

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 28

MEMBERS PRESENT:

SEN. NEIL BRYANT, Chair
SEN. RANDY MILLER, Vice-Chair
SEN. KEN BAKER
SEN. JEANNETTE HAMBY
SEN. PETER SORENSON
SEN. DICK SPRINGER
SEN. SHIRLEY STULL

MEMBER EXCUSED:

STAFF PRESENT:

M. MAX WILLIAMS II, Committee Counsel
JULIE A. CLEMENTE, Committee Assistant

MEASURES HEARD:

Bill Introduction: LC 2275, LC 1771, LC 1899, LC 1900
Public Hearing: SB 221

SB 223
SB 224
SB 240
SB 268

Rules for Sub-Committee on Civil Process

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

03 CHAIR BRYANT: Brings the committee to order at 3:00 p.m..
LC DRAFTS: LC 2275, LC 1899, LC 1900, LC 1771

05 MAX WILLIAMS: Described LC Draft 2275 [EXHIBIT A]

07 SEN. SPRINGER: FOR THE RECORD, DECLARES POSSIBLE CONFLICT OF INTEREST.

15 WILLIAMS: Continued to review/describe remaining LC Drafts for the Committee

25 CHAIR BRYANT: Announced meeting times for two new Sub Committees; Juvenile Justice and Civil Process.

36 Opens PUBLIC HEARING on SB 221 [EXHIBIT F]
Witnesses: Peter D. Shepherd, Assistant Attorney General, Oregon Department of Justice (Attorney in charge of Financial Fraud Section)

45 PETER D. SHEPHERD: Submits written commentary in support of SB 221 [EXHIBIT O]

73 SHEPHERD: Continues testimony.

82 SENATOR BAKER: Why do you need this when you can sue?

95 SHEPHERD: Those remedies are there but in some, we are not entitled to punitive damages. This bill provides for double the defendant's gain or treble damages whichever is greater. Taxpayer can recover costs.

99 SENATOR SORENSON: Interest in bill - looks like Federal False Claims Act. Is this correct?

106 SHEPHERD: It does share some of those elements.

110 SEN. SORENSON: Definition of "Claim" is virtually taken right out of the Federal False Claims Act?

148 SEN. SORENSON: How much fraud prevention and cost?

159 SHEPHERD: Very hard to determine estimate of detected frauds against State Government. 30 cases during a 2-year period and of those, about 20 would involve false claims. Tried to estimate cost per case; about \$7,500 - 100 hours.

180 SHEPHERD: Feels would be a net fiscal savings for State.

214 SEN. SORENSON: Why is this venue so that you can pick the venue in Marion County? Concerned about rights of defendants in these cases.

227 SHEPHERD: Venue position in Marion County could be eliminated.

262 SEN. SORENSON: Is this the reason you excluded false claims made against other institutions of government created by the legislative assembly?

264 SHEPHERD: It didn't reflect a judgment that those were any less heinous than frauds committed against the States' resources -

270 SEN. SORENSON: What would be your position on us saying that any false claims submitted to any government agency where taxpayers dollars have been lost - -

285 SHEPHERD: Would not have objections to Committee making policy changes to include dealing with other kinds of fraud. Would want to work with staff to preserve the utility of the remedy.

289 SEN. SORENSON: Has the Attorney General or the Department of Justice undertaken and actions under the Federal False Claims Act?

290 SHEPHERD: We have.

294 CHAIR BRYANT: - Is that difficult to obtain?

298 SHEPHERD: It isn't in this jurisdiction.

319 SEN. SORENSON: Concerned about difference in Federal False Claims Act and the remedies the tax payer has.

336 SHEPHERD: I think the answer is on page 3 of Bill lines 2 - 3.

340 CHAIR BRYANT: Concerned about higher standard civil side would have to prove fraud and recover.

351 SHEPHERD: There are some other legal theories.

357 SEN. SORENSON: What is the process to look at the Federal False Claims Act and the bill I have introduced to try to put the federal standard in place in Oregon in a broader sense?

373 SHEPHERD: At the Committee's disposal. Would be happy to work with its members for passage.

381 CHAIR BRYANT: Will get a copy of the Federal False Claims act for Committee

390 CLOSED the PUBLIC HEARING ON SB 221
NO WORK SESSION

408 OPENS the PUBLIC HEARING ON SB 223 [EXHIBIT H]

Witnesses: Peter D. Shepherd, Assistant Attorney General, Oregon Department of Justice
Dan McCulloch, Seventh-Day Adventist Church
Alan Contreras, Oregon Community College Association
Esther Loewen
Phillip Fell, League of Oregon Cities
Ray Gribling, Direct Marketing Association
Walter E. Brown, Oregon Consumer League
Barbara S. Brown, Oregon Consumer League
Jim Davis - Oregon Council of Senior Citizens/Gray Panthers

409 SEN. SORENSON: Would like to combine hearing on SB 383 before work session on SB 221.

410 CHAIR BRYANT: Will look at bill and consider request.

415 PETER D. SHEPHERD, Assistant Attorney General, Oregon Department of Justice/Financial Fraud Section: Begins testimony in favor of SB 223 [EXHIBIT P]

420 SHEPHERD: Direct mail fraud is targeted at seniors walking the line between competence and incompetence. Office has received thousands of complaints.

