

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

March 5, 1997 Hearing Room 357

1:00 P.M. Tapes 33 - 34

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

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 2674 - Public Hearing

HB 2415 - Work Session

HB 2044 - Work Session

HB 2733 - Public Hearing

HB 2509 - 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
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Tape 33, A		
008	Chair Shetterly	Calls the meeting to order at 1:06 p.m.
<u>OPENS PUBLIC HEARING ON HB 2674</u>		
014	Rep. Robert Montgomery	District 56 Testifies in favor of HB 2674. Our bill is based on a current Washington state law.
026	Judge Ronald Somers	Municipal Judge in The Dalles Testifies in favor of HB 2674. This has been a great benefit to the courts in the state of Washington. Discusses issues regarding the bill. We don't have enough people to work on the collection process in The Dalles.
040	Rep. Eighmey	One of my concerns is that most collection agencies take 50 percent, and if we're going to impose that as an additional court cost, that would tack on extra because we're taking the whole thing. Is that the intent?
046	Judge Somers	That's the intent, but the state of Oregon has a big stake also. Oregon has about a 22 percent interest in your fine assessments (i.e. fine tax), and that's necessary to fund police standard training and other facilities. Do you think that's unfair?
053	Rep. Eighmey	I'm concerned that when a judge imposes a fine on a person who is indigent, they are imposing a heavier fine on that individual than they would on one who has the ability to pay. Won't you run into some constitutionality problems because you are treating indigents differently than you would a person who is qualified?
061	Judge Somers	That's a good question, but this is how we're dealing with it: (1) you take that into consideration in court, and (2) if they're involved in a current program of working things out with the court, then they don't get referred out. In most cases, the ones who get referred out are people who feel that they have no incentive to pay. Gives examples to illustrate his position. This allows the court to say, "You have x number of days to get this taken care of, or it's going to be referred for collection, and all the collection costs will be assessed." Now it's nothing. You can't put them in jail for non-payment or contempt because there is no space.
092	Rep. Prozanski	My understanding is that you can, currently, go to a collection agency to collect existing fines. You want to be able access the lost revenue by going through the collection agency.
095	Judge Somers	That's right, and that would mean a lot to the cities and counties that have justice court.
		I have a bill up now that would allow the cities to report to the

100	Rep. Prozanski	Department of Motor Vehicles (DMV) the individuals who are delinquent on parking tickets, and they will not be able to renew their driver's license until they extinguish their debts. Washington state has a similar bill, but their bill relates to driver registration rather than licenses. I feel that is not working because titles can be easily transferred.
109	Judge Somers	This would help that. That's a finer assessment imposed by the court.
111	Rep. Prozanski	Isn't there already a provision that the court can report to DMV and require a suspension of the license for failure to pay?
113	Judge Somers	Yes, but not on a parking ticket. We deal with more than that. We deal with domestic assault, trespass I, II, and III, and many other misdemeanors.
120	Rep. Montgomery	There is a \$5 minimum fee that can be charged.
124	Rep. Prozanski	I just want to make sure that we are talking about the different types of fines. Is your testimony geared toward non-traffic offenses, or are you talking about a ballpark of everything?
129	Judge Somers	I'm talking about a ballpark of everything.
138	Rep. Prozanski	Instead of getting into a position where an additional assessment of 50 percent would be tacked on, that you are giving to a private entity, if we can do that within local and state governments, we don't have to worry about having cities enter into contracts to collect debts. To me, there is a benefit, a win-win for the state, to make sure municipal fines are paid and paid quickly. All that money would stay within the loop of government to offset the cost and expenses we all have, and the impact of Measure 47.
147	Judge Somers	With the Measure 47 impact, we're going to lose 20 positions in The Dalles, and we're a small city. We don't have the additional manpower to handle it. This also allows referral to the Department of Revenue, and that could lead to them making reasonable charges for their services.
154	Rep. Prozanski	Would you be opposed to this bill limiting collections to the Department of Revenue or through some other process involving, for example, the DMV, instead of bringing in another entity to enforce collections?
160	Judge Somers	Without adequately going to the DMV and asking them beforehand, I think they would be very opposed. They are understaffed now. The maximum they want to do is take in your suggestion for license suspension. The Department of Revenue only wants to deal with people who have tax returns in Oregon. They rarely proceed outside the state of Oregon. We're sitting right on the border, so a third to 40 or 50 percent are coming over to shop in Oregon because we don't have a sale tax. By eliminating that avenue, the potential for collecting those moneys would be extremely less.
		At the time of the judgment, you are assessing a fine. Then, when you

