

SENATE JUDICIARY SUBCOMMITTEE
ON CIVIL PROCESS

Hearing Room
Tapes - 31

MEMBERS PRESENT:

Rep. Del Parks, Chair
Sen. Tom Bryant, Vice-Chair
Rep. Kate Brown
Rep. Bryan Johnston
Rep. Leslie Lewis
Rep. Bob Tiernan
Sen. Ken Baker
Sen. Randy Miller
Sen. Peter Sorenson

MEMBER EXCUSED:

STAFF PRESENT:

Holly Robinson, Committee Counsel
Max Williams, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

SB 482 - Public Hearing
SB 598 - Public Hearing
SB 601 - Public Hearing

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

004 CHAIR BRYANT: Calls the meeting to order at 3:42 PM

PUBLIC HEARING ON SB 482

(SB 482 prohibits award of punitive damages in civil cases)

Witnesses:

Mark Griffin, Attorney
William D. Brandt, Attorney
Douglas Hutchinson
Tom Novick, OSPIRG

Witness (Cont.):

Tim Grabee, Attorney
Margin Sells
Marc Zwerling, Attorney

025 MARK GRIFFIN, ATTORNEY: Testifies and submits written testimony in opposition to SB 482. (EXHIBITS A-1,-2, B, C-1, C-2) Plays video tape of Jill Hobbs.

142 CHAIR BRYANT: Did you file an ORICO claim on that, or was it just a request for punitive damages along with compensatory damages?

144 GRIFFIN: In the original case, we filed an ORICO claim, but it was dismissed by the trial judge. Plays video tape of David Crosswhite

228 BILL BRANDT: Testifies and submits written testimony in opposition to SB 482. Reads testimony of Victor Tarala: (EXHIBITS D, E)

314 REP. JOHNSTON: In the cases you have spoken about, would the compensatory damages have been enough to suggest to the company that it was in their best interest to settle some of these suits?

320 GRIFFIN: In all cases that I have been involved, we tried to settle the cases for compensatory damages. No, it would not deter this kind of conduct. There are some limitations to compensatory damages by companies.

336 BRANDT: Damages in business cases, are the most difficult to prove. The courts don't recognize recovering for those types of loss in Oregon. The emotional stressors are the greater damages that people suffer from being a victim of a fraudulent scheme, than are those of financial losses.

That is why punitive damages are appropriate and should be imposed.

368 REP. JOHNSTON: Are you not entitled to attorney fees by virtue of some of the statutes you are sued under?

371 BRANDT: You are under the unfair trade practice and franchise law allowed to recover attorney fees. Cites cases in EXHIBIT D.

390 REP. JOHNSTON: Discusses testimony from insurance people.

395 BRANDT: An insurance adjuster suggested that the threat of punitive damages causes them to pay more money, and my feeling is just the opposite.

My experience is that adjusters evaluate cases on the real injuries and for the most part the system works.

419 REP. JOHNSTON: It is a burden of proof question. Do you feel you are held to that burden of proof when you go to trial?

426 BRANDT: Absolutely, explains position. Cites case of franchise fraud.

TAPE 31, SIDE A

010 GRIFFIN: In my experience in fraud cases, I represent people who cannot afford an attorney and are emotionally devastated. If they decide to bring

a lawsuit, they are faced with a fortune 200 or 500 company. We are faced with the largest law firms in Oregon and the country. Discusses defense costs. The companies that are sued for punitive damages, are not victims.

In all of these cases, these people said they didn't want to sue, but wanted to settle on a reasonable basis.

032 BRANDT: Discusses big firms vs. small person bringing a suit.

058 REP. BROWN: Did one of you represent Jill Hobbs. She said she received punitive damages, was that from the wrongful termination?

060 GRIFFIN: It was on the common law wrongful termination claim. Under the statutory claims, she would have been limited to lost wages between the time she was fired to the time she got a new job.

065 REP. BROWN: Many plaintiffs in employment discrimination cases aren't entitled to punitive damages now?

066 GRIFFIN: The only way to obtain punitive damages on an employment discrimination case is if you have been wrongfully terminated and can properly plead a wrongful termination case.

077 DOUGLAS HUTCHINSON, SELF: Testifies in opposition to SB 482.

227 REP. JOHNSTON: The statute is a '81 statute. What has the history been of cases that have resulted in punitive damages?

237 HUTCHINSON: There has been 2 cases that the tribe has invoked punitive damages.

243 REP. BROWN: Why should the tribes be exempted from SB 482?

254 HUTCHINSON: We are dealing with two sovereigns, the state of Oregon and the Indian nations. This is more than a tort action and I don't think it was intended to be caught within SB 482. Primarily what happened last session where the State Parks and the Indians joined together to assume a joint responsibility, places us in a special place as well.

277 TOM NOVICK, OSPIRG: Testifies and submits written testimony in opposition to SB 482. (EXHIBIT F)

349 REP. TIERNAN: Discusses language about punitive damages. Cites Fred Meyer case and asks them to comment on it.

360 NOVICK: I don't know the whole case, but I do know that Fred Meyer is going to appeal. For everyone of those frivolous cases, there are many countless victims.

378 REP. TIERNAN: Discusses Fred Meyer case who lawfully removed people from their property and discusses judges findings. This is a pure example that something is wrong.

