

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 9, 1997 Hearing Room 357

1:00 P.M. Tapes 58 - 59

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 2908 - Public Hearing

HB 2705 - Public Hearing

HB 2674 - 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 58, A		

006	Chair Shetterly	Calls the meeting to order at 1:07 p.m.
<u>OPENS PUBLIC HEARINGS ON HB 2908 AND HB 2705</u>		
007	Rep. Ken Strobeck	District six Discusses HB 2908. Submits written testimony in favor of HB 2908 (EXHIBIT A).
042	Rep. Bowman	Would this include people who serve on boards and commissions as well?
045	Rep. Strobeck	It's not my intention to include those who serve on boards and commissions, only those who are doing a community volunteering type of activity, especially where the volunteering involves children.
048	Chair Shetterly	I think, by the drafting of the bill, this is someone providing volunteer services, such as a camp counselor.
054	Rep. Strobeck	That's exactly it. This is meant to cover those who are primarily involved in civic, charitable, and other kinds of volunteer activity in the community.
058	Rep. Eighmey	Do you think it is properly worded, if that is your intent to limit it? Does counsel have a definition of ORS 128.620, "charitable trustee?"
066	Bill Taylor	Committee Counsel It relates back to corporations.
069	Rep. Strobeck	I would certainly be open to friendly amendments that restrict the scope of the bill to my and Rep. VanLeeuwen's intentions.
073	Rep. Eighmey	Do you intend to include doctors and lawyers? The Bar recommends that we do not give legal advice on a voluntary basis because we expose ourselves. I serve on several charitable organizations, and they always come to me, but I tell them it's best that I don't advise them.
081	Rep. Strobeck	Again, my intention is not to cover those who are serving on boards. I'm thinking in terms of actual community involvements, civic activities (e.g. girl scouts, boy scouts, etc.), where an accident might occur that is beyond the reasonable scope of where somebody could be expected to predict it, or where normal supervision would not have prevented it in any case.
089	Chair Shetterly	Don't we have some legislation that addresses those who serve on charitable boards? It does not involve a full grant of immunity, but it seems to me that substantial immunity is given.
094	Rep. Eighmey	There is a provision, in every organization that I belong to, that includes an immunity for all board members. It's included in the bylaws of the organization.

099	Chair Shetterly	Let's say that you are a volunteer driver for the church camp. You are driving a van full of kids, fall asleep at the wheel, and run a red light. I would read this as granting immunity for this. Would that be your intention?
109	Rep. Strobeck	The scenario you described would not be one that I would intend to have covered. Explains why the bill was drafted, and relates happenings of a constituent, which persuaded him to have the bill drafted. In this situation, the individual was trying their best to protect a child. The accident was not caused by his actions, but the driver, in the scenario you gave, could have caused harm by his own actions.
		Written testimony submitted, for the record, by Mic Alexander, Chairperson OTLA Legislative Committee (EXHIBIT B) .
130	Rep. Liz VanLeeuwen	District 37 Discusses HB 2705. This bill is pretty much, word-for-word, the same as HB 2908.
173	Rep. Bowman	I have a concern about where we are headed by providing blanket immunity to various people. As someone who does a lot of volunteering, I know that I have a responsibility to act in an appropriate manner, when I am doing my volunteer activities. I feel like we are opening up a can of worms, where anyone can walk into a nonprofit organization and not be held responsible for some level of activity that they have volunteered to do. Where do we stop, concerning immunity? I tend to disagree with the good Representative, regarding whether this encourages people to volunteer. People volunteer because they know it's the right thing to do. If they are doing the right thing, most of the time they won't get involved in frivolous lawsuits. If they do something wrong, I want to hold them accountable for that behavior.
193	Rep. VanLeeuwen	I think the problem is that we are in such a litigious society. Gives example. What we are trying to do is have things operate, where people aren't thinking about getting sued all of the time.
210	Rep. Uherbelau	It is true that there is a great deal of litigation in other states, but we are not a litigious state. I want to dispel the idea that Oregonians are out there just waiting to sue their neighbors. I understand the concern because we read it in the papers all the time, but I don't think we have "street corner" attorneys, in general, here in Oregon.
231	Rep. VanLeeuwen	I said we are a litigious society, not necessarily a litigious state. However, we do have those problems here in Oregon, just as other states do.
235	Chair Shetterly	This is one where the policy is a good policy, but I think the "devil is in the details." I don't know that I would want to exempt, for instance, the volunteer driver. I don't know that I want to be on the road with people who are driving around with immunity. It sounds like Rep. Strobeck's focus is much narrower than the bill, but how much narrower, I don't

