

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 28, 1997 Hearing Room 357

1:00 P.M. Tapes 92 - 93

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judith 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:

Dave Amesbury, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

SB 599A Public Hearing and Work Session

SB 1034A Public Hearing and Work Session

SB 273A Public Hearing

SB 266A 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
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Tape 92, A		
003	Chair Shetterly	Calls the meeting to order at 1:35 p.m.
<u>SB 599A - PUBLIC HEARING</u>		
011	Chair Shetterly	Opens the public hearing on SB 599A.
015	David Amesbury	Committee Counsel >Explains the provisions of SB 599A. >Refers to the -3 amendments (EXHIBIT A).
021	Charlie Davis	Commission on Judicial Fitness and Disability >Testifies in support of SB 599A. >This is a money bill. >discipline for the Supreme Court >The amendments propose that the Supreme Court may or may not accept the stipulation brought by the accused judge.
043	Chair Shetterly	So your assumption is that you will get some savings out of this?
044	Davis	Yes.
046	Chair Shetterly	It sounds like the attorney discipline bill we heard earlier.
051	Chair Shetterly	Closes the public hearing on SB 599A.
<u>SB 599A - WORK SESSION</u>		
051	Chair Shetterly	Opens the work session on SB 599A.
052	Rep. Bowman	MOTION: Moves to ADOPT SB 599A-3 amendments dated 5/28/97.
054		VOTE: 6-0-2 EXCUSED: 2 - Beyer, Prozanski
055	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
055	Rep. Bowman	MOTION: Moves SB 599A to the full committee with a DO PASS AS AMENDED recommendation.
058		VOTE: 7-0-1 EXCUSED: 1 - Beyer
059	Chair Shetterly	Hearing no objection, declares the motion CARRIED.

		REP. BOWMAN will lead discussion on the floor.
061	Chair Shetterly	Closes the work session on SB 599A.
SB 1034A - PUBLIC HEARING		
063	Chair Shetterly	Opens the public hearing on SB 1034A.
065	David Amesbury	Committee Counsel >Explains the provisions of SB 1034A.
070	Alan Bennett	Pioneer Trust Bank >Testifies and submits testimony in support of SB 1034A (EXHIBIT B) . >resolve problems with section five of ORS 128.102 >Trustee is not personally liable against unsubstantiated claims the beneficiaries may bring.
116	Rep. Bowman	We fixed this in 1993, tried to make it better in 1995, and here we are again to work on it.
121	Bennett	Nothing was done in 1995. The issue in 1993 was the result of a case which indicated that the trustee was liable for all the debts of the partnership.
140	Rep. Eighmey	All you are doing with this is absolving the trustee of liability to the estate or beneficiary when he isn't at fault?
144	Bennett	Yes.
154	Rep. Eighmey	Why didn't we put an "and" in there to cover our bases?
169	Bennett	We want the trust agreement to be able to permit the trustee to carry out the trust agreement.
193	Chair Shetterly	Section 5 addresses statutory liability. You want to leave the door open that a trust may limit some of a trustee's liability?
200	Bennett	Yes.
202	Chair Shetterly	The language is a prohibition on a provision in the trust agreement.
204	Bennett	Yes.
206	Chair Shetterly	Closes the public hearing on SB 1034A.
SB 1034A - WORK SESSION		
208	Chair Shetterly	Opens the work session on SB 1034A.
209	Rep. Uherbelau	MOTION: Moves SB 1034A to the full committee with a DO PASS recommendation.

215		VOTE: 8-0
215	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. UHERBELAU will lead discussion on the floor.
217	Chair Shetterly	Closes the work session on SB 1034A.
<u>SB 273 A - PUBLIC HEARING</u>		
224	Chair Shetterly	Opens the public hearing on SB 273A. >-A3 amendments (EXHIBIT C)
232	Kingsley Click	State Court Administrator >Submits and reads testimony in support of SB 273A (EXHIBIT D). >clean-up and efficiency issues in the courts >The first part of the bill deals with court fees. >Sections 19 through 21 clean up anomalies in the tax court legislation. >streamline court procedures and processes
281	Rep. Eighmey	Can you guarantee that there are no substantive changes?
287	Click	I will defer to Karen Hightower, because I don't want to mislead you.
297	Karen Hightower	State Court Administrator >We have tried to split them into substantive and technical changes. >We tried not to make any policy changes.
330	Vice-Chair Uherbelau	Are you talking about where you restore the word "regular?"
334	Hightower	Yes. It would be a policy change if we didn't restore it.
336	Rep. Bowman	Referring to page 9, what about the section which is deleted and changed significantly?
353	Click	These changes concern only interpreters used in depositions of civil proceedings. The court is the final determiner of the costs and taxes.
374	Rep. Bowman	Why was that change made?
		Either party having the depositions could ask that the cost be