182	Rep. Wells	turn that over to the collection agency, you are increasing that fine at that time.
188	Judge Somers	No, the fine doesn't increase, just the cost.
189	Rep. Wells	So, you are telling the collection agency to collect your fine and their cost?
190	Judge Somers	That's right.
192	Rep. Wells	As I read this, the statute would change so the state would be able to do the same thing. I'm confused because you said they already have the ability to do this, but they don't have the ability to add the cost.
195	Judge Somers	That's correct.
198	Rep. Wells	Why is this language in here then?
200	Rep. Prozanski	It is my understanding that cities are thinking about going to collection agencies to collect fines. However, the city has to pay the collection agency for their services, so they are losing money.
205	Rep. Wells	Why do we have the additional language of "municipal court" and "justice court." They can already assign it, but they can't collect the money.
210	Erik Larson	Attorney practicing in Salem, Oregon, judge for Kaiser part-time, president of the Oregon Municipal Judges' Association (OMJA) That is simply put in there for clarification purposes, so people are not under the impression that only state court can do this. Explains why they have been unsuccessful in collecting the money.
233	Judge Somers	We don't currently have the authority to assign this to the Department of Revenue; only district or circuit courts can do that.
236	Rep. Wells	Currently, you can turn these over to the collection agency, but you have to deduct from the amount that you collect, the agency's cost. Now, we are shifting that cost to the payee. Correct?
238	Judge Somers	Correct.
240	Rep. Wells	That would give you an incentive to use other avenues to collect the money, and going to a collection agency would be a last resort.
247	Rep. Bowman	I'm concerned with this bill because, if you look at the different types of fines, you're putting indigent people at a real disadvantage. The burden we are placing on indigent people is overwhelming. I don't think it's going to serve your purpose any more to hire a collection agency for people who can't pay.
271	Larson	Gives examples to explain the different types of payment plans and people that owe debts, in his court and personal experiences.
		I agree with you, but the United States Supreme Court has spoken, and I will follow what it has said. We have to take into account whether

285	Judge Somers	someone can pay, and if they cannot pay, we cannot take action on them, but there are people who can pay and don't take it seriously. Comments on the impact of Measure 47.
335	Rep. Bowman	Comments about the effects of debt on citizens.
348	Judge Somers	Comments on volunteer work and options for the unemployed in the community.
372	Bill Taylor	Committee Counsel I'm looking at ORS 153.615, and it lists the fine for a Class A traffic infraction as \$600. I assume there would be other court costs that are assessed in addition to that.
380	Judge Somers	22 percent state fine tax.
382	Taylor	So, that's about \$130 dollars. We're talking about \$730, and 50 percent of that would give us a fine of around \$1000. My concern is that in ORS 161.635, it lists \$1000 for Class C misdemeanors. Are we changing an infraction to a misdemeanor because of the penalty, and if we do that, do we have to appoint counsel?
392	Judge Somers	No. You still have an infraction or violation because it is not assessed as a fine. It's assessed as cost, and only if the fine is not paid. They have an opportunity to pay. This is only if we have to enforce action to collect the money.
TAPE 34, A		
007	Rep. Uherbelau	Even though, in essence, the collection agent would be an agent of the court for purposes of collecting that fine, I don't believe it would be perceived that way. It does seem to have a punitive aspect. Maybe we should take out the words "assigned to a private collection agency." It seems that even if you were slightly successful at collecting these fines and assessing the cost of collecting them, you ought to be able to fund a position to do that kind of work. Have you thought about that?
020	Judge Somers	I have, but the problem is we're going to lose positions under Measure 47. We don't have enough money to run the city. If we fund more positions, it still comes out of the pot. I'm not there to fund positions, but if we can't collect money, I'm left with an empty bag, and that's not very bright either.
034	Larson	Most courts operate on shoestring budgets with overworked clerks. Often times, they have only one clerk. They don't have the resources to be running civil suits on the side.
037	Rep. Uherbelau	I wasn't looking at this as a way to raise funds to fund positions; I was seeing it more as a dedicated fund. There would be one person, and they would be paid through the collection efforts. I'm concerned about adding the cost while using a collection agency. It's just perception of fairness when the court could be doing the same thing.

