if the agency could not come up with the resources to meet its obligations.
282	Wisbrock	Lottery proceeds do not need to be the only source of support, we could do an appropriation credit.
290	Rep. Bowman	I was hoping that the state could stop using lottery dollars as the backup for funding state programs.
314	Rep. Prozanski	The Revenue Committee should be having these discussions about supporting these bonds.
320	Chair Mannix	We could refer this bill to the Revenue Committee and let them deal with the technical issues.
322	Rep. Prozanski	I would agree with that.
326	Mary Botkin	American Federation of State, County and Municipal Employees (AFSCME) I support any way to enhance the prison industriesí funding base and this is a good way to do it. We might want to think about the non-compete language if we are amending HB 3377.
351	Chair Mannix	Closes the public hearing on HB 3377.
<u>HB WORK SESSION</u>		
354	Rep. Prozanski	MOTION: Moves HB 3377 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Revenue.
		VOTE: 5-0-2 EXCUSED: 2 - Rep. Bowman, Rep. Sunseri
	Chair	Hearing no objection, declares the motion CARRIED.

365	Chair Mannix	Closes the work session on HB 3377.
<u>HB 3378 PUBLIC HEARING</u>		
371	Counsel Horton	HB 3378 requires all cemeteries in the state to register or obtain a certificate from the State Mortuary and Cemetery Board. Explains the difference between an active and inactive cemetery and the difference between the misdemeanor and felony sanctions. The crime portion of HB 3378 pertains to the abuse of a memorial to the dead.
416	Chair Mannix	Discusses the ñ1 amendments to HB 3377 (EXHIBIT I).
TAPE 146, B		
002	Rep. Prozanski	What is the reason for establishing the different categories of cemeteries?
008	Chair Mannix	There is a comprehensive re-write of HB 3378 that should be coming out of Legislative Counsel and will explain that.
020	Jeanne Robinson	Chair, Pioneer Cemetery Commission Testifies in support of HB 3378. Discusses amending ORS 166.076, abuse of a memorial to the dead.
062	Chair Mannix	A person has to actually destroy cemetery property for the felony sanction to apply.
064	Rep. Sunseri	If HB3378 is adding 2.5 full-time staff people, do we have a fiscal impact statement?
066	Counsel Horton	We may not have that statement because of the pending amendments.
068	Chair Mannix	A re-write of HB 3378 would set up the Pioneer Cemetery Commission under the Parks Department to administer the rules and budgetary restraints.
082	Rep. Sunseri	So the proposed amendments would drop the 2.5 full-time staff people?
082	Chair Mannix	Yes.
084	Rep. Bowman	Would the re-write also drop the requirement for the statewide survey of cemeteries?
085	Chair Mannix	The proposed amendments will allow for the survey, but not require it.

097	Rep. Hansen	I am concerned with Pioneer Cemetery or an inactive cemetery that has very few people struggling to maintain it. If there is a safety hazard with a tombstone or grave marker and it has to be taken down for repair or safety reasons, I don't want the maintenance person who takes it down to come under the sanctions in HB 3378.
125	Rep. Simmons	What are the current laws regarding vandals who would go into a cemetery to steal the flowers after Memorial Day?
127	Chair Mannix	It is a Class A misdemeanor. We may want to concentrate on sanctions pertaining to the commercialism of stolen items from a cemetery, not just vandalism occurring in the cemetery.
146	Lucinda Potter	Executive Director, State Cemetery and Mortuary Board I want to defer comments until we see the amendments to HB 3378.
152	Chair Mannix	Closes the public hearing on HB 3378.
<u>HB 3265 WORK SESSION</u>		
180	Counsel Horton	Discusses the 11 amendments to HB 3265 (EXHIBIT J).
203	Rep. Prozanski	MOTION: Moves to ADOPT HB 3265-1 amendments dated 04/14/99.
		VOTE: 7-0
		Chair Mannix Hearing no objection, declares the motion CARRIED.
206	Rep. Prozanski	MOTION: Moves HB 3265 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
		Chair Mannix Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.

211	Chair Mannix	Closes the work session on HB 3265.
211	Chair Mannix	Adjourns the meeting at 9:45 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,
Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 3287, -1 amendments (LC 2804), dated 3/22/99, staff, 1 pg.

B - HB 3287, written testimony submitted by Michael Schrunk, Multnomah Co. D.A., dated 4/16/99, 2 pgs.

C - HB 3287, written testimony of Carl Davis, Columbia Sportswear Co., submitted by Paul Phillips, dated 4/19/99, 2 pgs.

D - HB 3287, written testimony submitted by John Bliss, Intrnl AntiCounterfeiting Coalition, dated 4/19/99, 6 pgs.

E - HB 3287, Organized Crime and Counterfeiting Fact Sheet submitted by John Bliss, 4 pgs.

F - HB 3287, written testimony submitted by David Simpson, Nike, Inc., 4 pgs.

G ñ HB 3287, written testimony submitted by Michael Heilbronner, Adidas America, Inc., 1 pg.

H - HB 3377, written testimony submitted by Charles Smith, Oregon State Treasury, dated 4/19/99, 2 pgs.

I - HB 3378, -1 amendments (LC 2070), dated 4/13/99, staff, 2 pgs.

J - HB 3265, -1 amendments (LC 3364), dated 4/14/99, staff, 1 pg.