

SENATE JUDICIARY SUBCOMMITTEE  
ON CIVIL PROCESS

Hearing Room  
Tapes - 39

MEMBERS PRESENT:

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

MEMBER EXCUSED:

Rep. Leslie Lewis

STAFF PRESENT:

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

MEASURES HEARD:

SB 482 - Work Session

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 3:45 p.m.

WORK SESSION ON SB 482

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

016 MAX WILLIAMS, COMMITTEE COUNSEL: Discusses memo sent to LC about SB 482 amendments. Discusses amendments.

088 CHAIR BRYANT: Discusses proposed amendments. I'm not in favor of eliminating punitive damages. Discusses attorney fee payments and who would pay in specific situations. The attorney fees would be limited to 25

percent which is fair, explains. The punitive damages don't have a cap, discusses why. Discusses Supreme Court decision about the judges review of punitive damages.

132 CHAIR PARKS: Discusses proposed amendments that he drafted. The issue with punitive damages is that they are often plead as a harassment technique. There should be some type of test to show that the case is an appropriate case to be tried. Discusses available financial information. Punitive damages serve an important purpose in the law in a very few cases, explains. I wouldn't give the state 75 percent of award, but split it up in one-thirds. I would also change the rule on the application of payments, explains. I do not want to include a criminal standard to the punitive damages. I object to using terms we use for criminal cases. I'm not in favor of making everyone jointly liable. Discusses caps on punitive damages.

225 CHAIR BRYANT: If the defendant is sued twice for the same "defective design", what happens?

227 CHAIR PARKS: I don't know about that. I am flexible on that.

233 REP. TIERNAN: What is the process be that we will be using? Are we going to go through these meetings just listening to the chair's amendments? How are we going to reach agreement or non-agreement?

245 CHAIR BRYANT: It can't go on much longer, we need to get back to our other committees. My hope is that these hearing would be done next week. Rep. Parks and I have not agreed on all the bills and their amendments. I encourage the members of the committee to talk to both of us a the chairs, to let us know your thoughts and concerns.

269 REP. TIERNAN: How are we, as a committee, going to proceed on all of these bills?

274 CHAIR BRYANT: We will not be in a long work session today. I would be interested in hearing your views on this and what we should do.

294 SEN. SORENSON: My understanding is that it seems like we are supposed to have agreement between the House and the Senate before this is passed out?

318 MAX WILLIAMS, COMMITTEE COUNSEL: In general terms, that is the way the rules would work. Explains process of bills passing through the joint committees and chambers.

340 HOLLY ROBINSON, COMMITTEE COUNSEL: This committee would then become the conference committee.

344 MAX WILLIAMS, COMMITTEE COUNSEL: This group would be termed a conference committee.

347 REP. TIERNAN: If the House and the Senate decide upon different versions of this bill, we would then be the conference committee? I don't think that is true.

350 MAX WILLIAMS, COMMITTEE COUNSEL: Assuming it passes the Senate, the

House full committee would have to vote to send it back to the joint committee, explains. The presumption would be that it would stay in this committee.

362 REP. TIERNAN: That would be against the House rules. The Speaker of the House has the authority to assign whomever she wants to a conference committee and that has not been made as part of these rules. Gives example of bill passing with minority report.

379 SEN. MILLER: Rep. Tiernan is correct. The conference committee could be appointed and possible would be a separate committee. There is an understanding that the bill that is agreed to in this committee, will not be changed in either full committee. The minority report option is available though.

391 REP. TIERNAN: If it changed in full committee, it would go back to this committee. But if there is a minority report filed, that would go on it's own.

396 HOLLY ROBINSON, COMMITTEE COUNSEL: In the event that the minority report is adopted when the bill comes to the House Judiciary committee, is that your scenario?

400 REP. TIERNAN: Gives example of bill passing with possible minority report.

411 SEN. SORENSON: The joint rules require that all of the House and Senate members agree before it is sent out of this committee, explains.

425 SEN. MILLER: There has to be a majority of the House and Senate members in order to pass the bill back to their respective full committees.

430 HOLLY ROBINSON, COMMITTEE COUNSEL: In the event that either chamber change the bill, there is the ability of the chairs to send it back to subcommittee.

