

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

February 4, 1997 Hearing Room 357

3:15 P.M. Tapes 10 - 11

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice-Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

SB 259 - Public Hearing

SB 261 - Public Hearing

SB 262 - Public Hearing

SB 265 - 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 10, A		
003	Chair Sunseri	Calls meeting to order at 3:15 P.M.

<u>OPENS PUBLIC HEARING ON SB 259</u>		
004	Chair Sunseri	Opens public hearing on SB 259.
010	Russell Lipetzky	Chair of Family & Juvenile Law Section of the Oregon State Bar Testifies in support of SB 259 and submits written testimony. (EXHIBIT A)
040	Chair Sunseri	Closes public hearing on SB 259.
<u>OPENS PUBLIC HEARING ON SB 261</u>		
041	Chair Sunseri	Opens public hearing on SB 261.
043	William E. Taylor	Counsel. Reads a Preliminary Staff Measure Summary on SB 261.
046	Russell Lipetzky	Chair of Family & Juvenile Law Section of the Oregon State Bar Testifies in support of SB 261 and submits written testimony and a proposed amendment. (EXHIBIT B)
063	Rep. Eighmey	Could you enumerate the problems in the family law court?
066	Lipetzky	The problem that this particular measure seeks to remedy is that the current wording states that "the court shall treat enhanced earning capacity as property." It renders the statute inconsistent internally with the rest of the divorce statute that deals with the division of property which directs the court to do what is just and proper under the circumstances of the case. An inconsistency that is problematic for parties, their attorneys , and the courts in trying to figure out when and how it needs to be addressed and when it can be ignored.
084	Rep. Eighmey	I think that it is exactly the problem run into by the Legislature. I note that the parties it hurts the most are the younger married people because the enhanced earning capacity is theoretically better if you were/are in college. Yet who knows what will actually happen.
091	Lipetzky	It is a statute that is in the process of being sorted out by the Court of Appeals.
		What happens if you have a situation: a) where the husband goes through

096	Chair Sunseri	law school and the wife supports him then they separate, b) so the Judge considers enhanced earning capacity in the future, c) then the guy does not pass the bar and doesn't get anywhere, and d) the settlement was based on something in the future that is not going to materialize? Does he have any cure for that or any kind of remedy?
103	Lipetzky	The statutes does allow for modification. Unlike other divorce aspects of property divisions in which are not subject to modification.
106	Rep. Uherbelau	Actually, if it is something people do not want to argue about, they can get out from under it or around it by doing a property settlement and address those issues. I don't think this will diminish the amount of lawsuits and in fact it may increase them.
120	Rep. Eighmey	I don't think this is going to make all things better. Its just going to revert back to the way it was before the amendment. Prior to the amendments the same things did occur.
130	Rep. Beyer	Asks for a chronological of what the Senate did with SB 261.
137	Taylor	There was no amendments made on the Senate side. The vote was almost unanimous.
187	Lipetzky	I have an amendment to SB 261 and in fact to all the bills before the Committee today. I also have an amendment to SB 259 and may need to reopen the public hearing on SB 259 as I failed to mention them earlier. Appropriate to have an effective date so that they if these are passed into law and if there is litigation pending all parties will know whether to apply the old or the new law? Reads directly from proposed amendment for SB 261. (EXHIBIT B) Generally the effective date should be set to commence on litigation started after the passage of this message.
207	Rep. Eighmey	Is "commenced" defined as "filed?" Sometimes "commenced" means from one attorney to another saying that you are hereby notified that I shall file and it commences the action. Maybe we should make certain that is what we mean in the statutes.
220	Lipetzky	The intent was to mean "commenced" meant "filed." If the committee wants to specify "filed", then I have no objection to that either.
223	Rep. Uherbelau	Other sections in ORS "commenced" is defined as "filed."
229	Taylor	Concerning "commenced" and "filed," I will check with Legislative Council's office to see what wording is consistently used.

234	Chair Sunseri	Closes public hearing on SB 261.
<u>REOPENS PUBLIC HEARING ON SB 259</u>		
235	Chair Sunseri	Reopens public hearing on SB 259.
238	Lipetzky	Presents a proposed amendment on SB 259. (EXHIBIT A)
256	Rep. Beyer	What is this going to actually change?
258	Lipetzky	<p>Your ex-spouse is ordered to pay you for child support. Later, they failed to pay and you had to cite your former spouse in contempt of court. What this bill amends in ORS 107.445 is the wording which would allow the courts to order you to be reimbursed for the attorney fees you had to spend in bringing your former spouse in for contempt of court.</p> <p>As the statute is currently worded it only allows the court to award attorney fees to compel future compliance with an order. It would not allow the court to order you reimbursed for attorney fees for dragging someone in for contempt for a past violation of a court order.</p> <p>SB 259 says in any contempt proceeding (past failure or future compliance) attorney fees can be awarded to a party.</p>
280	Taylor	This means basically you get one "free bite" of the apple?
281	Lipetzky	No.
284	Taylor	Under current law the person gets one "free bite" because when they failed to comply the first time you brought them back into the court for contempt.
288	Lipetzky	No, because you would see looking at past failures to comply almost by definition under the current wording of the statute.
293	Taylor	So under those circumstances they could continue to keep failing to pay support and you still couldn't get attorney fees?
296	Lipetzky	Under the old statute, yes. There are other statutes in Chapter 33 of ORS that allow the court authority to award attorney fees. This statute though in the particular 1994 appellate case I have cited here, for what ever reason, ORS 107.455 was relied upon. Per the Appellate Court this statute says we have no authority to award attorney fees in a contempt proceeding to try to punish someone for past violations of a court order.
302	Taylor	How would you violate a future court order?
303	Lipetzky	The classic textbook situation would be: if a reporter is thrown into jail until they are willing to disclose their source. An example of a court taking action in a contempt proceeding to compel future compliance with an order of the court.

