

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

February 26, 1997 Hearing Room 357

3:15 P.M. Tape 28

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 263A - Public Hearing

HB 2316 - Work Session

SB 264A - 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 28, A		
002	Chair Sunseri	Calls meeting to order at 3:20 P.M.
<u>OPENS</u> <u>PUBLIC</u>		

<u>HEARING ON SB 263A</u>		
003	Chair Sunseri	Opens a public hearing on SB 263A.
004	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on SB 263A.
030	Russell Lipetzky	Chair of Family & Juvenile Law Section of the Oregon State Bar. Testifies in support, presents written, and a proposed amendment on SB 263A. (EXHIBIT A)
050	Rep. Eighmey	Notice must be given to the non-custodial parent in order to get a temporary custody order change under ex parte?
054	Lipetzky	Responds by providing an example and provides legislative history surrounding this issue. SB 263A is intended to apply those protections to custody situations under what is referred to as the psychological parent statutes. Also, the measure provides the courts authority to award temporary custody. This measures addresses the circumstances under which and procedures with which the courts must go through before a party can be given an ex parte temporary custody order.
068	Chair Sunseri	Closes the public hearing on SB 263A.
<u>OPENS WORK SESSION ON HB 2316</u>		
072	Chair Sunseri	Opens a work session on HB 2316.
074	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary HB 2316. Notes -4 Amendment received on HB 2316. (EXHIBIT B)
082	Rep. Uherbelau	Do the -4 Amendment supersede all earlier amendments?
		[For reference purposes attached are the: -1 Amendment as heard on January 28, 1997 and -2 and -3 Amendments as heard on February 11, 1997] (EXHIBIT D)
084	Taylor	I believe so.
085	Rep. Uherbelau	Rep. Eighmey do we just look to the base measure plus the -4 Amendment?
	Rep.	

087	Eighmey	The -4 Amendment incorporates all earlier Amendments.
090	Chair Sunseri	Rep. Eighmey could you summarize for us the -4 Amendment.
093	Rep. Eighmey	I defer to the Department of Justice Support Enforcement Division. This amendment was created in conjunction with their assistance.
110	Bob David	<p>Department of Justice Support Enforcement Division</p> <p>Provides a summary of the -4 Amendment as follows:</p> <p>>Adds to Line 4 after the word "execute" the words "and file"</p> <p>>Adds language to measure "if obligor provides a sworn affidavit that indicates that the judgment has been paid in full"</p>
126	Chair Sunseri	Where is the language regarding the sworn affidavit referenced in the -4 Amendment?
127	Rep. Beyer	Responds by stating the requirement for a sworn affidavit came about from the -2 Amendment.
129	Chair Sunseri	I believe the -4 Amendment was to incorporate all earlier Amendments.
130	Rep. Beyer	Responds by stating that on Line 5 of the -4 Amendment this language is incorporated.
132	David	Responds by stating the language regarding the sworn affidavit is on Lines 5 & 6 of the -4 Amendment.
133	Rep. Beyer	Shares his concerns.
134	David	Continuing on from Line 6, Human Resources has added language beginning on Line 7 of -4 Amendment where it states "the department has a complete record for the support payment judgment and further certifies that there are no arrearages."
136	Rep. Eighmey	I have added this language because of my concern that the obligor & obligee be protected equally and further explains reasoning.
145	David	<p>The final change from the original measure is located on Line 12 & 13 of the -4 Amendment where it begins at "under ORS 25.080 establishes arrearages for the time period the pay record was not kept by the department." This language makes available an actual legal process for use in establishing when that portion of the pay records are missing.</p> <p>In summary, HB 2316 will allow the Human Resources department to file and execute satisfactions for judgments when the department has kept the entire pay record or has kept the pay record and had an arrearages established for the period of time they didn't keep the pay records. This would be done for non-assigned cases only upon notice to the parties.</p>
	Chair	As long as the obligee demonstrated that they had paid this arrearage,

