

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 14, 1997 Hearing Room 357

1:00 P.M. Tapes 84 - 85

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

HB 2944 Work Session

HB 3407 Work Session

HB 2040 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 84, A		
	Chair	

004	Shetterly	Opens the subcommittee on Civil Law at 1:20 p.m.
HB 2944 - WORK SESSION		
007	Chair Shetterly	Opens the work session on HB 2944.
017	Craig Campbell	Oregon Litigation Reform Coalition >Testifies in support of HB 2944. >We want to go back to the original bill. >It creates a complete defense in a civil action. >very narrow bill >victim's protection
051	Justin Burns	Oregon Gun Owners >refers to handouts from previous hearing
058	Campbell	The bill corrects a problem in current law with reference to homeowner insurance. The insurance company will be out of the issue after the negligence claim goes through court.
073	Chair Shetterly	Insurance would more likely pay for the defense.
075	Campbell	No, the insurance is already out of it.
077	Rep. Eighmey	Is this similar to the OJ Simpson issue? This lowers the standard from beyond a reasonable doubt, to a preponderance of the evidence.
084	Campbell	In a civil case, a preponderance of evidence is used. Uses the example of the OJ Simpson civil case to explain this.
096	Chair Shetterly	In a criminal case, the burden of proof is beyond a reasonable doubt. In a civil action there is a lower burden.
108	Burns	We were trying to be uniform in that respect.
113	Rep. Eighmey	According to this bill, the alleged perpetrator sues the victim. Do we have the right for the victim to sue using the preponderance of evidence?
125	Campbell	Yes.
128	Rep. Wells	What made this bill do anything at all?
133	Campbell	You're taking out the term "based on ordinary negligence."
137	Rep. Uherbelau	My concern is with the preponderance of evidence. This is different than the OJ trial. In this bill we're saying that what the person did would constitute murder. I have a problem changing the burden of proof.

157	Chair Shetterly	The plaintiff only has to prove his case. I am not bothered by creating a civil defense on the basis of an equal burden of proof.
170	Burns	In most cases, a crime has been perpetrated against the victim, so they must uphold the evidence.
178	Rep. Bowman	Gives an example to clarify the bill.
197	Campbell	You would be okay under that situation. You did not do anything to raise yourself to committing a Class A or B felony.
203	Burns	Your action would have to be a substantial factor contributing to the injury.
209	Rep. Bowman	Did we go back to the original bill with no amendments?
210	Campbell	Yes.
211	Rep. Bowman	I don't see that component in the original bill.
212	Campbell	Line 9, subsection 1b contains that component.
217	Rep. Prozanski	MOTION: Moves HB 2944 to the full committee with a DO PASS recommendation.
221	Chair Shetterly	Rep. Prozanski moves HB 2944 to the full committee without any amendments. Is there any discussion?
222	Rep. Eighmey	Why is "spring gun" in here?
224	Rep. Prozanski	It is a crime to set a spring gun.
228	Rep. Eighmey	That is the famous case from Iowa we all studied in law school.
231	Rep. Uherbelau	Why are you coming now and changing the law?
238	Campbell	You are extending it from a negligent case to an intentional one.
251	Rep. Prozanski	Can you give the history of this type of defense in other states?
254	Burns	I believe that Montana has this. We don't have that information for you now, but we can get it for you.
259	Chair Shetterly	Anything else? Is there any objection to the motion?
263		VOTE: 6-1-1 AYE: 6 - Bowman, Eighmey, Prozanski, Shetterly, Starr, Wells NAY: 1 - Uherbelau EXCUSED: 1 - Beyer

264	Chair Shetterly	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
265	Chair Shetterly	Closes the work session on HB 2944.
<u>HB 3407 - WORK SESSION</u>		
269	Chair Shetterly	Opens the work session on HB 3407.
274	Rep. Carolyn Oakley	State Representative, House District 36. >Testifies in support of HB 3407. >There were some questions raised at the previous hearing. >There should be disclosure made by solicitors.
299	Ross Laybourn	Attorney General's Office >enforces Oregon's Charitable Solicitation Act (CSA) >Paid employees of a charity would have to disclose that information when soliciting. >refers to -1 amendments
249	Rep. Eighmey	Will every minister who asks for contributions have to say beforehand that he is paid by the parish?
356	Laybourn	I haven't given that a lot of thought. It is easy to target for-profit organizations.
371	Rep. Uherbelau	Do you think it would make it clear if it said "primarily engage in person solicitation?"
377	Rep. Eighmey	How about a televangelist?
380	Rep. Bowman	My concerns are for non-profit organizations who have people on the staff and do this for a living. Does your legislation deal with these people?
391	Rep. Oakley	Yes.
397	Rep. Bowman	Where in this process would this come?
411	Chair Shetterly	Referring to line 7, it doesn't say exactly when the disclosure should be made.
418	Rep. Bowman	I didn't talk to someone unless I knew that I was going to get money for my organization.
	Chair	Before you get to the pitch you would have to disclose the