		know.
246	Rep. VanLeeuwen	My intent would be, as in the scenario of the driver, that his insurance would cover that. In some organizations, there is insurance for volunteers. I did not intend to say that, should you have a car accident and someone gets hurt, insurance would not cover the person(s) with you. So, how did we write it wrong?
259	Chair Shetterly	I don't know that you did.
260	Rep. Eighmey	I think it's a matter of policy. The concept is a good concept because we do want to encourage people to volunteer. How do we persuade people to volunteer and, at the same time, protect the rights of individuals, both those who volunteer and those who are injured by those volunteers? The vast majority of organizations have insurance. Today, organizations don't move without getting an umbrella liability coverage policy. I put together a neighborhood association, so we could put playground equipment at a school, on a voluntary basis, and before we even began, we got a \$1 million policy. I am concerned that there are so many people out there suing for anything and everything. How do we know that the example Rep. Strobeck gave us didn't involve some form of negligence? For example, maybe there are too many children under the supervision of one person. If I go to the river for an outing, and there are 30 children in my charge, I am negligent because I can't control 30 children. If I'm there with five that may be a different story. I don't know. It's difficult to know how to narrow the issue. Would I say "exempts, but does not include those who have liability and coverage" or "those who are just ordinarily negligent?"
310	Chair Shetterly	That would encourage people not to cover themselves.
311	Rep. Eighmey	Exactly.
312	Rep. Uherbelau	I think it really is a policy decision, in the sense of who bears the loss. Is it the person who does the negligent act, which results in injury, or is it the person who is actually injured? If we exempt out negligent acts, then the person who is hurt, by those negligent acts, is going to have to bear the cost for that other person's actions.
322	Chair Shetterly	That's a good point -- shifting the cost from the party at fault to the party who is damaged -- saying that we are holding the party at fault liable, as a matter of public policy. Therefore, the parents of the child, who is injured, now have to bear the costs because we shifted that cost to them, which comes back to who is best able to avoid that loss. It is the adults, the people in charge, who would be best able to do that.
337	Rep. VanLeeuwen	So, I leave in defeat.
341	Rep.	No, not in defeat. I think the idea to get more people to volunteer, especially as resources are shrinking, is important. We just have to

	Uherbelau	figure out who bears this loss.
348	Chair Shetterly	Discusses another bill that deals with protection for those in the medical field, as it relates to HB 2705.
379	Chair Shetterly	Closes Public Hearings on HB 2705 and HB 2908.
<u>OPENS WORK SESSION ON HB 2674</u>		
TAPE 59, A		
018	Susan Browning	Legislative Coordinator for the Department of Revenue Submits written testimony regarding HB 2674 (EXHIBIT C).
050	Rep. Beyer	I think the Department of Revenue is mistaking the meaning of this bill. We have had testimony stating that this is for private collection agencies. That's the way it was portrayed to us.
058	Bill Taylor	Committee Counsel I talked to Mr. Gervais before the meeting, and I am sure that he would be willing to rephrase the language, so it would be just private agencies. However, I do believe that the current language would allow courts the option of giving it to the Department of Revenue, and the Department of Revenue would have to take it.
067	Rep. Bowman	My recollection of the conversation we had, surrounding this, was the issue of what would be the charge. My understanding is that this charge would go back to the person who owes the money, and we heard testimony that it could be significantly higher, depending on who it was contracted with, for the collection service. Sometimes they double the charge or more. I would not be inclined to support a bill that required outside organizations to be hired to collect that debt.
076	Taylor	You're right. That's added language on line nine. Currently, the state courts can assign these issues to a private collection agency. However, the money the private collection agency collects would come from the fine or fee; there is no additional charge. However, this bill is drafted to add the cost of the collection agency to the fine or fee.
109	Rep. Eighmey	I recall conversation about a similar bill. My concern is that, if there is a judgment, in a criminal action, a monetary obligation is imposed as part of the penalty, for the indigent individual. How long does that judgment last? In this particular case, the collections agency may be after them for as long as the judgment, even if they are indigent. How does this work now that we have the new law, which requires us to have all prisoners fully employed, and they get paid? Are we going to garnish their wages in prison because of a fine? How is that going to work? I have some real concerns, outside of who is doing the collecting.

