

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 13, 1997 Hearing Room 357

1:00 PM Tapes 47 - 49

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearings - HB 2840, HB 2726

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 47, A		
004	Chair Minnis	Calls subcommittee to order
<u>HB 2840 - PUBLIC</u>		

HEARING		
005	Chair Minnis	Opens public hearing on HB 2840
007	Leslie Lewis	State Representative, District 29 >submits statistical graphs and reads written testimony, (EXHIBIT A)
050	Lynette Snell	Student, Willamette University >submits and reads written testimony, (EXHIBIT B)
100		Continues testimony
150		Continues testimony
164	Chair Minnis	If I understand the concept, you want demarcation on identification cards or licenses and that it be required that servers check for the mark?
173	Snell	That's correct.
185	Don LeCouteur	President, Mothers Against Drunk Drivers, Marion County >submits and reads written testimony, (EXHIBIT C)
239	Kelly Taylor	Oregon Department of Transportation, Department of Motor Vehicles >submits and reads written testimony, (EXHIBIT D)
268	Chair Minnis	Are you sure about this \$60,000 figure?
270	Taylor	Yes. It's about 700 hours and the contractors are paid \$85 per hour.
277	Rep. Sunseri	Have you given any consideration to a legal challenge to this bill?
287	Taylor	I'm not sure the challenge would come to DMV but it might come whether they are served or not. >I haven't talked to the Attorney General's office about it.
296	Rep. Shetterly	How long is a license valid?
300	Taylor	They are valid for four years.
302	Shetterly	Conceivably, there could be a significant period of time before the demarcation appears on the license.
307	Taylor	That is possible.
308	Rep. Shetterly	Asks about license suspensions
311	Taylor	They are supposed to surrender their license, but they are not confiscated.
315	Chair Minnis	If they are stopped and have a suspended driver's license, they will confiscate it.

317	Rep. Shetterly	I'm curious about how many of these two-time DUII offenders will even have a license?
321	Taylor	Responds that the assumption is after their suspension period when they are eligible for a license the notation would be put on
324	Chair Minnis	The bill also includes identification cards.
333	Bill Perry	Oregon Restaurant Association >support further penalties for drunk drivers, but unsure how this bill will affect us >There could be some constitutional questions. >have concerns with 86 lists, especially in relation to interstate drivers >People do not always forfeit their licenses and so there are some liability questions. >We are not in the enforcement business.
379	Rep. Bowman	It's not unusual for people to buy drinks for other people, so how would this be implemented in an establishment such as yours?
402	Perry	Responds that he has concerns about its implementation
430	Rep. Bowman	What we're trying to stop here is the driving after drinking, so if the person says they are not driving, then it would not be illegal for you to serve me alcohol.
TAPE 48, A		
020	Rep. Bowman	The bill appears to be a good concept, but there is a difference between the concept and its implementation.
025	Rep. Wells	I'm looking at the practicality of this bill and how it relates to my district. >I think that a frequent customer who is asked every time for his identification could be a problem.
035	Rep. Sunseri	They do not have to show a driver's license to establish proof of age. Aren't there other things they can show?
038	Berry	There are certain things that are outlined in law like military ID's and identification cards, issued by the DMV will work.
042	Rep. Sunseri	Someone could go into a bar and say they don't have a driver's license and still drink by showing a passport or military ID.
045	Chair Minnis	If there is a defect in the bill, it is the issue of liability of the establishments. >If we're going to work with this bill, we need to have some insulation