421	Shetterly	information.
425	Rep. Wells	This doesn't deal with telephone solicitations.
428	Rep. Oakley	No, it doesn't.
428	Rep. Wells	What about people who are keeping a percentage of what they collect? Is that considered being paid?
436	Rep. Oakley	Yes.
437	Rep. Wells	Explain what lines 10 and 11 mean.
447	Laybourn	It corresponds to the requirements of the disclosure of a professional solicitor. It is meant to include telemarketing.
464	Chair Shetterly	So, in person does cover the telephone?
466	Laybourn	Yes. The concept is in how the message will be communicated.
TAPE 85, A		
001	Laybourn	Most of the professionals solicit over the telephone. We can follow up easier with this bill.
010	Rep. Uherbelau	There are people who work for organizations whose primary task is fundraising. Their ultimate goal is building a relationship that will culminate in a donation. Legislators pay staff to be campaign managers who call looking for campaign funds.
034	Chair Shetterly	Defines solicitation as to what the statute says.
042	Rep. Uherbelau	It still doesn't take care of the legislator aspect.
043	Chair Shetterly	I see a clear distinction between a cultivation of a relationship and solicitation.
045	Rep. Bowman	Gives an example of work place donations. I see problems with this legislation. A volunteer is different than a paid person.
064	Rep. Prozanski	Why do we have this? We are focusing on those who go door-to-door and not those who raise money over the phone.
071	Rep. Oakley	It did come out of constituents who were concerned about door-to-door solicitors. Now that we know it covers telephone solicitors, I think it strengthens it.
074	Chair Shetterly	Referring to line 4, suggests conceptual wording to narrow the bill.
081	Rep. Wells	I was going to narrow it down to the telephone. There are many solicitors who mislead the public when they get on the phone.
093	Rep. Oakley	I have also had some concerns raised about telephone solicitations, but I never thought of them applying here.
096	Rep. Eighmey	I think the evil addressed here doesn't raise to the level that we should impose a fine. Who are we trying to protect? We live in a complex society.

119	Rep. Prozanski	If I as the receiver of the phone call ask the individual calling whether or not they are receiving compensation, do they have a duty to disclose?
123	Laybourn	No, they don't have a duty to disclose, but they have a legal obligation to not lie.
127	Rep. Prozanski	It must be a truthful response, or else they are violating the solicitation laws.
129	Laybourn	Correct.
130	Rep. Prozanski	Maybe that is where we need to go with this. How much do we need to put into the law?
141	Chair Shetterly	Is there a need for this?
144	Laybourn	The majority of the abuse takes place here. People would like to know who they are dealing with.
161	Rep. Oakley	Senior citizens are getting these calls and are sympathetic to the cause.
169	Chair Shetterly	Those are mostly conducted by the professionals.
175	Laybourn	With the public safety associations, most are conducted by professional solicitors. If they are not disclosing that to you, it is a problem of enforcement.
183	Rep. Bowman	A \$50 fine would not phase them at all.
190	Laybourn	By incorporating it into the CSA, the civil penalty is up to \$25,000.
198	Chair Shetterly	Maybe this is an issue of enforcement. The cold calls probably will come from the professionals.
213	Rep. Uherbelau	The seniors are a targeted group, because they are sympathetic.
227	Rep. Eighmey	The people we will probably catch with this are those who are responsible. Gives an example of missionaries coming to his door.
257	Rep. Bowman	What should be done in cases when you don't know where the contribution is coming from?
263	Rep. Oakley	If we decided to limit it to telemarketing and door-to-door, that would not be applicable.
269	Chair Shetterly	Anything else? It may just be an enforcement issue.
276	Rep. Oakley	It may well be an enforcement issue.
279	Laybourn	We do enforce from time to time, but the cases are very complaint oriented. We rely on the public.
290	Rep. Uherbelau	Don't you get these calls yourself?
	Chair	

