

SENATE COMMITTEE ON JUDICIARY

July 19, 1999 Hearing Room C

12:50 p.m. Tapes 275 - 276

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Nelson

Sen. Duncan

Sen. Tarno

MEMBER EXCUSED: Sen. Burdick

STAFF PRESENT: Bill Taylor, Counsel

Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HJR 2A - Work Session

HB 2394A ñ Work Session

SB 1340 ñ Public Hearing and 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 275, A		

003	Chair Bryant	Calls the meeting to order at 1:05 p.m.
<u>SB 1340 PUBLIC HEARING</u>		
012	Chair Bryant	Discusses SB 1340 and the reasons it was introduced so late in the session.
032	Counsel Tweedt	Discusses the materials they have been given on HJR 2A and SB 1340.
050	Scott Gallant	<p>Oregon Medical Association</p> <p>Submits testimony and testifies in support of SB 1340 (EXHIBITS A, B & C). Indicates he is representing the sixty-eight organizations which are listed in Exhibit A. Discusses the history of tort reform in relationship to non-economic damages. Discusses the legislation passed in 1987 which placed a cap on non-economic damages. Believes a cap on non-economic damages assists in making insurance coverage available and making it more affordable. The Supreme Court is interpreting "inviolable" to have the meaning it was given 160 years ago, by indicating that the legislature cannot cap damages. The only alternative for the legislature to cap non-economic damages is to amend the constitution by referral to the ballot.</p>
144	Chair Bryant	Indicates that the bill passed in 1987 was a bipartisan bill.
125	James Gardner	<p>Oregon citizen</p> <p>Submits written testimony and testifies in support of SB 1340 and HJR 2 (EXHIBITS D & E). Discusses the recent decision by the Supreme Court.</p>
156	Chair Bryant	Recesses hearing at 1:15 p.m..
158	Chair Bryant	Reconvenes hearing at 1:21 p.m..
164	Gardner	Indicates the decision of the Supreme Court, in his opinion, is a profoundly anti-democratic decision.
180	Mark Bonanno	<p>Oregon Medical Association, General Counsel</p> <p>Testifies in support of SB 1340 and HJR 2 and indicates he is there to answer questions.</p>
205	Larry Wobbrock	<p>Oregon Trial Lawyers Association</p> <p>Submits testimony and testifies in opposition to SB 1340 and HJR 2 (EXHIBIT F, G & H). The basis of the crisis in 1987 has not been borne out by the facts. Indicates a more considered perusal of the issues would be beneficial. Discusses the effect of the cap on non-economic damages and the discriminatory aspects of such a cap. I don't believe there is a problem since I am aware of only 18 non-economic damage awards exceeding one million dollars in the history of the</p>

		state.
485	Sen. Brown	You heard Jim Gardner's discussion regarding the power of the branches of government: the power of the legislature to define remedies for tort action, versus the power of the court to interpret the limits of democratic self-rule. What are your thoughts on this?
Tape 276, A		
034	Wobbrock	The court's opinion not only incorporates the right to trial by jury, which I think gives the most power to the people, but also incorporates a referendum amendment to the constitution which specifies that facts decided by a jury shall not be re-examined by the court. A major fact question is the amount of damages.
<u>HB 2394B WORK SESSION</u>		
069	Counsel Taylor	Explains that the B14 amendments to HB 2394B will increase the severity of the penalty should a death occur while someone is fleeing or attempting to elude a police officer (EXHIBIT I). It also creates an affirmative defense if a passenger is injured in an accident with an intoxicated driver and knows, or should have known, the driver's condition.
096	Sen. Duncan	MOTION: Moves to ADOPT HB 2394B-B14 amendments dated 7/19/99.
		VOTE: 5-0 EXCUSED: 2 - Burdick, Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.
098	Sen. Duncan	MOTION: Moves HB 2394B to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 EXCUSED: 2 - Burdick, Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.

		SEN. DUNCAN will lead discussion on the floor.
<u>HJR 2A WORK SESSION</u>		
106	Chair Bryant	Discusses the reason for HJR 2 and SB 1340. Indicates he is sympathetic with the difficulties that may occur when issues are rushed, however, the issue was thoroughly discussed in 1987 and I believe the Supreme Court decision deserves a response. Discusses the reasons for passing SB 1340 that would not take effect unless HJR 2 receives approval.
136	Sen. Brown	I would like to verify that there have been less than eighteen verdicts exceeding one million dollars in the history of the state.
142	Chair Bryant	Yes, I've also asked for Legislative Counsel to give me a list of any other statutes that could or will be effected by this decision. Discusses the A9 amendments to HJR 2A (EXHIBIT J).
148	Sen. Bryant	MOTION: Moves to ADOPT HJR 2A-A9 amendments dated 7/19/99.
		VOTE: 6-0 EXCUSED: 1 - Burdick
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
157	Sen. BRYANT:	MOTION: Moves HJR 2A be sent to the floor with a BE ADOPTED AS AMENDED recommendation.
		VOTE: 4-2 AYE: 4 - Duncan, Nelson, Tarno, Bryant NAY: 2 - Brown, Courtney EXCUSED: 1 - Burdick
	Chair Bryant	The motion CARRIES. SEN. BRYANT will lead discussion on the floor.

158	Sen. Courtney	Indicates that there are many referrals to the ballot this session and that we should spend more time analyzing the issue.
163	Chair Bryant	We are referring this since this is the only way to address the issue.
168	Sen. Brown	Serves notice of a minority report.
<u>SB 1340 WORK SESSION</u>		
187	Chair Bryant	This would reenact the statute we passed in 1987.
189	Sen. Bryant	MOTION: Moves SB 1340 to the floor with a DO PASS recommendation.
		VOTE: 4-2 AYE: 4 - Duncan, Nelson, Tarno, Bryant NAY: 2 - Brown, Courtney EXCUSED: 1 - Burdick
		Chair Bryant The motion CARRIES. SEN. BRYANT will lead discussion on the floor.
191	Sen. Courtney	Gives notice of a possible minority report.
202	Chair Bryant	Adjourns the hearing at 2:02 p.m.

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 1340, written testimony from Scott Gallant, 4 pp

B - SB 1340, written testimony from Scott Gallant, 1 pp

C - SB 1340, written testimony from Scott Gallant, 2 pp

D ñ SB 1340, written testimony from Jim Gardner, 1 pp

E ñ SB 1340, written testimony from Jim Gardner, 2 pp

F ñ SB 1340, written testimony from Larry Wobbrock, 1 pp

G - SB 1340, written testimony from Larry Wobbrock, 1 pp

H - SB 1340, written testimony from Larry Wobbrock, 16 pp

I ñ HB 2394A, -B14 amendments dated 7/19/99, 10 pp

J ñ HJR 2A, -A9 amendments dated 7/19/99, 1 pp

K ñ HJR 2A, hand-engrossed HJR 2A with the ñA9 amendments, 1 pp