044	Judge Somers	Is it fair they did what they did, and then did not pay? They know the system and funding today is such that they will not have to pay, and I can't do much about it.
056	Rep. Eighmey	I still have concerns, as they've been expressed. Assuming I accept this concept, what are the possibilities of authorizing the government itself to impose collection fees up to 50 percent of a fine?
062	Judge Somers	Not a problem, if they'll do it. The problem I've experienced is that being on a border, they don't want to act outside the borders of Oregon.
071	Chair Shetterly	Closes Public Hearing on HB 2674.
<u>OPENS WORK SESSION ON HB 2415</u>		
80	Bill Taylor	Committee Counsel Discusses HB 2415.
89	Jim Markee	Oregon Collectors' Association The committee had requested that Jeff Hasson and The State Court Administrator's Office combine efforts, and the new amendments are the final product.
100	Karen Hightower	State Court Administrator's Office Submits written testimony on, and proposed amendments to, HB 2415 (EXHIBIT A). Discusses proposed amendments to HB 2415.
150	Hightower	Continues discussion about proposed amendments.
164	Markee	The necessity of this bill arises from a federal court case, as well as other pending court cases, in which the court has held, under the Unfair Debt Collection Practice Act, legal action must be instituted either in the jurisdiction in which the debtor resides or in the jurisdiction that he/she signed the contract in.
181	Chair Shetterly	I would like these amendments to be drawn up in Legislative Counsel's form, and I would be willing to schedule this for another work session.
188	Chair Shetterly	Has the application of the federal case had any impact here in Oregon, or do you see "gray clouds on the horizon" that you want to take care of now?
193	Jeff Hasson	Oregon Collectors' Association I have not seen any Oregon cases directly on this particular issued. The problem arises because the words "legal action" have been interpreted as being post-judgment processes, including garnishments.
207	Tom Churchill	Oregon State Bar, Debtor-Creditor Committee My only request is that we be given some time to study this matter a little more, since we did not see the amendments before now, and we'd like to discuss that.
219	Chair Shetterly	Absolutely. I think we feel the same way. Closes Work Session on HB 2415.

<u>OPENS WORK SESSION ON HB 2044</u>		
235	Taylor	Discusses HB 2044 and -1 amendments to the bill (EXHIBIT B).
285	Rep. Eighmey	On page three of the -1 amendments, line 17, it should say "methical" not "medial."
299	Chair Shetterly	I'd like to move this today, if that would please the committee.
300	Rep. Starr	MOTION: Moves to ADOPT HB 2044-1 amendments dated 2/18/97 and that the measure be FURTHER AMENDED on page 2, line 17, by changing "medial" to "methical".
311	Rep. Beyer	I've got my usual complaint: we are trying to amend the "relating to" clause again.
317	Taylor	I believe the relating clause is "relating to civil liability," the rest is just an adjective describing exactly what's going on. We're not amending the relating clause.
329	Rep. Wells	Where does it refer to veterinary medicine?
332	Chair Shetterly	It doesn't. Rather than adding "veterinary medicine" to the laundry list of medically trained persons (lines 17-20 of the original bill), we decided to make this a blanket, Good Samaritan statute that would apply, regardless of a person's medical training, or lack thereof.
345	Rep. Wells	Where would the veterinarian fit into this?
349	Chair Shetterly	They would have fit within the laundry list of the original bill, but my recollection is that we decided to do this, rather than adding to the list.
355	Rep. Wells	Where is the language where they fit in under the -1 amendments?
360	Chair Shetterly	Lines 20-22 are coming out, and that's where they would have been added.
362	Rep. Eighmey	I think Rep. Wells' concern where does anybody, including veterinarians, doctors, ordinary citizens, etc., fit now?
369	Rep. Wells	If I were a veterinarian, where would I be protected under this Good Samaritan law?
372	Taylor	On page three, lines 13-19, you find the operative language, and the key word there is "person." There is no limitation on that.
389	Rep. Wells	Comments on how emergency transportation is protected, especially for those who live far out of town.

TAPE 33, B		
015	Rep. Bowman	Is it okay that we've made it so generic?
023	Rep. Prozanski	I think the question is: Do they now have a duty because it's so generic? I don't believe so.
026	Rep. Uherbelau	You have to look at whether a person was grossly negligent or not and what they did. Someone who has not had medical training and has tried to do something, may be looked at as grossly negligent. The standard is really gross negligence, and that would deal with background information.
035	Rep. Starr	Comments on a personal experience. In that kind of a situation, there may be a different level.
042	Rep. Eighmey	The reason that we want to pass this is because medically trained individuals were reluctant to stop and help someone because they feared they would be held to a higher standard than would anyone else. This says that, only if you're grossly negligent. I'm thinking that this allows a medically trained individual to more readily stop and assist.
055	Taylor	This definitely changes the current standard. This goes to a more difficult standard to prove: gross negligence.
061	Steve Kafouri	Oregon Acupuncture Association The bill eliminates the distinction between medically and non-medically trained people.
067	Taylor	That's correct as far as gross negligence, but my assumption is that a doctor who did something that would be grossly negligent for a doctor, he/she would still violate the statute.
075	Kafouri	I disagree. As I understand it, gross negligence means "beyond careless;" you have to have some willful, wanton conduct involved. I think that standard would be the same for a medically trained person and a non-medically trained person. Gross negligence is not just a little more negligence; it's a different kind of standard. It would be the same kind of thing, regardless of a person's background.
091	Rep. Prozanski	We're going to go with the definitions of "gross negligence" and "ordinary negligence" that are already in the statute. We're not going to redefine these statutes.
095	Chair Shetterly	This may be a standard that may ultimately get flushed out in a court. Our effort here, in comparing the standard in the current statute, I think, is more protective of medically trained people. I think we've done about as much as we can to open doors for all people to render emergency assistance and have maximum protection from liability.
108	Rep. Beyer	Is gross negligence defined in the statute somewhere?
111	Rep. Prozanski	I believe it is.
113	Taylor	It's basically defined in case law.

