

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 103

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: Sen. Jeannette Hamby

STAFF PRESENT:

M. Max Williams II, Committee Counsel
Julie Clemente, Committee Assistant

MEASURES HEARD: Public Hearing & Work Session SB 189
Work Session

SB 276
SB 496
SB 796
SB 943

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

003 CHAIR BRYANT: Calls meeting to order.

OPENS PUBLIC HEARING ON SB 189

Witnesses: Kingsley W. Click, Acting State Court Administrator

016 KINGSLEY W. CLICK, Acting State Court Administrator: Testifies in
support of SB 189 and offers proposed amendments. [EXHIBIT A]

058 CHAIR BRYANT: References Section 2, subsection 4. Are you deleting
subsection 4?

CLICK: Yes. Explains.

085 CHAIR BRYANT/CLICK: Discussion.

101 CHAIR BRYANT: Chair is in favor of this. Suggests that it be sent to
Ways & Means for an analysis.

103 SEN. SORENSON: References comment "currently jury trial is a
fundamental right." Focusing on "currently," are you aware of any
legislation to change that?

CLICK: No. Explains.

120 CHAIR BRYANT: Speaks of questions Ways & Means might bring regarding
difference between private and state compensation of jury fees to
employees.

131 MAX WILLIAMS: Speaks of his concern of treating employers differently.

Explains.

CLICK: Will look at that. Explains.

MAX WILLIAMS: Speaking more specifically to the private employers versus
the state. Continues

160 CLICK: Thought about it in the reverse. Explains.

SEN. STULL: How much money are you estimating be allocated out of your
resources to accomplish this?

CLICK: Pay about \$5.4 million in jury expenses now. Explains.

CLOSES PUBLIC HEARING ON SB 189

OPENS WORK SESSION ON SB 189

189 MOTION: CHAIR BRYANT: Moves to ADOPT hand engrossed changes
to Ms. Click's testimony. attached

VOTE: Hearing no objection the amendments are ADOPTED. All members are
present. SENATORS HAMBY, MILLER AND SPRINGER ARE EXCUSED.

MOTION: CHAIR BRYANT: Moves that SB 189, AS AMENDED, be returned to the
President's desk with a letter requesting that the bill be referred to the
the

Committee on Ways and Means with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection the motion CARRIES. All members
are present. SENATORS HAMBY, MILLER AND SPRINGER ARE EXCUSED.

CLOSES WORK SESSION ON SB 189

OPENS WORK SESSION ON SB 276

Invited testimony: Bob Shoemaker, Multnomah County Medical Society
Association Erik Wasmann, Department of Justice and Oregon District Attorneys
John Ellis, Support Enforcement Division, Department of Justice
Thompson, Health Insurance Association of America
Brian Boe, American Express Life Assurance Companies
John Mangan, Assistant Vice President, Public Affairs, Standard Insurance
Company and the American Council of Life Insurance
Al Thompson, Thompson & Associates

204 MAX WILLIAMS: Refers to SB 276-2 amendments offered by the proponents
of the bill [EXHIBIT F]; March 23, 1995 memo indicating some specific
clean-up amendments [EXHIBIT D]; additional amendments [EXHIBIT B] dated
March 23, 1995 and [EXHIBIT C] dated April 12, 1995 agreed on by the
proponents as well as the Department of Justice and the Oregon District
Attorneys Association with respect to the use of DNA testing in criminal
situations.

219 CHAIR BRYANT: The proposed amendments do not address the concern raised
at the last hearing which deals with long-term health care.

229 BOB SHOEMAKER, Multnomah County Medical Society: Speaks to the
relationship of the SB 276-2 amendments [EXHIBIT F] with those proposed by
the Department of Justice and the District Attorneys Association. [EXHIBITS

B & C]

Explains where in -2 amendments the DOJ and the Oregon District Attorneys
Associations' amendments supersede those -2 amendments.