458 SHEPHERD: Most direct mail scams have frequent repetitious mailings targeted at the same individual from same solicitor. Introduces a version of a chart (visual aide) obtained from such a solicitor on how they target consumers.

TAPE 27, SIDE A

40 SEN. SPRINGER: You say game, what do you mean by game?

53 SHEPHERD: Games are structured as follows:

70 ESTHER LOEWEN: Testifies of personal experience with an elderly brother -in-law and sister-in-law who have been receiving excessive amounts

of mail from companies enticing them to send money for chances of bigger moneys or gifts/trips.

151 CHAIR BRYANT: Questions Shepherd on concerns that Oregon's constitution fails to distinguish between political and commercial free speech

161 SHEPHERD: Is an issue of concern. Addressed in commentary submitted [EXHIBIT P]

274 SEN. SORENSON: Directed to both witnesses. Interested in views on the avenues of support the postal service gives.

238 SHEPHERD: We do work with the postal inspectors.

248 LOEWEN: Postal service not too helpful; finally suggested 1 cent stamp solution.

279 SEN. BAKER: Bill does not accomplish what you want to do in many ways. Needs another remedy.

304 CHAIR BRYANT: Makes some recommendations to witness regarding constitutional argument

310 SEN. SORENSON: Questions wording of bill

319 SHEPHERD: Not sure what language would add

325 SEN. SORENSON: Concerns of constituents regarding the bulk mailings of small businesses.

365 SHEPHERD: Recommends different wording

376 CHAIR BRYANT: No work session on this bill. Requests additional witnesses come forward

410 DAN McCULLOCH, Seventh-day Adventist Church presents testimony in opposition to SB 223.

422 SEN. HAMBY: Concurs with testimony. Continues with additional questions for witness.

472 RAY GRIBLING, National Direct Marketing Association: Presents written testimony [EXHIBIT O] in opposition to SB 223.

TAPE 26, SIDE B

93 GRIBLING: Continues with his concerns

146 ALAN CONTRERAS, Senior Associate, Oregon Community College Association presents written testimony [EXHIBIT R] in opposition to SB 223.

160 SEN. SORENSON: Questions both witnesses with separate concerns:

174 CONTRERAS: To his knowledge, community colleges don't offer goodies as an inducement.

179 GRIBLING: Doesn't want to send out mailing to those who don't want it.

201 WALTER E. BROWN, Board of Directors, Oregon Consumer League

231 BROWN: Offers testimony in favor of SB 223 [EXHIBIT S]

274 BROWN: Continues with his concerns for seniors receiving numerous letters asking them to change HMO. Has to be some solution.

297 PHILLIP FELL, League of Oregon Cities: Echo comments of Contreras on behalf of community colleges.

313 CHAIR BRYANT: Additional witnesses

320 JIM DAVIS, Oregon Council of Senior Citizens/Gray Panthers: Presents testimony in favor of SB 223.

340 CLOSES PUBLIC HEARING ON SB 223
NO WORK SESSION

348 CHAIR BRYANT: Refers to Rules on Joint Sub Committee with House. House has passed identical rules in their Judiciary Committee. Aware that Senator SPRINGER has some concerns, but is not in favor of changing the proposed rules.

364 SEN. SPRINGER: Shares his concerns regarding joint-judiciary committee.

468 CHAIR BRYANT: Rules read that all submissive amendments would be made in the Sub Committee.

TAPE 27, SIDE B

80 CHAIR BRYANT: Called for motion .

MOTION: CHAIR: Moves to ADOPT the Rules for Senate Judicial Sub-Committee on Juvenile Justice.

VOTE: Senators BAKER, HAMBY, MILLER, STULL and BRYANT vote AYE. Senators SORENSON and SPRINGER vote NAY.

CHAIR BRYANT: The motion CARRIES.

89 GAVEL PASSED TO VICE CHAIR MILLER.

OPENS PUBLIC HEARING ON SB 224

98 PETER D. SHEPHERD, Assistant Attorney General, Attorney in Charge/Financial Fraud Section, Oregon Department of Justice presents testimony in favor of SB 224 [EXHIBIT T]

203 SHEPHERD: Continues with concerns regarding improper challenges

276 SEN. SORENSON: Requests testimony from Professor Bender. Interested in how this bill came to be. It represents a significant improvement in consumer protection in the State of Oregon.