135	Chair Shetterly	My understanding is that Mr. Gervais has expressed some willingness to make some amendments.
140	Rep. Uherbelau	Don't circuit and district courts already do this?
143	Doug Bray	Deputy State Court Administrator The courts have been involved in collecting through the Department of Revenue for many years. In 1995, they were able to increase resources to handle more of our activity. We presently have 105,000 accounts assigned to the Department of Revenue, and we've probably just begun our collection work with the Department of Revenue. We have been doing this for quite some time, and we are able to this, under a combination of several statutes.
156	Rep. Uherbelau	The statute, as presently written, allows you to assign it, either to the Department of Revenue or to a private collection agency. Have the circuit and district courts assigned any to private collection agencies? If so, do they use the regular system (where the collection agency gets a percent and then turns over the rest)?
166	Bray	We do have a contract with a private collection agency, in addition to using the Department of Revenue. That collection agency is the same agency the Department of Revenue uses to collect those accounts that are out of state or are otherwise difficult to collect. There is a fee involved when we work with either the Department of Revenue or the private agency. I believe the Department of Revenue receives about 18 percent of the collected agency amount, and I believe it is slightly less with the private agency. Those are deducted from the collected amount, and the state replaces that money through an appropriation to our budget, for collection activity. The defendant has no additional amount to pay, at the present time.
180	John Gervais	Municipal Court Judges and Justice of the Peace I talked with counsel today, and we talked about taking out the provision to allow assignment, to the Department of Revenue, by municipal and justice courts. I think the sense of the committee is that they don't want to collect costs in addition to the fee, so perhaps we should drop back to collecting just the fine for the violation or infraction. I believe the percent that goes to the state should be the same as the percentage collected, but not the percentage of the fine.
193	Chair Shetterly	So, the state shares in the risk.
196	Gervais	Yes.
197	Chair Shetterly	That puts you in the business of collecting money for the state, basically.
198	Rep. Beyer	I can agree with you that we should take the Department of Revenue out of this bill. This is a great opportunity to privatize more government. However, I don't agree with your assessment to take out the collection costs. I think that should be picked up. If these people are refusing to pay, they should be assigned the collections cost in addition to what they have already been fined.

210	Rep. Uherbelau	This agreement about you getting a percent of whatever is recovered, not a percent of the fine itself, we wouldn't have to write that into the statute would we?
224	Rep. Eighmey	It's the percent of the receipts recovered.
230	Bray	As it stands right now, all these moneys are paid in municipal and justice courts, just as they are in state court, in a criminal fines and assessment account. That determines, by statute, how this money is going to be distributed. However, that is on dollars actually received into the court. If the collection agency only forwards \$60 out of \$100 to the court, and they keep \$40 for their costs, then the court deposits the \$60 into the criminal fines and assessment account. I presume the debt is settled, and the \$40 is written off as a collections cost against the city.
242	Gervais	That's possibly how it works. Discusses processes, based on personal contact with judges.
251	Bray	Discusses unitary assessment.
265	Chair Shetterly	Does that create an imbalance for the folks who have paid the full balance of their fine? Gives example.
275	Rep. Bowman	What is a unitary assessment?
278	Taylor	A unitary assessment is a fine that is imposed in all criminal cases, and it goes all the way from the Victims' Assessment Account to the Advocacy Center to the general fund. It's a very lengthy laundry list.
286	Bray	That's in ORS 137.303. The unitary is set by statute. Relates the costs of different crimes. Discusses percentages and obligations involved with fines.
325	Taylor	I take it the current ORS 137.118 applies not just to judgments, but also judgments pertaining to where there has been a violation of an infraction or a violation?
332	Bray	That's correct. It includes any offense.
336	Chair Shetterly	It's interesting that the definition of "criminal action" includes "non-criminal action."
346	Jim Markee	Oregon Collectors Association I just wanted to make clear that there are private collection agencies doing business with courts today. We would like to see more of this business in the private sector. The only thing, in this bill, you can't do now is add the collection charges. That's a serious policy question: do you want to add collection fees to these kinds of fines? If you decide you do want to do that, I believe you should put some type of a limit on it.
TAPE 58, B		

019	Chair Shetterly	What kind of cases would a court be assigning that are not criminal?
020	Rep. Prozanski	City ordinances aren't just criminal; they can be civil.
021	Markee	A growing area, for private collections agencies, is parking fines.
027	Rep. Eighmey	I cannot accept the assessment being increased by the collection cost. If that happens, we may run into some constitutional problems. I can't support this policy.
061	Rep. Uherbelau	I just want to make very clear that justice courts and municipal courts are already doing this, so the only thing this bill changes is one sentence, which we are having problems with. If we took that out, we wouldn't need the bill anyway because it's already being done.
067	Gervais	They needed the direct statutory authority to assign and assess collection of the costs.
072	Rep. Uherbelau	If there is nothing forbidding them from assigning, they're no different than any other business.
076	Taylor	The state courts expressly have the authority to do that, and one could argue that if they expressly have the authority and the justice and municipal courts weren't mentioned, they weren't intended to be included.
082	Bray	It seems you're going to have to have a hearing, and you are going to have to inquire if the defendant has the ability to pay those costs. One of the Oregon Judicial Departments major concerns is the added cost of bringing someone back in, after collection has taken place, to have that hearing. That may not be able to be done.
094	Gervais	We would like the bill, at least with the portion I talked about earlier, to clearly state that those two courts have the right to assign collection agencies. I'd like to see a definition that the state would see the same percentage of the amount collected, so the city or court doesn't get wiped out by the unitary.
100	Chair Shetterly	Would that get us into amending the unitary assessment bill? I don't think our relating clause would get us to that. Would it?
105	Taylor	That could get you into the problem of reducing revenues that these 12 different entities are anticipating. My understanding is that unitary assessment comes off the top. Discusses applications of moneys to unitary assessment. I assume that would be the same now. If they did not collect everything, the first amount would go towards the unitary assessment. The unitary assessment may not be getting the full amount that it's entitled to now. Are you saying that it would be divided equally?
123	Chair Shetterly	Proportionately.
124	Gervais	These are funds that are not going to be received by the state, unless this action is taken. If it's not something that the city or justice courts