408 NOVICK: I'm not an attorney and I have not looked closely at the case. The jury system is not perfect. Discusses '87 legislative session on

punitive damages.

426 REP. TIERNAN: There are some bad employers, but on the other hand there are employers that are acting on good faith and following the law. Should there have been an award at all?

438 NOVICK: I would be concerned throwing out all Oregonians ability to hold wrong doers accountable because of an aberration in the system.

TAPE 30, SIDE B

016 TIM GRABEE, ATTORNEY: Testifies and submits written testimony in opposition to SB 482. (EXHIBITS G, H)

039 MARGIE SELLS, SELF: Testifies in opposition to SB 482.

068 MARC ZWERLING, ATTORNEY: Testifies and submits written testimony in opposition to SB 482. (EXHIBITS I, J)

PUBLIC HEARING ON SB 598

(SB 598 limits physicians liability for acts or omissions of health care providers acting under supervision of physician.)

Witnesses Tom Cooney, Oregon Medical Association
Steve Kaforny, AMR Insurance

232 TOM COONEY, OREGON MEDICAL ASSOCIATION: Testifies in opposition to SB 598.

263 CHAIR BRYANT: Do you have a definition for "health care providers"? Does that include EMT, ambulance drivers, etc. Who are the health care providers this bill is intended to address?

268 COONEY: Primarily in the hospital setting. It would not change any liability of an EMT or the doctor.

275 CHAIR BRYANT: If we added to this bill a definition that would describe or define a health care provider as someone who had admitting privileges, would that satisfy your concern?

281 COONEY: It could be limited to the health care facility. In situations where the physician by virtue of the bylaws is required to be responsible for the care of someone else, if that person is who he employs or is a partner.

287 CHAIR BRYANT: I think we need a definition that would clear up exactly who we are talking about.

295 STEVE KAFORNY, AMR INSURANCE: Testifies in opposition to SB 598.

PUBLIC HEARING ON SB 601

(SB 601 specifies that in comparative negligence actions, fault of plaintiff is to be compared with fault of all persons legally responsible

for damages sought by plaintiff, whether or not those persons are parties to action.)

Witnesses: Scott Gallant, Oregon Medical Association
 Tom Cooney, Oregon Medical Association
 Jim Huegeli, Attorney
 Larry Wobbrock, Oregon Trail Lawyers Association
 Steve Larson, Stoll, Stoll, Berne, Lokting & Shlachter PC

321 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Introduces Mr. Cooney.

329 TOM COONEY, OREGON MEDICAL ASSOCIATION: Testifies in support of SB 601.

380 CHAIR BRYANT: Did you receive a letter from Judge Beardan? He had concerns about this bill (gives letter to Scott Gallant and Tom Cooney)

390 COONEY: Discusses letter from Judge Beardan. Disagrees that SB 601 would discourage settlements which prevents absolute gridlock, explains. If the defendant is going to delay a trial, they must do it within 60 days.

Discusses Montana case.

TAPE 31, SIDE B

021 JIM HUEGLI, ATTORNEY: Testifies and submits written testimony in opposition to SB 601. (EXHIBIT K)

080 CHAIR BRYANT: What state was mentioned as having a rule such as this? Was is Washington?

083 COONEY: Yes, Washington allows the jury to access responsibility.

085 CHAIR BRYANT: Do you have any experience in the state of Washington?

086 HUEGLI: None. I can tell you of how the rules will work here. I can assure you of the results.

093 REP. BROWN: Discusses the Fred Meyer case.

102 LARRY WOB BROCK, OREGON TRIAL LAWYERS ASSOCIATION: Testifies in opposition to SB 601. Submits and plays video tape testimony in opposition to SB 601 by Janet Rice (EXHIBIT L). Discusses Montana case.

239 CHAIR BRYANT: How long have they had the bill in Washington?

240 WOB BROCK: Since 1986. Continues with testimony.

347 STEVE LARSON, STOLL, STOLL, BERNE, LOKTING & SHLACHER PC: Testifies and submits written testimony in opposition to SB 601. (EXHIBIT M)

361 WOB BROCK: Gives example case of doctor who is named for fault. We will see litigation's expanded and people brought into cases where they shouldn't be.

386 CHAIR BRYANT: Adjourns the hearing at 5:34 pm.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A-1 Video Tape Testimony on SB 482 - Jill Hobbs - Video
A-2 Testimony on SB 482 - Jill Hobbs - 1 page
B Testimony on SB 482 - Kevin Webber - 2 pages
C-1 Video Tape Testimony on SB 482 - David Crosswhite - Video
C-2 Testimony on SB 482 - David Crosswhite - 2 pages
D Testimony on SB 482 - William Brandt - 6 pages
E Testimony on SB 482 - Victor Tarala - 2 pages
F Testimony on SB 482 - Tom Novick - 3 pages
G Testimony on SB 482 - Tim Grabee - 13 pages
H Testimony on SB 482 - Tim Grabee - 1 page
I Testimony on SB 482 - Marc Zwerling - 9 pages
J Testimony on SB 482 - Marc Zwerling - 14 pages
K Testimony on SB 601 - James Huegli - 6 pages
L Video Tape Testimony on SB 601 - Larry Wobbrock - Video
M Testimony on SB 601 - Larry Wobbrock - Chart
N Testimony on SB 601 - Steve Larson - 2 pages