		against the liability for those complying establishments.
060	Don LeCoteur	The law on identification is that a driver's license, Oregon DMV ID card, or passport are the only stand-alone acceptable pieces of identification. Other one's are alternative but with a second ID as well as a statement of age card.
072	Berry	Punish them if you want to, I just don't want to be the enforcement agent.
075	Chair Minnis	Closes public hearing on HB 2840
<u>HB 2726 - PUBLIC HEARING</u>		
076	Chair Minnis	Opens public hearing on HB 2726
084	Judy Uherbelau	<p>State Representative, District 52</p> <p>>introduces Angela Barber and Sandra DePiero</p> <p>>have talked with State Police, Beer and Wine people, towing companies, banks and other different people whom this bill would impact and most support the bill</p> <p>>One of the concerns was on line 8 regarding impoundment and forfeiture under first-time DUII's.</p> <p>>Deschutes County has an ordinance that may deal with this problem which may not effect the first-time person.</p> <p>>Some technical changes need to be made, but we are attempting to target those who continue to drink and drive after their conviction.</p>
136		>There are some concerns regarding impact on one-car rural families which is addressed in the bill.
151	Angela Barber	<p>Drunk driving victim, Ashland</p> <p>>submits and summarizes written testimony, (EXHIBIT E)</p>
205		Continues testimony
255		Continues testimony
276	Sandra DePiero	<p>Traffic Safety Coordinator, Jackson County</p> <p>>submits and reads written testimony, (EXHIBIT F)</p>
328	Rep. Prozanski	I assume you are referring to the last DUII on the bottom of the first page of the record.
330	DePiero	That is in connection with that same DUII.

332	Rep. Prozanski	As well as the DWS felony?
333	DePiero	Yes and he was declared an habitual offender in there as well.
338	Rep. Prozanski	I notice that it shows there is more record available. Do you know what the rest of his record is?
340	DePiero	I tried to run that from my LEDS terminal and couldn't find any more records. >Continues testimony
371	Rep. Uherbelau	Although I haven't seen a fiscal impact statement yet, there is a fiscal impact if we don't pass it.
380	Rep. Bowman	In considering bills on DUII, I can't help but think that alcoholism is a disease and so it is difficult just dealing with the penalty side without considering the social problem. >Simply taking away the ability to buy alcohol or get behind the wheel of a car doesn't deal with the root issue.
407	Barber	I speak at Serenity Lane once a month and so I understand what you are saying. >It would be nice if we were able to make money available for people to go to places like Serenity Lane, but in the meantime we need to take away the vehicles.
431	Rep. Uherbelau	I agree that it is a disease, but just like the mentally ill can not get a license to carry a weapon, we need to have the instruments of danger out of their hands.
TAPE 47, B		
019	Chair Minnis	I don't know the number of people that get into accidents involving alcohol are actually alcoholics. >If we are talking about those with diseases, we don't allow driver's licenses to be issued in the first place.
025	Barber	They drive anyway. They only way they will stop is if you take away their cars.
039	Paul Romain	Oregon Beer and Wine Distributors Association >also testifying on behalf of Mike McCallum of the Oregon Restaurants Association >in full support of HB 2726 with some modifications as it applies to first-time offenders

		<p>>Forfeiture works and it has in the City of Portland.</p> <p>>You will be taking away the gun which is the vehicle.</p> <p>>It forces people to deal with the problem.</p>
066	Rep. Prozanski	<p>Individuals continue to drive by using other people's vehicles.</p> <p>>How do the Portland or Deschutes plans deal with this issue?</p> <p>>want to make sure people eligible for diversion programs do not lose an asset, their car</p>
087	Romain	<p>Responds that they agree that it should not be applied to first-time offenders</p> <p>>In City of Portland it applies to when one is driving suspended as a result of a drunk driving conviction.</p>
102	Rep. Wells	Under how many different circumstances can we have asset forfeiture?
108	Rep. Prozanski	At the state level, we can have a car impounded for up to 120 days for multiple DUII or DWS convictions.
112	Chair Minnis	<p>We will have the drug forfeiture bill which we will have to deal with at some point.</p> <p>>In 1989 we had a caveat allowing cities and counties to extend forfeiture under the authority of that.</p>
117	Rep. Wells	If you don't have insurance in Portland, can they take your vehicle?
118	Committee	Discussion
121	Rep. Wells	Evidently we have some experience with asset forfeiture involving automobiles, so it would be interesting to see how this works.
128	DePiero	We need to keep the information separate on impoundment involving uninsureds and those involving DWS's and forfeitures.
140	Romain	This is a good bill, but it is your obligation to make it work.
147	Rep. Bowman	What is your industry doing to help alleviate the disease of alcoholism?
151	Romain	<p>The industry supports numerous alcohol education programs, but we're schizophrenic.</p> <p>>We do fund some things through beer and wine taxes.</p> <p>>We don't like it when we find ourselves in situations in which someone has overconsumed our product.</p> <p>>Could we be doing more? Yes.</p>
176	Rep. Bowman	Would you be willing to?

