

SENATE COMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT

January 27, 1999 Hearing Room B

3:00 p.m. Tapes 7 - 8

MEMBERS PRESENT: Sen. John Lim, Chair

Sen. Avel Gordly, Vice-Chair

Sen. Verne Duncan

Sen. Tony Corcoran

Sen. Bill Fisher

MEMBER EXCUSED:

STAFF PRESENT: Carol Rives, Administrator

Gary Roulier, Administrative Support

MEASURE/ISSUES HEARD: SB 115 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 7, A | | |
| 003 | Chair Lim | Calls meeting to order at 3:11 p.m. |
| 016 | Carol Rives | Administrator. Summarizes housekeeping items, to include agendas of upcoming meetings, and future presentations by four minority commissions (Commission on Black Affairs, Asian Affairs, Hispanic Affairs, and the Commission for Women). |
| 051 | Sen. Duncan | Asks whether future meetings will deal with the continuation and/or enhancement of these minority commissions. |
| 057 | Chair Lim | Responds that they will. Supports combining some of the functions of the |

| | | |
|-----|-------------------|---|
| | | minority commissions to save on support costs. |
| 065 | Vice-Chair Gordly | Asks if the upcoming meetings will include discussions of the minority commissions' budgets. |
| 068 | Chair Lim | Responds that they will cover budgets. |
| 070 | Sen. Duncan | Supports going to the Ways and Means Committee to ask for support for these commissions. |
| 072 | Sen. Corcoran | Expresses concerns about timing since hearings begin in Ways and Means Committee on the commissions' budgets next week. |
| 077 | Rives | Summarizes report from Measure Tracking System on House measures dealing with economic development. |
| 092 | Chair Lim | Opens public hearing on SB 115. |

SB 115 PUBLIC HEARING

| | | |
|-----|---------------|--|
| 102 | Bernie Giusto | Chief of Police, City of Gresham. Presents (EXHIBIT A) and testifies in opposition to SB 115. |
| 138 | Rives | Presents overview of SB 115. |
| 154 | Giusto | Continues testimony and emphasizes the importance of strong enforcement by Oregon Liquor Control Commission (OLCC) and police agencies. States that the bill is too broad in its definitions. |
| 189 | Giusto | Summarizes that SB 115 raises some legitimate issues, particularly with licensing of retailers and employees. Suggests that language stating that sanctions could not be imposed without certified education for the retailer would be more appropriate. |
| 234 | Sen. Fisher | States that the problem addressed in SB 115 is not a problem in his district. Adds that enforcement for a licensee such as Fred Meyer or Safeway could be a problem. |
| 280 | Giusto | Answers that even with adequate training, some retailers simply do not treat the sanctions seriously. Summarizes the procedures involved in a sanction. |
| 318 | Sen. Fisher | Feels that groundwork needs to be established for this legislation. |

| | | |
|-----|---------------|---|
| 331 | Jim Harper | Dallas Police Chief and Oregon Association of Chiefs of Police. Presents (EXHIBIT B) , and testifies in opposition of SB 115. Remarks that owners of establishments need to be held accountable for violations committed by their employees. |
| 372 | Sen. Corcoran | States concern that holding owner responsible in a small establishment and imposing sanctions can put a small licensee out of business. Suggests that other penalties short of removal of license are possible. |
| 400 | Giusto | Responds that a more direct and immediate response by the OLCC with the owner may increase the effectiveness of the decoy program. |

TAPE 8, A

| | | |
|-----|-----------------|---|
| 008 | Sen. Fisher | States that his concerns are with the decoy program. |
| 012 | Giusto | States that the decoy program is run by the local police. Adds that different things can be done with the decoy program, and that heavier sanctions and further education may be alternatives to the removal of the license. |
| 039 | Sen. Duncan | Asks if the licensee loses their license immediately after citation for selling to a minor. |
| 051 | Pamela Erickson | Administrator, OLCC. Responds that OLCC has a penalty schedule which allows four violations prior to cancellation. Adds that a newly adopted temporary rule increases the allowance to six violations prior to cancellation. States that the temporary rule is good for 180 days, but the Commission has acted to make this a permanent rule before the temporary rule expires. |
| 075 | Sen. Fisher | States that his impression is that the decoy programs are not run by the police. |
| 081 | Erickson | Responds that the OLCC has a number of decoy operations in place, and generally coordinate with the local police departments. The OLCC is focusing efforts outside the Portland Metropolitan area, and are always in close contact with the local enforcement authorities. |
| 088 | Sen. Fisher | Asks about a specific decoy operation in Roseburg where a citation was issued by an OLCC employee. |
| 091 | Erickson | Answers that is the correct procedure. |
| 101 | Steve McCoid | Oregon Grocery Industry Association. Testifies in support of SB 115. States that his association wants to protect the businesses who are following the rules and not selling to minors. Adds that even with proper training, an employee could sell to a |

minor during a decoy operation and it would go on the businesses sanction schedule.