		are going to share in, there's not going to be any incentive for them to send them out.
128	Rep. Prozanski	I want to address what Mr. Bray brought up, concerning additional hearings and court costs. I would agree that it would, in fact, take some type of hearing. Explains why, using a general scenario. With this type of legislation, are we opening the door for municipalities or justices of the peace to say that everything is going to be automatically referred out? That's going to increase some type of cost. Traditionally, there has been some type of working relationship with the court and the individual that had been before them. Discusses the bill's relation to and possible effects under Measure 47.
152	Rep. Bowman	I was thinking about how this would apply, under the Victims' Rights Legislation that we have. Measure 40 says that restitution is at the top of the list of who gets paid, when there's a fine, etc. It takes all that has been assessed from the person who owes this amount. If this unitary assessment fee is, traditionally, what has come off the top, does that move to second place, and restitution goes first? If that's the case, the courts would never get any money because the chances of an individual, in jail, being able to pay the restitution amount, in any timely manner, would be slim to none.
169	Rep. Uherbelau	I want to make a comment about what Rep. Prozanski said, with regard to the court having a relationship with the person who has been fined. That may be true to some extent, but we had testimony from the Department of Revenue, who went around to all the different courts. If your read Ms. Browning's testimony, there are a lot of unpaid bills, stuck in somebody's drawer, and the courts do not have a relationship with those people. Some are substantial. There is a substantial amount of money that is not being paid. I think we have to make a policy judgment. Do we just let it go by, or do we try to recover?
181	Rep. Prozanski	Discusses an issue that he intends to bring forward in the future: an existing mechanism that would enable costs to be recovered.
187	Chair Shetterly	Is that current law, or is that the bill?
190	Rep. Prozanski	It's a bill that I have, and it's in our committee. It only seems right for the state to have a partnership with local communities in trying to collect. Discusses collection processes and distribution.
217	Browning	We didn't call around to all 186 courts because once we saw the Department of Revenue referenced in this bill, we did get concerned, since we don't have the staff to cover this. We do require that accounts be liquidated debt and exceed \$50. A lot of these accounts seem to be small dollars; they seem to be in paper files. From our understanding, most of them don't have social security numbers on them, and that's one of the key collection identifiers. These are a little difficult to collect, and it sounds like there's a large number of them out there. Just for your consideration, we wanted to provide that information. If you do decide

		to involve the Department of Revenue, we don't have the staff to provide the service to these courts, and we don't want to raise expectations about what we could do for them, unless we have additional staff.
235	Rep. Wells	The Department of Revenue has an avenue to collect money when no one else can. You're leaving a big hole here because the Department of Revenue takes the money out of refunds that are going back to people. But, the Department of Revenue can collect money, and they are good at it.
244	Browning	We do have a \$25 minimum just for the refund offset piece, but we do need social security numbers to collect that. Last year, we collected \$294 billion, through the refund offset, and 101,000 accounts. That's just for other state agencies.
252	Markee	Mr. Taylor mentioned that there is some concern on the part of, at least, one municipal court, who thought they might not have the authority to sign these out because this language might be exclusive. I think that lends credence to my earlier concern. If this is limited to criminal judgments, someone might construe it to be limiting to criminal judgments. I would urge you, if you move this bill forward, to apply it to any action, at least where municipal and justice courts are concerned.
263	Chair Shetterly	I think we have a problem with the relating clause. I hate to do this in chapter 137, which is our criminal code. I like this bill. I like the sense of it, but it seems to have a lot of twists and turns.
280	Chair Shetterly	Adjourns at 2:23 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2908, written testimony, Rep. Ken Strobeck, District six, 1 page.

B - HB 2908 and HB 2705, written testimony, Mic Alexander, OTLA Legislative Committee Chair, 2 pages.

C - HB 2674, written testimony, Susan Browning of the Oregon Department of Revenue, 2 pages.