376	Click	incurred by the other party.
382	Rep. Bowman	Now, rather than it being a part of the court proceedings, it is up to the party to say whether or not they can pay for the service.
388	Click	This just has to do with the taxes. They only deal with the depositions that happen outside the court.
409	Vice-Chair Uherbelau	Are you proposing to eliminate section 18, subsection 6, because there is otherwise authority for the court to do this?
421	Click	Referring to page 10, we moved the language so that the procedure and the taxation appear together.
436	Vice-Chair Uherbelau	You have moved the substance of how the courts can seek interpreter costs.
419	Click	The procedure statement is on the top of page 10.
455	Vice-Chair Uherbelau	There is nothing that shows me that you have authority to recover interpreter's fees.
464	Click	Doesn't it refer to the costs and disbursements, which include interpreter's fees?
Tape 93, A		
002	Vice-Chair Uherbelau	Shows the committee what is being referred to.
009	Rep. Bowman	My concern is that the new boldface language doesn't talk about what will be covered. Section 6, under section 18 has a cleaner definition of what will be included. It still looks like the fees are put on the person who has to come and get the services.
025	Vice-Chair Uherbelau	They had to do that anyway. It doesn't change.
030	Rep. Eighmey	The only thing that is added is that it includes depositions. The new bold language doesn't refer to the fact that the prevailing party may not be able to pay. We have deleted reference to that section. People don't know where to look for this information. Ordinary individuals need to be able to find information when they need it.
065	Click	Maybe we are too close. We could have a reference which could go back to section 68. Would that make sense? Our intent was to make it more clear.
083	Rep. Eighmey	How do you address the indigent question?
085	Click	The court determines that now.
095	Rep. Eighmey	We are concerned with, the party who didn't prevail, being able to pay.
100	Vice-Chair Uherbelau	The way it reads now, we do care about the prevailing party. That is a strange provision.
104	Vice-Chair Uherbelau, Rep. Bowman, Rep.	Discuss the prevailing party issue.

	Eighmey	
106	Vice-Chair Uherbelau	The court now looks to see if the person who won can pay.
118	Rep. Uherbelau	Referring to page 7, there is a section which is deleted. I want to make it clear where it is mandatory to keep certain records.
128	Click	We are taking the mandatory language out, because there was a conflict.
131	Rep. Uherbelau	They do make rules for those records?
132	Click	Yes.
133	Rep. Beyer	Referring to page 2, isn't changing fees a policy change?
136	Click	One of the fees is being restored, and the other had the fee assessed in the wrong place.
141	Hightower	We are deleting language which was inserted in the wrong statute. Courts used to charge a fee to transcribe the judgment from one county to another.
159	Rep. Beyer	Restoring a fee that was taken out by a policy decision last session is a policy decision this session.
164	Hightower	The transcript of judgment fee has always been there. The thing that has changed is transcribing from one county to another.
181	Chair Shetterly	Referring to page 6, line 12, would this refer to state court judges? Would it include municipal court judges?
187	Click	It would include both municipal judges and justices of the peace.
190	Hightower	I think there is a reference somewhere concerning this.
193	Chair Shetterly	Policy considerations would be the same?
193	Click	Yes.
194	Chair Shetterly	Justices of the peace are included?
195	Click	They would be under the definition.
199	Gary Carlson	Associated Oregon Industries >Section 19 is the only part we have concerns with, and it has been fixed with the -A3 amendments. >do not want to lose administrative appeal
224	Rep. Eighmey	The charge for the transcript from one county to another has been changed. It was not a policy decision by the legislature.
240	Hightower	There was no intent to eliminate a fee when the terminology changed.
242	Rep. Eighmey	The change is just a word. I can't recall doing this last session.
248	Rep. Bowman	I want to bring my concerns over section 18. I would like to put subsection 6 back into this bill.
		We all agree that technical changes should be made. Most people