296	Shetterly	Closes the work session on HB 3407.
HB 2040A - PUBLIC HEARING		
297	Chair Shetterly	Opens the public hearing on HB 2040A.
305	Bill Taylor	Committee Counsel
308	Rep. Beyer	This bill has been to the floor.
318	Mike Scott	<p>Power Rents</p> <ul style="list-style-type: none"> >Testifies and submits testimony in support of HB 2040A (EXHIBIT A). >four situations contractors may be in at a given time >Contractors may be properly registered at all times. >Contractors may never have been registered. >Contractors may have registered during the required time period.
362	Scott	<p>Continues testimony</p> <ul style="list-style-type: none"> >Contractors let their registration lapse and then properly renew it. >fairness to contractors >helps the rental association >refers to HB 2041-1 and the registration issues
402	Rep. Uherbelau	Do we need this?
403	Scott	Yes. The other bill doesn't address the issue of fairness to contractors.
414	Rep. Prozanski	What sections are the fairness ones?
416	Scott	Sections 3, 4, and 6 relate to registration. The effective date in section 5 originally was July 1, 1997 as it relates to registration.
TAPE 84, B		
001	Rep. Prozanski	I will not support this bill. I want the table fair for everyone. I am appalled that we can't protect consumers. The contractors board will not tell you what is going on.
028	Rep. Bowman	Can you give me a reason why a contractor would not re-register?
030	Scott	One reason is because the contractor would have a change of address. The bill addresses awareness.

041	Rep. Bowman	I am having a hard time with them not registering. This is a professional license.
051	Scott	They are not licensed. There is some educational requirement which needs to be in place.
065	Rep. Bowman	What is this exception?
066	Scott	Referring to the present law, the contractor is not required to be registered. This bill would require the nonregistered contractor to rise to the level of the registered ones.
079	Chair Shetterly	Is the exception of substantial injustice still in the bill?
082	Scott	Yes. It applies if you were never registered or if you let it lapse.
089	Rep. Uherbelau	This is a poorly drafted bill. In a letter to Rep. Devlin, the author states that this bill doesn't do anything different than what the current statute does. Legitimate contractors do register. I believe that this does change statute.
130	Scott	We were trying to address the issues. The focus of the bill initially was to deal with the legitimate contractor.
147	Rep. Uherbelau	The contractors who aren't legitimate are the ones who bother me.
149	Tony Rodolpho	Department of Justice >lapse of registrations due to lack of manpower >provides additional protection to consumers
175	Fred VanNatta	Oregon Building Industry Association >Applications for renewing registration need to be sent 60-90 days prior to the expiration date.
196	Rep. Prozanski	I am more than willing to work with you on this bill. Individuals who are legitimate do deserve to be protected as well. Consumers need the protection.
233	Rep. Beyer	I think it should go back to the floor. Under the current law, unregistered contractors have a right to make a claim.
238	Rep. Prozanski	I want to fix it, but I want to make sure those who aren't registered can't make claims.
242	Chair Shetterly	In order to get the protection, contractors would have to not know about the registration requirements.
253	Rep. Prozanski	What if someone doesn't know he has to be a licensed lawyer or doctor? Ignorance should not be a defense.
260	Chair Shetterly	It is a defense now. I see this bill as a step forward.
	Rep.	Why aren't we looking at holding people accountable for not

277	Prozanski	registering?
284	Chair Shetterly	They are held accountable. They don't get any help from this bill or current law unless they can show that the enforcement of the statute would result in substantial injustice. Any other questions?
310	Rep. Uherbelau	I have a problem with "didn't know." I can't imagine anyone not knowing the requirements of their profession.
318	Scott	There were questions about what "aware" means. We want the standard created by existing law.
329	Chair Shetterly	This changes carries forward any case law that is already developed in existing statute.
330	Scott	That was the intent.
332	Chair Shetterly	Closes the public hearing on HB 2040A.
<u>HB 2040A - WORK SESSION</u>		
333	Chair Shetterly	Opens the work session on HB 2040A
337	Rep. Beyer	MOTION: Moves HB 2040A to the full committee with a DO PASS recommendation.
338	Rep. Shetterly	MOTION: Moves to AMEND the motion by substituting "January 1, 1998" for "July 1, 1997" and deleting sections 3, 4, and 6.
352	Rep. Wells	Why do we have this bill?
353	Rep. Uherbelau	Rep. Devlin was going to carry it, and he asked for it to be referred here.
359	Rep. Beyer	Someone made a request that it come to this committee, so that it could be looked at by the people who had a problem with it on the floor.
375	Rep. Eighmey	Rep. Uherbelau was not involved in those discussions. We made the decision to send it here.
379	Chair Shetterly	I remember Rep. Uherbelau having some problems with this bill.
385	Chair Shetterly	Is there any further discussion?
390		VOTE: 4-4 AYE: 4 - Beyer, Shetterly, Starr, Wells NAY: 4 - Bowman, Eighmey, Prozanski, Uherbelau
405	Rep. Beyer	Changes vote from "aye" to "nay" and serves notice for possible reconsideration.

405		VOTE: 3-5 AYE: 3 - Shetterly, Starr, Wells NAY: 5 - Beyer, Bowman, Eighmey, Prozanski, Uherbelau
407	Chair Shetterly	The motion FAILS.
408	Chair Shetterly	Adjourns the meeting at 2:45 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2040A, written materials, Mike Scott, 2 pp.