259 CHAIR BRYANT: "By those deletions, what have we accomplished?"

SHOEMAKER: Approach to opening up criminal investigations to DNA
information were taken differently by the DOJ. Explains.

281 Continues.

316 CHAIR BRYANT: "That's on your -2 amendments, line 17 through 22?"

SHOEMAKER: "Correct." Continues.

John Ellis of the Support Enforcement Division of the Department of Justice
asked that the bill not interfere with current statutory authority testing
to establish paternity. We concurred. SB 276-2 amendments accomplish
that in two places. Both the obtaining and disclosure of genetic
information would be permitted as authorized by statute for establishing
paternity.

CHAIR BRYANT: Asks Erik Wasmann to explain why the Department of Justice
wanted those changes.

363 ERIK WASMANN, Department of Justice and Oregon District Attorneys
Association: "It appears that Sen. Shoemaker has deleted from the -2
amendments the things that need to be deleted to make room for their
proposed amendments." Continues.

387 SHOEMAKER: Turning to my March 23rd memorandum. [EXHIBIT D].
Explains.

TAPE 102, SIDE A

038 SHOEMAKER: We would proposed that Section 8.3 of the bill be amended.
Explains.

076 SEN. BAKER: Would this or other sections of the bill protect the
exhumation of a body for genetic purposes?

SHOEMAKER: It would involve that from time to time. Explains.

135 CHAIR BRYANT: Unrelated to long-term health care insurance, amendments
discussed address your concerns, right?

JOHN ELLIS, Department of Justice: Our concerns have been taken care of.

148 JOHN MANGAN, Assistant Vice President, Public Affairs, Standard
Insurance Company and the American Council of Life Insurance: Have
reviewed conceptual amendments from the March 23rd hearing. In bulk have
no problem with those. Continues.

162 CHAIR BRYANT: You'd like to see it in written form?

MANGAN: Yes.

CHAIR BRYANT: Where we can come to agreement, have it drafted
conceptually. Bring it back to make sure all understand before it goes to

the Floor. Continues.

170 MANGAN: That is right. Continues.

174 CHAIR BRYANT: Last issue to address is long-term health care insurance.

SHOEMAKER: Section 8.(8)(3) Insurance Provision as drafted would protect long-term care insurance from genetic underwriting. Continues.

201 Long-term care is provided via Medicaid once you spend your assets down to a certain point. It becomes a burden on the state. Continues.

CHAIR BRYANT: We are one of the first states in the union to consider adopting this sort of bill. Correct?

SHOEMAKER: There are three other states that have a genetic privacy act.

SEN. BRYANT: How do they treat long-term health care?

SHOEMAKER: Don't know.

217 CHAIR BRYANT: If Oregon prohibited its use, would that stop a company from coming in and writing that type of insurance?

SHOEMAKER: I don't think it would. Companies would price insurance with that risk in mind. Explains.

237 GERRY THOMPSON, Health Insurance Association of America and the Oregon Association of Health Underwriters: Makes an appeal that long-term care insurance be exempted just like life insurance and disability. Explains.

306 BRIAN BOE, American Express Life Assurance Companies: Echoes what Gerry Thompson said. Long-term care insurance is a distinctly different product than life insurance. Explains.

322 CHAIR BRYANT: Walk through amendments first - saving long-term care for last.

MOTION: CHAIR BRYANT: Moves to ADOPT the SB 276-2

ame

SB 276-2 amendments be amended by deleting lines through 16 from page 1 and deleting lines 2

1 & 2, 6 through 9, 13 through 5 from page 2.

VOTE: CHAIR BRYANT: Hearing no objection, the SB 276-2 amended are ADOPTED. All members are present. STULL ARE EXCUSED.

SENATORS HAMBY, MILLER and

344 MOTION: CHAIR BRYANT: Moves to ADOPT the April 12, 1995 amendments by the Department of Justice.

pro

VOTE: CHAIR BRYANT: Hearing no objection, the amendments are All members are present. SENATORS HAMBY, MILLER and STULL ARE EXCUSED.