258	Rep. Eighmey	probably don't know where to look. This is not requiring the prevailing party to be paid by the loser. The judge uses his own discernment in coming up with a judgment.
300	Chair Shetterly	What was the response of the panel on that?
302	Click	We were okay with having a cross-reference which would refer back to the methodology. The concern was with the section dealing with the in-court proceedings. I offer that we come up with a statement to restore the language, so it isn't as confusing.
325	Chair Shetterly	Do you think that you could have something conceptually or from LC by Friday?
332	Click	Yes.
333	Chair Shetterly	Closes the public hearing on SB 273A.
<u>SB 266A - PUBLIC HEARING</u>		
337	Chair Shetterly	Opens the public hearing on SB 266A.
339	Chair Shetterly	We have the bill as it was introduced, and we have the amendments.
348	David Amesbury	Committee Counsel >Discusses the -1, -2, -A3 amendments (EXHIBIT E).
365	Sen. Neil Bryant	State Senator, Senate District 27 >Testifies in support of SB 266A. >Gives the background of SB 266A.
416	Sen. Bryant	Continues testimony. >tort reform of the 1995 session >I would consider going back to thirty percent.
Tape 92, B		
004	Rep. Eighmey	Are there any other compelling reasons to increase from twenty-five to thirty percent? Is there any indication as to why we should change it, since it's only been two years?
009	Sen. Bryant	The thirty percent was a compromise. The people who wanted stronger tort reform wanted to go back to the fifty percent.
017	Chair Shetterly	Discusses with witnesses as to who will be coming to testify.
023	Rep. Bryan Johnston	State Representative, House District 31 >Suggests Chip Lazenby testifies first.
026	Chair Shetterly	My intent is to lay out the background for SB 266A, so we understand what is going on.

030	Chip Lazenby	<p>Legal Counsel, Governor's Office</p> <ul style="list-style-type: none"> >Testifies in opposition to SB 266A. >The context of the agreement is that thirty percent is a ceiling. >discrimination litigation >remove governmental action from this bill
064	Rep. Johnston	<ul style="list-style-type: none"> >Testifies in opposition to SB 266A. >The minority report exempted providers of alcoholic beverages from this liability. >political costs of five percent >Twenty five percent has been good law.
116	Rep. Bowman	Have there been any legal decisions which compel us to make a change one way or another?
121	Rep. Johnston	I don't know of any, but I don't actively practice in this field.
146	Robert Neuberger	<p>Attorney at Law</p> <ul style="list-style-type: none"> >Submits testimony and testifies in support of SB 266 (EXHIBIT F). >joint and several liability >Gives the history of SB 601.
196	Neuberger	<p>Continues testimony.</p> <ul style="list-style-type: none"> >Referring to tab 5, page 7 of the testimony, those are the conceptual amendments to SB 601. >What was agreed to was that damages could not exceed double the percentage of fault.
246	Neuberger	<p>Continues testimony.</p> <ul style="list-style-type: none"> >No joint liability for a defendant found to be less than thirty percent liable. >The documents show a different history than what was told here earlier.
284	Rep. Eighmey	It is important for us to understand history. I am not hearing what the significance of fifteen or twenty percent is. What will increasing the percentage do?
		>Joint liability deals with two different parties' liability.