| | | |
|-----|-------------------|---|
| 136 | McCoid | Remarks that the association is working on amendments that would define mitigating circumstances. Adds that the association does not support cancellation of the licensee when the business owner is making a good faith effort. Remarks that that owner should be notified immediately when they have passed or failed a decoy operation. Emphasizes that the results of decoy operations should be used as a training tool. |
| 178 | Sen. Duncan | Asks how much of a problem these decoy operations are with retailers. |
| 184 | McCoid | Responds that the decoy program is the largest issue at present. |
| 190 | Sen. Duncan | Wants to know how many licensees have been cancelled. |
| 191 | McCoid | Responds that there have been only two but the decoy program is still relatively new. |
| 196 | Chair Lim | Wants to know if it is employers or employees who are cited. |
| 198 | McCoid | Responds that it is largely the employees who are making the sales to minors. |
| 201 | Bill Linden | Southland Corporation. Testifies in support of SB 115, and supports education and training for the retailer rather than sanctions. Adds that their suggested amendments mandate research into where underage persons are obtaining alcohol. States that another amendment will require that decoy operations be random in nature to avoid perceived targeting of specific businesses. |
| 277 | Vice-Chair Gordly | Asks if the changes suggested by the proposed amendments would still be appropriate even if the committee was not considering SB 115. |
| 281 | Linden | Responds that research is important to monitor the effectiveness of the decoy program, and adds that it would eliminate the targeting of specific licensees. |
| 297 | Tom Gallagher | ARCO AM/PM Convenience Stores. Testifies in support of SB 115, and adds that there needs to be a conciliation between the regulation of retailers of alcohol and the policies that encourage business. |
| 330 | Gary Oxley | Fred Meyer, Safeway Stores, and Oregon Neighborhood Stores Association. Testifies in support of SB 115, and remarks that the decoy operations are unfairly impacting licensees throughout the state. Adds that there are inconsistencies in the interpretation of OLCC policies among local law enforcement agencies. |

| | | |
|-----|-------------------|---|
| 404 | Kaleen Deatherage | Oregon Partnership. Testifies in opposition to SB 115. Summarizes key findings of the Oregon Drug Use Survey released on January 26, 1999. Summarizes that the survey indicates that nearly half of Oregon 11 th graders have reported using alcohol in the past month, 25 percent of 8 th graders in Oregon have reported using alcohol in the past 30 days, and that alcohol remains the drug of choice among Oregon youth. |
| 457 | Deatherage | Continues that research has shown a number of risk factors that increase the chances of adolescents developing drug or alcohol dependency problems. Adds that the main risk factor is the availability of alcohol and drugs to youth. |

TAPE 7, B

| | | |
|-----|-------------------|--|
| 020 | Deatherage | Continues testimony. Remarks that the community needs to send the correct message that alcohol use by youth is unacceptable. |
| 043 | Jill Showalter | Oregon Partnership and Youthlink Project. Testifies in opposition to SB 115. Shares comments from youth in opposition to adolescent use of alcohol. Summarizes what different groups of young people are doing in communities to discourage alcohol use. |
| 074 | Showalter | Continues testimony by stating that many groups of young people are forming peer groups to encourage youth to abstain from alcohol. Notes that these are also the peer groups that know which local outlets will sell alcohol to minors. Asks for zero tolerance and total accountability. |
| 087 | Sen. Duncan | Asks for names of Milwaukie students involved in the peer group projects. |
| 088 | Showalter | Responds that she will provide the names for the member. |
| 093 | Vice-Chair Gordly | Asks for a repeat of the statistics stated at the beginning of Deatherage's presentation. Discusses with Showalter the statistics offered. |
| 105 | Showalter | Remarks that many at-risk youth know which stores and bars will sell them alcohol, but the survey did not ask that specific question. |
| 116 | Vice-Chair Gordly | Asks if Oregon Partnership makes their information available to legislators and retail grocery industry representatives. |
| 124 | Showalter | Responds that they have, but would feel comfortable doing so and sees the value in sharing this information. |
| 130 | Chair Lim | Asks if witness believes that the minor buyers of alcohol should be legally responsible as well as the owner and employees of the store. |
| 137 | Showalter | Responds that all parties should be held responsible. |

