

SENATE COMMITTEE ON JUDICIARY

June 17, 1999 Hearing Room C

1:00 p.m. Tapes 243 - 244

MEMBERS PRESENT: Sen. Courtney, Vice-Chair

Sen. Duncan

Sen. Tarno

MEMBER EXCUSED: Sen. Bryant

Sen. Brown

Sen. Burdick

Sen. Nelson

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HJR 87 ñ Public Hearing

HJR 88 ñ Public Hearing

HJR 89 ñ Public Hearing

HJR 90 ñ Public Hearing

HJR 91 ñ Public Hearing

HJR 92 ñ Public Hearing

HJR 93 ñ Public Hearing

HJR 94 ñ Public Hearing

HB 3388 ñ Public Hearing

HB 3492 ñ Public Hearing

HB 2985 ñ Public Hearing

HB 3630 ñ 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, A		
003	Sen. Courtney	Calls meeting to order at 1:10 p.m.
<u>HJR 87, HJR 88, HJR 89, HJR 90, HJR 91, HJR 92, HJR 93, HJR 94 PUBLIC HEARING</u>		
010	Dave Fidanque	American Civil Liberties Union (ACLU) Submits written testimony and testifies in opposition to HJR 87 through 94 (EXHIBITS A, B & C). Indicates that the major problem with the HJRs, as they came out of the House, is they are too wordy. Believes that work needs to be done on the specific language. Indicates the states should not be giving up power to the federal government. Discusses the provisions of each HJR.
<u>HB 3492 PUBLIC HEARING</u>		
432	Mark Gardner	Special Counsel to the Attorney General Submits written testimony and testifies in support of HB 3492 that would align Oregon law with the federal law regarding cigarette labeling and advertising. Submits affidavits made by cigarette manufacturers in litigation in Colorado (EXHIBIT D).
Tape 244, A		
079	Sen. Tarno	On page 2, line 33 the bill specifies that the cigarettes will be destroyed or resold, who would be doing that selling?
083	Gardner	That would be the Department of Revenue. They have the option to destroy the cigarettes or sell them back to the company for export. There are amendments being prepared to protect the retailers and distributors with prior notice of potential seizures and notice of the bill taking effect.
105	Sen. Duncan	If you are a retailer, would you have knowledge of this?
109	Gardner	Discusses the notification of retailers which is required.
<u>HB 3388A PUBLIC HEARING</u>		

128	Rep. Ryan Deckert	State Representative, House District 8 Submits written testimony and testifies in support of HB 3388A (EXHIBITS E & F) amendments. HB 3388A declares certain sweepstakes promotions to be unlawful trade practices. The amendments make it clear that the bill applies only to mail sweepstakes.
176	Dr. Phil Leveque	American Association of Retired People (AARP) Testifies in support of HB 3388A. Discusses the advertising practices of sweepstakes mailings.
<u>HB 2985 PUBLIC HEARING</u>		
251	David Slader	Oregon Trial Lawyers Association, Multnomah County Testifies in opposition to HB 2985 which limits the liability of employers for intentional actions of employee. Discusses the case law in this area and indicates he believes it is sound law. Indicates he believes the bill is unclear, establishing an "intentional tort," which is not now a concept in the law.
357	Sen. Tarno	Can't the intent be implied for an intentional tort?
359	Slader	Common law tort does not use the concept of implied intent.
366	Sen. Duncan	What were you thinking of by "implied"?
368	Sen. Tarno	Implied by the actions being taken.
375	Slader	Discusses intentional tort. Indicates HB 2985 will cause a radical change in Oregon Law.
Tape 243, B		
043	Slader	Gives examples of employer liability under current law versus employer liability should HB 2985 become law.
120	Rep. Max Williams	State Representative, House District 9 Testifies in support of HB 2985. Indicates the intent of HB 2985 is to return the law to the state it was in before <i>Fearing v. Bucher et al.</i> and <i>Lourim v. Swensen and Cascade Pacific Council, Boy Scouts of American, et al.</i> , were decided. Indicates his willingness to compromise to achieve this goal. Asked that Kelly Clark, the attorney who argued these two cases, be given the opportunity to testify since he could not be here today (EXHIBIT G).