ADO

MOTION: CHAIR BRYANT: Moves to conceptually ADOPT

ame

Mr. Shoemaker's memo dated March 23, 1995 and 'and' from section 5, subparagraph 3.

further amend by striking

VOTE: CHAIR BRYANT: Hearing no objection, the amendments are All members are present. SENATORS HAMBY, MILLER and STULL ARE EXCUSED.

ADO

CHAIR BRYANT: Will be put into written form for all to review before bill is moved.

366 MOTION: CHAIR BRYANT: Moves to amend SB 276 by deleting health insurance' at line 11, page 5.

'lo

374 SEN. BAKER: Did we cover the definition of health insurance?

SHOEMAKER: Yes. Explains.

382 SEN. SORENSON: Seems we should have same rule for life insurance as for as we have for long-term health insurance. Continues.

CHAIR BRYANT: Your feeling would be to delete that section.

SEN. SORENSON: It should be treated the same. Explains.

413 CHAIR BRYANT: Chair's concern is the success it might have on the Floor of the Senate if long-term health care insurance remains in the bill. Explains.

SEN. SORENSON: Can you explain what you mean by leave it in or take it out?

431 CHAIR BRYANT: If it is deleted from the bill, it is my understanding it can be used as a consideration by a long-term health company in their determination of whether or not they are going to cover people.

SEN. SORENSON: Isn't it possible that the potential insured will go and be tested and will be able to keep that information from the insurance

company?

445 CHAIR BRYANT: Yes. Explains.

SEN. SORENSON: Isn't that what they want to do?

CHAIR BRYANT: Yes. But if they are included in the bill under this particular section, they wouldn't be able to use that information to reject, deny, limit or cancel coverage.

TAPE 101, SIDE B

50 SEN. BAKER: I would prefer to leave in the bill. Explains

058 SEN. SPRINGER: I don't know enough about the long-term care market in this state. Continues.

078 SEN. BAKER: Where we have gone in 20 years is amazing. This is a good bill.

086 CHAIR BRYANT: Will reschedule it.

092 SEN. SORENSON: Could counsel put together a one page sheet on this?

CHAIR BRYANT: Will do that.

CLOSES WORK SESSION ON SB 276

OPENS WORK SESSION ON SB 943

104 CHAIR BRYANT: Gives background of bill.

Invited Testimony: Lisa Bertalan, Attorney, Specializing in Elder Law
Aileen P. Kaye, Program Coordinator, Adult Protective Services, Senior & Disabled Services Division

110 LISA N. BERTALAN, Attorney, Specializing in Elder Law: Presents proposed amendments to SB 943. [EXHIBIT E] After discussion with Oregon Health Care representative Jim Carlson, came up with new amendments to SB 942. Explains.

145 CHAIR BRYANT: Roger Martin along with Frank Brauner have asked for a statement similar to the one you have in Section 9. Explains.

160 SEN. SORENSON: What are you trying to do with Section 2a through h? Continues.

BERTALAN: That's correct. Explains.

192 SEN. SORENSON: If it's not a problem, why are we writing this amendment in?

BERTALAN: Statistics show over 2,000 elderly abuses occurred in the State of Oregon last year. Continues.

199 CHAIR BRYANT: This bill will allow the person to try to recover their assets

BERTALAN: Continues.

211 SEN. SORENSON/BERTALAN: Discussion.

228 AILEEN P. KAYE, Program Coordinator, Adult Protective Services, Senior & Disabled Services Division: Adult foster care home cannot have more than 5

persons; residential care facilities and assisted living facilities up to 50 persons. Nursing homes can be larger. Talking institutional types of care rather than a home setting.

238 SEN. SORENSON: Speaks of residents of foster homes. Do you agree that a prior criminal convictions would not have to be shown for protection under this act?

KAYE: Yes.

246 SEN. SPRINGER: Refers to prior testimony stating 2,000 reported instances of abuse. How many of those were criminally prosecuted?