177	Chair Minnis	You can take the fifth. >I wonder if the U.S. experience in regards to drinking and driving is different than in other countries.
194	Vinita Howard	Governor's Advisory Committee on Driving Under the Influence of Intoxicants
		>submits and reads written testimony, (EXHIBIT G)
227	Rep. Shetterly	I am a co-sponsor of the bill and from what I know the Deschutes County model works well. >Do you know if it addresses security-interest holders and banks?
235	Howard	I do not know.
240	Rep. Shetterly	Do we have a copy of the Deschutes County ordinance? >I think it also addresses the urban-rural issue as well.
251	Howard	There is language adopted years ago in 809.010 about those with suspended licenses using another person's vehicle.
269	Al Elkins	Oregon Tow Truck Association >submits and reads written testimony, (EXHIBIT H)
319		Continues testimony
327	Chair Minnis	There's nothing that prohibits a police agency from phoning a towing unit.
333	Rep. Prozanski	Asks about the vast differences in cost for hook-up, storage, and tow for services
348	Elkins	What I find is that they use the fees of the local towers which are on contract with the city. We would like to see this continue.
361	Rep. Prozanski	So, you're saying there is one set rate within a specific jurisdiction?
372	Elkins	The procedure is that the county would ask the towers to send in their rates and have them posted.
383	Rep. Prozanski	Are you saying that whatever the posted rates are that is what is charged or are there some ceilings under these agreements?
393	Elkins	I have to defer to Dale Johnson.
396	Dale Johnson	Speed's Towing, Portland >The rates they charge are the posted rates. >Some cities and counties have suggested rates.
413	Rep. Wells	Asks about costs incurred if vehicle is impounded
432	Elkins	On line 18, page 1 it says the registered owner pays any costs for removal and storage, so I believe that is covered.

TAPE 48, B		
013	Johnson	Throughout the states there are different rates, so it is difficult to quote rates.
018	Rep. Wells	I'd heard of these \$100 per day storage costs, but maybe those are horror stories.
020	Rep. Uherbelau	That is one of the corrections we have to make.
033	Glen Rader	Lieutenant, Patrol Services Division, Oregon State Police >submits and reads written testimony, (EXHIBIT I)
083		Continues testimony
115	Russ Spencer	Oregon State Sheriff's Association >in opposition of the bill for many of the reasons Lt. Rader cited >If bill were to pass as is, we would be taking officers off of the road. >must function within scope of the budget >The bill looks like an unfunded mandate. >Give us the money to do these and we will gladly enforce this.
145	Rep. Wells	We currently have asset forfeiture for driving without liability insurance, so what is the difference here?
150	Rader	There is a differentiation between impoundment used for liability insurance and forfeiture for drugs, etc.
177	Rep. Wells	Evidently the problem is more with storing the vehicle and following it through the procedure of forfeiture.
183	Spencer	Part of the concern of the "shall" is the storage of the vehicle until the trial is over.
188	Kevin Campbell	Oregon Association of Chiefs of Police >grasping for a tool to deal with drunk drivers >supportive of a permissive approach
213	Rep. Bowman	Are you supportive of HB 2840?
218	Rader	Yes, we would.
		We haven't reviewed it in our legislative committee but I can't see any