161	Sunseri	for instance, would canceled checks establish payment in full and would that be acceptable to the department?
166	David	The only thing required is that the obligor provide us with a sworn affidavit that the payments have been made and that we have the pay records and know these payments have been paid to the state.
179	Chair Sunseri	Gives an example to explain his concerns. Even if the obligor demonstrates paid in full with canceled checks even though that doesn't coincide with the department's records, can they still obtain a satisfaction of judgment?
182	Ronelle Shankle	Department of Justice Support Enforcement Division That is another process that we have in place that is separate from this lien satisfaction. Where upon receipt of canceled checks, we will adjust the records and offer a hearing if that's needed. HB 2316 is designed to address those cases where we do not have the pay records complete. The Department of Human Resources is willing to prepare a judgment of satisfaction on the portion that was owed to the State when the obligee, for instance, can not be found or the is not willing to file a judgment of satisfaction for that portion of the money owed.
188	Chair Sunseri	OK.
189	Rep. Eighmey	I want the obligor to make a sworn affidavit placing on record that in fact they have made full payments and if in fact they did not fulfill their obligation there is some recourse available.
193	Chair Sunseri	Shares concerns.
195	David	This may not fix every situation, however, it will assist in many cases.
197	Rep. Beyer	The way the measure was originally drafted it did a better job of fixing the problem and further shares his concerns.
207	Rep. Eighmey	Explains by giving an example. Currently, the department can't give the obligor the satisfaction of judgment, unless the obligee is notified and given the opportunity to object?
218	David	Under the current situation, Human Resources could not issue a satisfaction of judgment unless the money had been assigned to the State. Even though, we knew those payments had been made because they are on State record.
222	Chair Sunseri	If the obligee resists legitimately or illegitimately, then there can not be a satisfaction recorded?
224	David	That is correct.

225	Rep. Eighmey	To summarize my intention of HB 2316-4 Amendment is so that: a) the obligor is protected to the extent if he/she has kept records, [regardless if the child support payments were assigned to the State]; b) the State has kept the records; and c) the obligor gives you this affidavit, then the Department of Human Resources can issue a satisfaction of judgment. However, there still has to be notice given to the obligor and obligee.
230	David	Correct.
233	Rep. Eighmey	Restates his reasoning for drafting the -4 amendment.
235	Rep. Beyer	Doesn't deleting the language between Lines 28 and 30 on page one and Lines 1 and 2 on the second page of the printed bill provide the safety needed?
239	Rep. Eighmey	Correct, but I would want the obligor to sign an affidavit to that effect.
240	Rep. Beyer	If the records are already there, why do we need more from the obligor? Continues to expound on his concerns.
247	Rep. Eighmey	Explains his reasons for adding the sworn affidavit requirement.
287	Rep. Beyer	I understand your explanation but I do not necessarily agree.
289	Chair Sunseri	Shares his experiences with clients seeking a satisfaction of judgment. I can see that by executing an affidavit and not by relying on the accuracy of the department's records only that this facilitate receiving a satisfaction of judgment.
305	Rep. Eighmey	On the -4 Amendment I have hand engrossed language to Line 4 as follows, "and file" after the word "execute." To execute a document refers to only signing. I would like to ask the obligor to execute (sign) and file the affidavit.
321	Chair Sunseri	Is it the responsibility of the individual to record the affidavit?
322	Rep. Eighmey	Correct.
323	Chair Sunseri	So filing the affidavit alone doesn't constitute recording, correct?
325	Rep. Eighmey	Correct, filing does not constitute recording.
341	Rep.	MOTION: Moves HB 2316 to the full committee with a DO PASS AS AMENDED WITH A HAND ENGROSSED AMENDMENT

	Eighmey	ON LINE 4 recommendation.
342		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	The motion CARRIES.
345	Chair Sunseri	Closes the work session on HB 2316.
<u>OPENS PUBLIC HEARING ON SB 264A</u>		
348	Chair Sunseri	Opens the public hearing on SB 264A.
351	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on SB 264A.
355	Russell Lipetzky	Chair of Families and Juvenile Law Section of the Oregon State Bar Testifies in support of SB 264A and presents written testimony. (EXHIBIT C)
384	Rep. Eighmey	For the record this measure is consistent with child support.
392	Chair Sunseri	Closes the public hearing on SB 264A. Adjourns meeting at 3:48 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 263A, written testimony and a proposed amendment, Russell Lipetzky, 2 pages.

B - HB 2316, proposed -4 amendment, Bob David, 1 page.

C - SB 264A, written testimony, Russell Lipetzky, 1 page.

D - HB 2316, proposed -1, -2, -3 amendments, Staff, 4 pages.