KAYE: No, I don't. Explains.

263 BERTALAN: After conference, hoping to develop a model system to prosecute these cases.

SEN. SPRINGER: Have you given thought to inserting parallel language?

BERTALAN: Sees this statute as next step.

277 SEN. SORENSON: Have we heard anything from the DOJ?

BERTALAN: Spoke with Steve Schneider and is in support of amendments.

297 MOTION: CHAIR BRYANT: Moves to ADOPT SB 796
by Ms. Bertalan as follows: Section 2, add after ORS 126.003 "or by either
such persons' guardian, conservator, attorney-in-fact, trustee or other
like agent."

Add: SECTION 10: Allegations that a transfer was made for the
qualifying an elderly or incapacitated person for Medicaid benefits or any

other federal or state assistance programs shall be an
to an action brought under Section 3 of this Act."

affirmative defense

of licensed nursing facilities as defined under ORS 442.015
care facilities and licensed assisted living facilities as
ORS Chapter 433 unless said persons are convicted

Add : SECTION 9 This Act shall not apply to owners, employees
or residential
defined under
criminally for any of the

actions set forth in Section 2(a) through (h)
institutions as defined by ORS 706.005.

or Section 3. (2) Financial
(3) Licensed security brokers and

dealers as defined by ORS 59."

322 SEN. BAKER: Refers to amendments to Section 1, subsection 2: Was their
discussion regarding Trustees or other like agents? Continues.

BERTALAN: Reason I included trustees, if the elderly person has their
assets in a trust and the financial abuse occurred out of the trust, the
trustee would be the appropriate person to bring the cause of action.

SEN. BAKER: Don't have any problems with conservator or attorney-in-fact.
Explains.

BERTALAN: Agrees.

SEN. BAKER: Prefer to strike the words "trustee or other like agent" and
put an "or" before and a period after attorney-in-fact.

CHAIR BRYANT: Amendment will be modified to reflect that.

362 SEN. SORENSON: What happens when the power of attorney is withdrawn?

BERTALAN: Attorney-in-fact can't be revoked if the person doesn't have
capacity to revoke the power of attorney. Explains.

SEN. SORENSON/BERTALAN/BAKER: Discussion.

430 CHAIR BRYANT: Refers to amendment. Continues.

SEN. BAKER: What is reason for Section 9?

BERTALAN: Those facilities are heavily regulated. Continues.

468 CHAIR BRYANT: If left in we would have to change other language which
is not a problem. Explains.

TAPE 102, SIDE B

039 CHAIR BRYANT: Amends motion: Put or in front of attorney-in-fact in
Section 2 and put a period after attorney-in-fact. Add verbiage beginning
with unless said persons . . .

VOTE: CHAIR BRYANT: Hearing no objections, the amendments are
All members are present. SENATORS HAMBY AND MILLER ARE EXCUSED.

MOTION: CHAIR BRYANT: Moves that SB 943, AS AMENDED, be
with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objections the motion CARRIES.
members are present. SENATORS HAMBY AND MILLER ARE EXCUSED.

CHAIR BRYANT will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 943

OPENS WORK SESSION ON SB 796

Invited Testimony: James Wheeler, Director, Columbia Counseling, Inc. and
Chairman of the Oregon Council of Adoption Agencies

082 MAX WILLIAMS: SB 796-1 amendments are in your packets. [EXHIBIT J]
Continues:

JAMES WHEELER, Director, Columbia Counseling, Inc. and Chairman of the
Oregon Council of Adoption Agencies: Explains amendments.

099 SEN. BAKER: Do we need to get into misdemeanors or infractions simply to
say you will be subject to a \$1,000 penalty?

104 MAX WILLIAMS: Don't see any reason why you would be precluded from
doing that. Explains.

CHAIR BRYANT: Also have opportunity of recovering attorney's fees.

113 MAX WILLIAMS: Certainly was anticipated in the initial draft of bill
that it would be the government that would be bringing the suit for
violation. Explains.