| | | |
|-----|---------------|--|
| 141 | Chair Lim | Asks what the penalties should be for minors buying alcohol. |
| 147 | Showalter | Responds that there are many worthwhile programs for first-time offenders, but that prevention is preferable. |
| 154 | Sen. Fisher | Appreciates the organization's effort, but believes that there is a fairness issue. Adds that all parties, and particularly employees, need to be held accountable. |
| 209 | Lynn McNamara | League of Oregon Cities. Testifies in opposition to SB 115. |
| 238 | Harold King | Package store owner in Newberg, Oregon. Testifies in support of SB 115. States that he was cited for a violation by Newburg Police and the OLCC in March, 1998. Questions whether it is right to hold him responsible for an employee's actions when he has taken all precautions. |
| 282 | King | Continues that he feels that OLCC rules and licensee's concerns need to be brought closer together. States that a deliberate sale of alcohol to a minor should be cause for loss of license. |
| 324 | Chair Lim | Asks if the citation received was for an employee or the owner. |
| 332 | King | Responds that he received the citation in a decoy program. |
| 338 | Sen. Duncan | Asks whether the citation was a first offense. Discusses the citation with King, who summarizes the procedure. States that he paid a \$75 fine to Newburg Police, and then OLCC issued a citation. Adds that he has spent in excess of \$8,000 in total costs, \$3,000 of which are attorney fees. |
| 387 | Sen. Corcoran | Asks about the facts surrounding the case. |
| 397 | King | Responds that the citation was for failing to ask for ID. |

TAPE 8, B

| | | |
|-----|-------------|--|
| 003 | King | Continues that adversarial relationships do not help accomplish the goal of preventing sales of alcohol to minors. |
| 015 | Sen. Duncan | Asks whether King has a problem with the citation process and discusses the fine for a first offense with King, who adds that the fine from OLCC may constitute double jeopardy. |
| 030 | Chair Lim | Points out that he has introduced legislation that would develop uniform standards for decoy operations. |
| 032 | Sen. Duncan | Asks if OLCC has a response to this particular citation and asks for a response regarding double jeopardy. |

| | | |
|-----|---------------|--|
| 057 | Phil Lang | Chairman, OLCC. Discusses the difference between criminal and civil or administrative law. Remarks that the penalty is \$395 for the first violation. States that there would need to be four violations within a two-year period for cancellation of the license. |
| 085 | Sen. Duncan | Asks for clarification that the total penalties in King's case would have been the \$75 fine to the Newberg Police and the \$395 fine to OLCC. |
| 087 | Lang | Responds that is correct, and the licensee would have had to receive four violations (six under the temporary rule) in a twenty-four month period prior to cancellation. |
| 097 | Sen. Corcoran | Asks whether there is the capacity within the administrative rules to mitigate the penalty by taking into account the level of effort on the business owner to comply with the rules. |
| 104 | Phil Lang | Responds that OLCC considers mitigation all the time. Adds that of 3,000 package stores, only twelve have come before the Commission for cancellation in the past year. |
| 120 | Chair Lim | States that the issue is not the penalty, but double jeopardy. |
| 124 | Lang | Answers that courts do not consider criminal penalties and sanctions or fines from administrative agencies to be double jeopardy. |
| 135 | Sen. Duncan | States that a Driving Under the Influence of Intoxicants (DUII) would be an example of being in violation of both the criminal and administrative rules. |
| 147 | Sen. Fisher | States that drug confiscations might fall into the category of allowable double jeopardy. |
| 166 | Sen. Duncan | Asks if King is still looking for an outcome. |
| 171 | Erickson | Outlines appeal process for OLCC. |
| 181 | King | States that the citation was in March 1998, and the administrative hearing with OLCC was five months ago. |
| 198 | Erickson | Remarks that the process is a slow one, depending on the legal issues. |
| 207 | Dennis Nelson | Bureau of Licenses, City of Portland. Testifies in opposition to SB 115. |

| | | |
|-----|-------------|--|
| 258 | Nelson | Continues that he supports the Oregon Partnership position, and adds that the new sanction schedule approved by temporary rule by the OLCC addresses many of the fairness concerns. Remarks that the bill creates a disparity between small and large licensees. |
| 278 | Sen. Fisher | Asks Nelson how many times he has been fined for not monitoring the actions of his employees. |
| 289 | Nelson | Answers that he has never been fined. |
| 294 | Sen. Fisher | Discusses the differences of responsibility between private business owners and public officials. |
| 344 | Chair Lim | Asks Giusto if the police arrest the buyer as well as the seller when making drug arrests. |
| 358 | Giusto | Answers that both are subject to penalty. Draws a parallel that driving is a privilege, as is the right to sell liquor. Adds that several moving violations would result in criminal fines and loss of license. |
| 392 | Chair Lim | Asks where the funds go from the fines on decoy operations. |
| 399 | Giusto | Responds that the criminal fine is shared equally between local jurisdiction and the state. |
| 407 | Sen. Duncan | Comments that accountability is also present in the public sector. |
| 425 | Sen. Fisher | Comments that the fines are the concern. |
| 432 | Chair Lim | Closes meeting at 5:02 p.m. |

Submitted By, Reviewed By,

Gary Roulier, Carol Rives,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 115, letter, Bernie Giusto, 1 p

B ñ SB 115, letter, Jim Harper, 1 p

C ñ SB 115, letter, Dennis Nelson, 2 pp