310	Taylor	In a domestic relations situation you basically wouldn't be able to get attorney fees?
313	Lipetzky	Not for a past violation. For instance, visitations were denied in a past order. Now visitations are currently being allowed and you need someone to take the visitation order seriously so you bring them in to cite them for contempt of court on a past violation - denial of visitation. That's an example where you would bring someone in on a contempt proceeding to really make sure that they understand and take the court order seriously. Thereby you are in court on both a past violation and a current failure to comply.
318	Taylor	Which violation could you get attorney's fees under the current law?
320	Lipetzky	Only for future compliance not for any past violations.
323	Rep. Uherbelau	Let's take a situation where support is ordered and you fail to pay support. You take the other party into court on a contempt proceeding for failing to pay support which has already happened. However, I read this proposed measure to say when you go into court on a contempt proceeding that you can ask the court to award you attorney fees?
351	Lipetzky	That is correct. Under current statute if support has not been paid in the past and by the time you get into court it is currently being paid. Therefore, you can have both a past failure and may or may not have a current ongoing failure to pay support.
360	Rep. Uherbelau	So you are distinguishing between these two issues under this amendment?
361	Lipetzky	This amendment eliminates this distinction. This bill says in any contempt proceeding.
368	Chair Sunseri	Closes the public hearing on SB 261.
<u>OPENS PUBLIC HEARING ON SB 262</u>		
369	Chair Sunseri	Opens the public hearing on SB 262.
371	Taylor	Reads a Preliminary Staff Measure Summary on SB 262.
380	Lipetzky	Chair of Family & Juvenile Law Section of the Oregon State Bar Testifies in support of SB 262 and submits written testimony and a proposed amendment. (EXHIBIT C) This measure is proposed by the Family & Juvenile Law Section of the Oregon State Bar rather than from the Family Law Task Force.

461	Rep. Uherbelau	In <u>Section 3</u> you say that <u>Section 4</u> is made part of Chapter 109 and it deals with attorney fees. In SB 265 you seem to be doing the same thing. I am wondering why we have this redundancy.
Tape 11, A		
028	Lipetzky	The reference in SB 262 to ORS Chapter 109 refers to all of the chapter which is commonly called the psychological parents statute in which attorney fees might be appropriate. Also, areas which deal with paternity cases. SB 265 deals only with a portion of Chapter 109.
031	Rep. Uherbelau	So if we have one measure that deals with the whole chapter, why do we have the one that deals only with a portion?
033	Lipetzky	Asks time to review each Measure and will comment shortly.
040	Rep. Eighmey	Comments that SB 262 is a good bill and does occur more frequently with intervention on behalf of psychological parents and corporations and gives an example.
062	Lipetzky	SB 262 in Section 4 the language specifies that in any proceeding brought under this chapter an authorization of attorney fees to a party also authorizes and awards fees to or against any person who intervenes. SB 265 deals with a section that doesn't currently have authorization to offer attorney fees.
069	Rep. Uherbelau	To anyone, correct?
070	Lipetzky	Correct. I present an amendment to SB 262, also. That deals with the effective date of the act and specifies that the act would apply only actions commenced after the effective date of the act. By "commenced" we mean "filed." If Legislative Council wants to change "commenced" to "filed" this would be acceptable.
077	Chair Sunseri	Closes the public hearing on SB 262.
<u>OPENS PUBLIC HEARING ON SB 265</u>		
078	Chair Sunseri	Opens a public hearing on SB 265.
079	Taylor	Reads a Preliminary Staff Measure Summary on SB 265.
082	Lipetzky	Chair of Family & Juvenile Law Section of the Oregon State Bar Testifies in support of SB 265 and submits written testimony and a proposed amendment. (EXHIBIT D)
112	Chair	Closes the public hearing on SB 265.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manger

EXHIBIT SUMMARY

A - SB 259, testimony and proposed amendment, Russell Lipetzky, 2 pages

B - SB 261, testimony and proposed amendment, Russell Lipetzky, 2 pages

C - SB 262, testimony and proposed amendment, Russell Lipetzky, 2 pages

D - SB 265, testimony and proposed amendment, Russell Lipetzky, 2 pages