290 VICE CHAIR MILLER: Requests hardship witnesses at this time. There will be an additional hearing on this bill.

JOHN J. COSGRAVE, Attorney provided written testimony [EXHIBIT V] in support of SB 224.

BARBARA S. BROWN, Oregon Consumer Agency stated support for SB 224 from the floor.

333 CLOSES PUBLIC HEARING ON SB 224

337 OPENS PUBLIC HEARING ON SB 240

Witnesses: Frank K. Brawner, President, Oregon Bankers Association and Independent Community Banks of Oregon

The

340 FRANK K. BRAWNER, President, Oregon State Bankers Association and The Independent Community Banks of Oregon presents testimony in support of SB 240 [EXHIBIT U]

- Reviews the need for basic documentation on Living Trusts submitted to a third party so that information contained therein can be readily understood

by that third party.

- Contains section by section analysis of the measure.

374 SEN. SORENSON: Is this a bill that affects revenue to the State?

400 BRAWNER: No it does not.

407 VICE CHAIR MILLER CLOSES PUBLIC HEARING ON SB 240
OPENS WORK SESSION ON SB 240

MOTION: SENATOR HAMBY moves that SB 240 be sent to the Floor with a DO PASS recommendation.

VOTE: VICE CHAIR MILLER: Hearing no objection the motion CARRIES. All members present vote AYE. CHAIR BRYANT is EXCUSED.

VICE CHAIR MILLER will lead discussion on the Floor.
CLOSES WORK SESSION ON SB 240.

422 OPENS PUBLIC HEARING ON SB 268

TAPE 28, SIDE A

47 FRANK K. BRAWNER, President, Oregon State Bankers Association testifies in favor of SB 268. [EXHIBIT W]

Presents his lay person explanation of SB 268. Would require that Living Trusts have some sort of brief uniform outline of information contained in the document for use by third parties (Living Trust Certificate) such as California and other states have already done.

80 RON D. BAILEY, Legislative Chair, Estate Planning Section, Oregon State Bar: Speaking in favor of SB 268. Bar has submitted SB 73 which they will

not move forward. In lieu thereof, are supporting SB 268.
- Concern is to develop a standardize certification that can be relied upon
- Standardization will benefit public - much better bill than SB 73
- Continues with suggested amendments or language changes [EXHIBIT W]
Section by Section Analysis.

101 SEN. BAKER: Agrees with making things simple.

117 CLOSES PUBLIC HEARING ON SB 268
OPENS WORK SESSION ON SB 268

119 MOTION: SEN. HAMBY: Moves to amend SB 268 as follows: on page 2, section 5, sub-section D, line 16 delete "use" and "of certification" and insert "adopt the certification to".

VOTE: VICE CHAIR MILLER: Hearing no objection the amendments are
CHAIR BRYANT IS EXCUSED.

ADOPTED.

MOTION: SENATOR STULL: Moves that SB 268, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: VICE CHAIR MILLER: Hearing no objection the motion CARRIES.
BRYANT IS EXCUSED.

CHAIR

SENATOR STULL will lead discussion on the Floor.

130 VICE CHAIR MILLER: Adjourns at 5:05 p.m.

Submitted by:

Reviewed By:

JULIE A. CLEMENTE
Committee Assistant

M. MAX WILLIAMS II
Committee Administrator/Council

EXHIBIT LOB:

A- LC DRAFT 2275, STAFF - 2 pages
B- LC DRAFT 1899, STAFF - 2 pages
C- LC DRAFT 1900, STAFF - 2 pages
D- LC DRAFT 1771, STAFF - 6 pages
E- SMS, SB 221, STAFF-1 page
F- SB 221, STAFF - 3 pages
G- SMS - SB 223, STAFF-1 page
H- SB 223, STAFF - 3 pages
I- SMS, SB 224, STAFF - 1 page
J- SB 224, STAFF - 5 pages
K- SMS, SB 240, STAFF - 1 page
L- SB 240, STAFF - 1 page
M- SMS, SB 268, STAFF - 1 page
N- SB 268, STAFF, - 3 pages
O- Commentary on SB 221, Asst. Attorney General Peter D. Shepherd -8 pages
P- Commentary on SB 223, Asst. Attorney General Peter D. Shepherds -4 pages
Q- Testimony on SB 223 - Ray Gribbling -2 pages
R- Testimony on SB 223 - Alan Contreras -1 page
S- Handout Walter Brown - 1 page
T- Commentary on SB 224, Asst. Attorney General Peter D. Shepherd-11 pages
U- Testimony on SB 240 - Frank E. Brawner-6 pages
V- Testimony on 223 & SB 224 - John J. Cosgrave-1 page
W- Testimony on SB 268 - Frank E. Brawner-15 pages