SEN. BAKER/WILLIAMS: Discussion.

130 CHAIR BRYANT: Class A is now \$10,000, isn't it? Continues.

141 SEN. BAKER: If you had a criminal penalty, you would be inviting
disaster with this statute. Explains.

144 WHEELER: Very comfortable with putting in the fine that you mentioned,
Senator Baker. Just state that the infraction would be a \$1,000 fine.

150 CHAIR BRYANT: My idea would to be conceptually adopt that idea, do the amendment and then pass it out.

WHEELER: Do you want some discussion on the "uncompensated agent" clause?

Explains.

CHAIR BRYANT: You would favor the language?

WHEELER: Believe it's fine.

169 MOTION: CHAIR BRYANT: Moves to ADOPT a SB 796
under Section 2 dealing with a penalty. Treat as an infraction with a
\$1,000 fine, not a crime.

VOTE: CHAIR BRYANT: Hearing no objection the amendment is
members are present. SENATORS HAMBY, SORENSON AND SPRINGER ARE EXCUSED.

MOTION: CHAIR BRYANT: Moves to ADOPT lines 1 & 2 of SB

VOTE: CHAIR BRYANT: Hearing no objection the amendments are

members are present. SENATORS HAMBY, SORENSON AND SPRINGER ARE EXCUSED.

180 WHEELER: It's my belief that anyone who has been studied and proven to live in Oregon should be able to advertise in Oregon. Continues.

203 CHAIR BRYANT: Talking under Section 2?

WILLIAMS: Potential for confusion is that when bill was printed, it was printed with two Section 2's. Continues.

MOTION: SEN. MILLER: Moves that SB 796, AS AMENDED, be
with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objections, the motion
members are present. SENATORS HAMBY, SORENSON AND SPRINGER ARE EXCUSED.

SENATOR CEASE will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 796

OPENS WORK SESSION ON SB 496

Invited Testimony: A. Carl Myers, Attorney, representing the Oregon State
Bar
Billy M. Sime, Attorney, Parks, Bauer, Sime & Winkler and representing the
Oregon State Bar

215 CHAIR BRYANT: Gives background on bill and explains what lead to its being presented. Explains

245 A. CARL MYERS, OREGON STATE BAR: Turns over to Billy M. Sime for comments.

251 BILLY M. SIME, Attorney, Parks, Bauer, Sime & Winkler: Has no reservations regarding amendments to Section 2. Continues.

-- Many situations within the domestic relations context where the attorney and clients will not know within 30 days after the judgment if it is necessary to file a lien or not. Creates a time problem. Explains.

-- When you have recovery of a positive money judgment and the defendant appeals. Explains.

297 CHAIR BRYANT: Could you put in a stay proceeding

SIME: That's possible. Explains

304 CHAIR BRYANT: Not looking to put plaintiffs attorney in an adversarial position. Continues.

CHAIR BRYANT/SIME: Discussion.

370 CHAIR BRYANT/SIME: Continue.

396 SIME: Has a better understanding of problem. Committee scheduled to meet on Saturday. Will give you some additional thoughts in writing next week.

CLOSES WORK SESSION ON SB 497

Adjourns meeting at 5:00 p.m.

Submitted by:

Reviewed by:

Julie Clemente
Committee Assistant

M. Max Williams II
Committee Administrator/Counsel

EXHIBIT LOG:

A - Testimony SB 189 -- Kingsley Click -- 5 pages
B - Proposed Amendments SB 276 -- Department of Justice -- 2 pages
C - Proposed Amendments SB 276 -- Department of Justice -- 1 page
D - Proposed Amendments SB 276 -- Bob Shoemaker -- 4 pages

E - Proposed Amendments SB 943 -- Lisa Bertalan -- 2 pages
F - Proposed Amendments SB 276-2 -- Staff -- 2 pages
G - Proposed Amendments SB 796-1 -- Staff -- 1 page