119	Rep. Eighmey	It is my intent that we adhere to established case law that exists today, with regard to the definition of "gross negligence." That standard and those definitions exist, and it is not my intent to change those. It is my intent to be inclusive of parties providing emergency medical care.
125	Chair Shetterly	The amendments have already been moved. Are there any objections?
		VOTE: 8-0 (to adopt -1 amendments as amended)
130	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
134	Rep. Eighmey	MOTION: Moves HB 2044 to the full committee with a BE ADOPTED AS AMENDED recommendation.
		VOTE: 8-0
137	Chair Shetterly	Reads definitions of "gross negligence," from ORS chapters, for clarification purposes.
147	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
150	Chair Shetterly	Closes Work Session on HB 2044.
<u>OPENS PUBLIC HEARING ON HB 2733</u>		
190	Rep. Bryan Johnston	District 31 Testifies in favor of HB 2733. I introduced this bill for three reasons: (1) fundamental fairness argument, (2) judicial economy, and (3) desire for finality. Explains why. I'm not 112 percent sure this is the right way to go, but we do treat this area differently, and I think some change needs to be made.
240	Rep. Johnston	Continues testimony.
267	Rep. Uherbelau	This isn't the only area of law that we treat. There is equity and there is law. You raised an issue I think is important to address. Has there ever been any survey done to see how many domestic relations cases have actually gone to appeals?
279	Rep. Johnston	I don't know.

298	Rep. Uherbelau	I was just curious because, in my own experiences, I have not done more domestic relations appeals.
309	Rep. Eighmey	Domestic relations are the last type of cases you appeal. You encourage your clients not to go to trial in the first place, but once you go to trial, not all judges are knowledgeable on domestic relations cases. Knowing I can de novo to the Court of Appeals, is very reassuring. To take that away from clients is a real barrier.
354	Rep. Johnston	If this committee decides to rest the policy of de novo review, I could accept that conclusion.
364	Rep. Bowman	If this is the last opportunity to have review, I would be very concerned about removing the last option for that individual.
382	Rep. Johnston	The opportunity to appeal still exists; the opportunity to have a factual review of the facts would not. You still have the opportunity to review.
393	Rep. Kate Brown	Submits written testimony (EXHIBIT C). Testifies in opposition of HB 2733.
TAPE 34, B		
060	Russ Lipetzky	Oregon State Bar, Family & Juvenile Law Section Submits written testimony in opposition of HB 2733 (EXHIBIT D).
112	Rep. Wells	It seems that you and Sen. Brown have an interest in this because it involves things that affect your livelihood. Rep. Johnston seems to be doing this for the goodwill of the public.
124	Lipetzky	I am a defense lawyer, and I am here to represent the Bar.
130	Rep. Eighmey	We always go to those who are expert in the field for their input. We do not appeal that often, but when we do, de novo review is a crucial and important tool for our clients. If a conflict of interests exists, it is on the other side.
145	Rep. Uherbelau	This does not preclude someone from appealing. My sense is that it wouldn't change much. I don't really see a conflict.
160	Rep. Johnston	I welcome the opposition's testimony because they have insight into the field. I would suggest we put this off, so we can get someone from the Court of Appeals to answer some questions.
184	Lipetzky	We turn away far more appeals than we accept.
194	Chair Shetterly	Closes Public Hearing on HB 2733.
<u>OPENS WORK SESSION ON HB 2509</u>		

213	Rep. Eighmey	MOTION: Moves to ADOPT HB 2509-2 amendments dated 3/4/97.
		VOTE: 8-0
217	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
225	Rep. Uherbelau	MOTION: Moves HB 2509 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0
230	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. UHERBELAU will lead discussion on the floor.
232	Chair Shetterly	Adjourns at 2:44 p.m.

Submitted By, Reviewed By,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2415, written testimony and proposed amendments, Karen Hightower, Office of the State Court Administrator, 5 pages.

B - HB 2044, proposed amendments, Legislative Counsel, 4 pages.

C - HB 2733, written testimony, Sen. Kate Brown (district seven), 2 pages.

D - HB 2733, written testimony, Russ Lipetzky, Family & Juvenile Law Section of the Oregon State Bar, 3 pages.

E - HB 2509, proposed amendments, Legislative Counsel, 1 page.