444 REP. TIERNAN: If you did that, you would nullify the right to have a minority report filed.

TAPE 39, SIDE A

011 HOLLY ROBINSON, COMMITTEE COUNSEL: The process would be that it would come back to this committee first and then go out of this committee with a minority report.

015 REP. JOHNSTON: Will counsels should meet and outline the process this will take so that they can tell the committee.

019 CHAIR BRYANT: Are you discussing the possibility of a minority report?

020 REP. JOHNSTON: It might be better, to delegate that responsibility of figuring the process out to the counsels, rather than the committee taking any more time with it.

022 CHAIR BRYANT: The rules are clear. Anyone in full committee, can propose a minority report to take to the floor.

025 REP. TIERNAN: In full committee, there is a right of a minority report to go to the floor. If that minority report is successful, then that would go to a conference committee.

028 CHAIR BRYANT: Or would it come back to the joint committee?

028 REP. TIERNAN: Once it passes the floor, it can't come back to committee.

029 CHAIR BRYANT: The rules of the Senate and the House would supersede our committee rules.

036 REP. JOHNSTON: I would like to draw some comparisons between the House and Senate amendments. There is a three part test for punitive damages that we need to take, explains. Some of the Senate amendments fail on these tests, explains.

054 CHAIR BRYANT: Because you feel the behavior of the defendant was so bad that there should be, in addition to the compensable damages, punishment whether or not you receive them. We want to make the point that this behavior needs to be deterred. The 25 percent would leave some economic advantage, but the prime motivation should be to stop the behavior.

060 REP. JOHNSTON: I think that is the correct answer, I just don't know if that is what would prevail in the marketplace. You do the same thing in my mind when you raise the standard of proof from "clear and convincing", to "beyond a reasonable doubt". Discusses credits for previously paid damages in the Senate amendments. I might be able to support it, if they included that the people had done something to alter the situation, gives example of GMC case. Discusses House amendments on the three part test. But, to impose sanctions at this stage seems harsh, explains. If you prevail on the summary judgment and the defendant makes a reasonable settlement offer that cover damages and throws in enough money that a person would rather take it than go to trial, under the system the state is now a party and could have an influence to settlement. I don't want the state to be part of the negotiation.

111 CHAIR PARKS: I do like your concept, explains.

119 REP. TIERNAN: None of those three part test include attorney fees. Punitive damages are based on a windfall rather than on a loss theory. Why do we have to give a cut of the punishment to the attorney?

130 CHAIR PARKS: The reason you pay the attorney is the same reason you pay the attorney in the principal case. The attorney has to do all the research to find the other people involved, that is why you compensate the attorney.

138 REP. JOHNSTON: When I said retain economic incentive, I meant the economic incentive to both the attorney and his/her client.

140 SEN. BAKER: The average consumer protection case is less than one hundred dollars. If you are an attorney on that case, you need the motivation to go forward.

146 SEN. SORENSON: If a defendant who is subject to punitive damages and changes their conduct, isn't that already admissible in court? The conduct of the defendant and what they've done, is brought out by the defendant in the course of the case?

159 CHAIR PARKS: I don't think it is a defense that a person takes corrective action.

160 SEN. SORENSON: It's not a defense, but a matter of evidence that the jury is supposed to take into consideration.

163 REP. JOHNSTON: Sen. Sorenson is right but that isn't what we were talking about. We are encouraging remedial action, the fixing of problems that have resulted in injuries.

178 SEN. BAKER: You are talking about a remeditor action on the part of the judge to reduce punitive damages based upon certain facts, which is probably a good policy.

180 CHAIR PARKS: That would be a point at which you could stop them in the motion to go forward. If the defendant could put on evidence to say "all this is true, but this is what has happened since we got this verdict against us". The judge would then have to make a determination.

199 CHAIR BRYANT: Adjourns the hearing at 4:27 p.m.

Submitted by, Reviewed by,

Sarah May                      Debra Johnson  
Committee Assistant              Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on SB 482 - Oregon State Bar - 4 pages
- B. Testimony on SB 482 - Oregon State Bar - 15 pages
- C. Testimony on SB 482 - Oregon State Bar - 5 pages