220	Spencer	reason why not.
221	Campbell	We have reviewed it and would support it.
228	Ed Marges	Manager, Transportation Safety Section, Department of Transportation >submits and summarizes written testimony, (EXHIBIT J)
266	Jim Arneson	Oregon Criminal Defense Lawyers Association >in opposition to the bill >introduces Shaun McCrie and Jenny Cooke, Asset Forfeiture Specialists
283	Shaun McCrie	Lawyer, Eugene >speaking from perspective of those she represents whom are caught in the net as innocents >This bill impacts not only those responsible for the crime but wives, children, etc. >The bill should not include first-time offenders as well as include the permissive language Lt. Rader mentioned. >The bill does not allow a right to a hearing with no exceptions, discriminating against families and urban people.
332		>spirit of bill is laudable but other pending bills may take care of the question such as impoundment bills >could give discretion to officers or trial court judge to determine whether license is suspended >Or, this could be included into the current civil forfeiture statute. >A car is not a gun, it's a vehicle - a tool - to my clients.
375	Jenny Cooke	Lawyer, Portland >substantial part of practice includes civil forfeiture >concerned that mandatory language is in violation of Article 1, 41 of the Oregon Constitution >Portland has an ordinance providing for the forfeiture of a driver convicted of DUII and DWS. >All of the ordinances (Portland, Deschutes County) incorporate the protections available in the 1989 Civil Forfeiture statute.
415	Chair Minnis	I assume you will come back and testify when we deal with other issues of asset forfeiture in the committee.

TAPE 49, A		
008	Chair Minnis	Announces no other bills will be heard today due to time constraints
011	Frank Brawner	Oregon Bankers Association >submits and reads written testimony, (EXHIBIT K)
044	Chair Minnis	Declares subcommittee adjourned
		[Additional written testimony submitted on HB 2726: Sean Parlamen, (EXHIBIT L) , Rep. Judy Uherbelau, "Portland's Asset Forfeiture Program: The Effectiveness of Vehicle Seizure in Reducing Rearrest Among Problem Drunk Drivers," (EXHIBIT M) , Dwight Barber, (EXHIBIT N) , Sally F. Ward, (EXHIBIT O) , Proposed amendments, (EXHIBIT P)]

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2840, Written testimony, Rep. Leslie Lewis, 8 pp.

B - HB 2840, Written testimony, Lynette Snell, 14 pp.

C - HB 2840, Written testimony, Don LeCouteur, 2 pp.

D - HB 2840, Written testimony, Kelly Taylor, Oregon Department of Transportation, 1 p.

E - HB 2726, Written testimony, Angela Barber, 2 pp.

F - HB 2726, Written testimony, Sandra DePiero, Jackson County Sheriff's Office, 6 pp.

G - HB 2726, Written testimony, Vinita Howard, Governor's Advisory Committee on DUII, 1 p.

H - HB 2726, Written testimony, Al Elkins, Oregon Tow Truck Association, 3 pp.

I - HB 2726, Written testimony, Lt. Glen Rader, Oregon State Police, 5 pp.

J - HB 2726, Written testimony, Ed Marges, Oregon Department of Transportation, 1 p.

K - HB 2726, Written testimony, Frank Brawner, Oregon Bankers Association, 3 pp.

L - HB 2726, Written testimony, Sean Parlamand, 5 pp.

M - HB 2726, "Portland's Asset Forfeiture Program: The Effectiveness of Vehicle Seizure in Reducing Rearrest Among `Problem' Drunk Drivers," Ian B. Crosby, The Reed College Public Policy Workshop and The Portland Police Bureau, submitted by Rep. Judy Uherbelau, 4 pp.

N - HB 2726, Written testimony, Dwight Barber, 13 pp.

O - HB 2726, Written testimony, Sally F. Ward, 3 pp.

P - HB 2726, Proposed amendments, Staff, 1 p.