301	Neuberger	>Uses "Murder on the Orient Express" as an example of joint liability.
351	Neuberger	Continues explaining joint liability.
361	Chair Minnis	Could you apply this to a civil case? Let's talk about a motor vehicle accident involving more than one person.
378	Neuberger	Gives an example of a construction worker who is knocked off a building by four people. There would be no reallocation for any of the four defendants. If fault is more than twenty-six percent, the defendant will have to pay more than his share.
409	Rep. Uherbelau	If there is four defendants who are all twenty-five percent guilty, and one can't pay, the widow will suffer. They will not be able to be paid by the other three.
418	Neuberger	Yes. The insurance company will also suffer.
423	Rep. Eighmey	The twenty-five percent isn't going to be paid under current law. Under pure contribution, that twenty-five percent would be divided by three, and it then would be added to the costs the others would pay.
431	Neuberger	Under the common law that is correct.
436	Chair Shetterly	Reallocation would not occur under today's law.
440	Neuberger	The higher one makes the limit, the fewer defendants there needs to be before the widow takes a hit.
445	Rep. Eighmey	What happens if the limit is twenty percent and one of them can't pay?
449	Neuberger	It would be strictly several liability under today's law.
453	Chair Shetterly	The widow will recover seventy-five percent of the verdict?
465	Neuberger	Yes.
466	Chair Shetterly	Give us a hypothetical situation where this makes a difference.
Tape 93, B		
001	Neuberger	If the four defendants are found to be ten, fifteen, thirty, and forty-five percent at fault, the two defendants with the highest fault could be subject to reallocation.
011	Rep. Eighmey	Which means?
012	Neuberger	It is a process by which it would be determined whether or not they have assets that are subject to paying...
013	Rep. Eighmey	..those ten or fifteen percent that couldn't pay.
014	Neuberger	Yes.
014	Rep. Eighmey	What if those people couldn't pay?
016	Neuberger	Are we still at thirty percent?
016	Rep. Eighmey	Yes.
		Under today's law, thirty percent could end up paying the whole

016	Neuberger	thing. Under the proposed amendments, thirty percent would be immunized. The more the threshold is raised, the more defendants get off without paying.
043	Rep. Eighmey	So, the drunk driver who is thirty percent at fault, and is the only one who can pay, only pays his share. The victim is out the other seventy percent?
048	Neuberger	Under the proposed amendments, yes.
049	Rep. Eighmey	Under the present law, he would be responsible for the whole thing?
050	Neuberger	Yes. Another problem with artificial limitations is what if there are eight defendants.
063	Rep. Eighmey	We need to be careful to not perpetuate the concept of sin and guilt.
072	Neuberger	Perhaps I was over responding to the issue.
085	John DiLorenzo	Oregon Litigation Reform Coalition >Submits testimony and testifies in support of the amendments to SB 266A (EXHIBIT G). >joint liability >several liability >Task force on liability recommended that joint and several liability be abolished.
135	DiLorenzo	Continues testimony. >SB 601 (1995) got rid of the doctrines of joint and several liability. >-A3 amendments reinstate the 30% compromise.
185	DiLorenzo	Continues testimony >Referring to page 9 of the testimony, a survey shows that most people don't think that a defendant who is found thirty percent liable should have pay the whole rendered verdict.
235	DiLorenzo	Continues testimony. >There were many deals in coming up with this legislation.
257	Chair Minnis	Wouldn't it be better to just be liable for your share, rather than be responsible for the whole thing?
263	DiLorenzo	That is precisely what SB 450 would have done.
266	Chair Minnis	The problem really is the reallocation system.
		Such a proposal would likely not survive scrutiny in the Senate, but

271	DiLorenzo	this would.
275	Chair Shetterly	The loser becomes the plaintiff without reallocation. The defendant may end up paying more, but fault is found with him rather than the plaintiff.
285	Chair Minnis	We are assuming that all the defendants will pay the same share. That is an inappropriate comparison.
297	Rep. Eighmey	Yours is the classical argument in liability. Who should pay? A person found only to 1% at fault, still is at fault. Mr. DiLorenzo is making the arguments based on what was negotiated in 1995 and not the merits of the arguments. I see that you are trying to change it back to what you thought you wanted.
342	DiLorenzo	What I wanted was SB 450, which would have abolished joint and several liability. Should one injustice be remedied by another injustice? We are arguing about the deep pockets theory, which is a philosophical split.
367	Chair Shetterly	Closes the public hearing on SB 266A.
375	Chair Shetterly	Closes the meeting at 3:30 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 599A, -A3 proposed amendments (dated 5/28/97), staff, 1 p.

B - SB 1034A, written testimony, Alan Bennett, 8 pp.

C - SB 273A, -A3 proposed amendments (dated 5/23/97), staff, 1 p.

D - SB 273A, written testimony, Kingsley Click, 7 pp.

E - SB 266A, -1, -2, -A3 proposed amendments (dated 3/20/97, 4/30/97), staff, 6 pp.

F - SB 266A, written materials, Robert Neuberger, 74 pp.

G - SB 266A, written testimony, John DiLorenzo, 11 pp.