181	Henry Lazenby	Governor's Office Submits written testimony and testifies in opposition to HB 2985 (EXHIBIT H). Indicates HB 2985 goes too far by extending immunity from liability to all employers. A jury would be better placed to decide liability in individual cases, rather than the legislature or a judge deciding without the individual facts.
209	Rep. Williams	The decision the court cases make is in the circumstance when there is an employer who does everything right, and yet, one of their employees acts in a harmful manner. There will be a cost for that harm and the important policy question is who should bear that cost.
279	Lazenby	Rather than a blanket exemption for employers, perhaps some affirmative defenses could be developed for employers to protect themselves.
299	Sen. Tarno	Failure of the employer to train or supervise can sometimes be naïve, not malicious.
303	Rep. Williams	We do not intend to protect employers from negligence, we just want to get back to the way it used to be before those two court cases. I think it would behoove us to talk further on this issue. I think that we should make it as narrow as possible.
<u>HB 3388A PUBLIC HEARING</u>		
384	Pete Shepherd	Department of Justice, Financial Fraud Section Submits written testimony and testifies in support of HB 3388A with the ñA4 amendments (EXHIBIT I). Discusses mail sweepstakes and gives examples of the ways in which the elderly, in particular, are harmed.
473	Mike Dewey	Direct Marketing Association Testifies regarding his concerns with HB 3388 including the ñA4 amendments. Discusses the possibility that the federal government will soon pass a bill at the federal level, which would be preferable. Regulatory consistency between the states would be very helpful.
Tape 244, B		
060	Sen. Duncan	I would agree that getting this done at the federal level would be a better way to do this, but how do we get this done? Do the companies involved understand what they are doing to the seniors?
063	Dewey	Discusses the various direct marketing companies involved and indicates that it is not in their interest to deliberately harm the public.
074	Sen. Duncan	But they do keep doing it.

077	Dewey	If a large percentage of those receiving these mailings understand what these sweepstakes are, why should we intervene with new laws? How many people should misunderstand before we intervene through legislation?
098	Sen. Duncan	People continue to react inappropriately to these sweepstakes. What do we wait for?
106	Dewey	In some cases the elderly may not fully understand. The question remains, at what point do we intervene.
129	John Powell	Private citizen Discusses an experience he had with his mother regarding magazine sweepstakes marketing techniques. Suggests the possibility of an HJR sent to the federal government supporting this kind of legislation on a national basis. Using the "reasonable person" standard, doesn't always work when you are trying to protect the vulnerable. My mother thought she would win and leave her children a huge inheritance.
233	Sen. Duncan	If we pass something like this, doesn't it send a valuable message?
271	Sen. Tarno	I would like to see this move forward. It has caused too much grief.
295	Phil Fell	Private citizen Discusses an aunt who had subscribed to so many magazines that she had created a fire hazard in her dwelling and had received an eviction notice from the fire marshall. Her relatives took five and one-half tons of paper out of her apartment. She was convinced that the more magazines she bought, the more likely it was she would win.
<u>HB 3630 PUBLIC HEARING</u>		
351	Donalda Dotson	Health Division, Department of Human Resources Submits testimony and testifies in support of HB 3630 which will bring Oregon law into compliance with federal law (EXHIBIT J). This is needed so that the WIC program can be continued in the State of Oregon. HB 3630 will allow for a civil penalty not just the disqualification of vendors.
494	Chair Courtney	Adjourns hearing at 3:00 p.m.

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HJR 87 through HJR 94, written testimony from David Fidanque, 8 pp
B - HJR 87 through HJR 94, written testimony from David Fidanque, 1 pp
C - HJR 87 through HJR 94, written testimony from David Fidanque, 3 pp
D ñ HB 3492, written testimony submitted by Mark Gardner, 22 pp
E ñ HB 3388A, written testimony submitted by Rep. Ryan Deckert, 2 pp
F ñ HB 3388A, -A4 amendments dated 6/8/99, 2 pp
G ñ HB 2985, written testimony from Kelly Clark, 1 pp
H ñ HB 2985, written testimony from H. Lazenby, 1 pp
I ñ HB 3388A, hand-engrossed with the ñA4 amendments, Department of Justice, 19 pp
J ñ HB 3360, written testimony submitted by Donalda Dotson, 2 pp