

SENATE JUDICIARY SUBCOMMITTEE
ON CIVIL PROCESS

Hearing Room
Tapes - 41

MEMBERS PRESENT:

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

STAFF PRESENT:

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

MEASURES HEARD:

SB 450 - Work Session
SB 93 - Work Session
SB 386 -Work Session
SB 482 - Work Session
SB 393 - Work Session
SB 598 - 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

003 CHAIR BRYANT: Calls the meeting to order at 3:54 PM.
-Discusses the agenda and the need for another Civil Process Committee meeting.

WORK SESSION ON SB 393

018 MAX WILLIAMS, COMMITTEE COUNSEL: Explains SB 393 dash three amendments [EXHIBIT A]. Responds to Sen. Baker, who questions the "all claims" on page 2, line 19 regarding the current law, in conjunction to line 22 which states "for a single claim"; provides interpretation. Responds to Sen. Sorenson who questions firms with 6 or less shareholders. This amendment would have virtually no effect on firms with six or fewer shareholders.

085 CHAIR BRYANT: We have had no testimony regarding six or more share holders.

090 CHAIR BRYANT: The purpose of the bill as amended is to put a cap on the non-negligent shareholders' liability for a claim.

095 MOTION: REP. TIERNAN: Moves TO ADOPT SB 393 -3 AMENDMENTS.

100 CHAIR BRYANT: Discusses the amendments and the process required to move bills out of this committee.

VOTE: Hearing no objection the amendments are ADOPTED. All members are present.

155 MOTION: SEN. BAKER: Moves SB 393 AS AMENDED TO THE SENATE COMMITTEE with a DO PASS recommendation.

JUDICIARY

MOTION: REP. TIERNAN: Moves SB 393 AS AMENDED to the HOUSE JUDICIARY COMMITTEE, SUBSEQUENT TO THE SENATE COMMITTEE, with a DO PASS recommendation.

189 SEN. SORENSON: Discusses the motion and the number of persons effected; references his comments on lack of testimony regarding companies with less than six shareholders. States his opposition to the bill as amended.

VOTE: 8-1 MOTION PASSES
Parks AYE: Sen. Baker, Miller, Bryant - Rep. Brown, Johnston, Lewis, Tiernan,
NO: Sen. Sorenson

WORK SESSION ON SB 386

208 MAX WILLIAMS, COMMITTEE COUNSEL: Explains the dash eight amendments to SB 386 [EXHIBIT B].

246 CHAIR BRYANT: This will not effect other causes of action . If there is a criminal conviction then the right to the civil causes of action would return.

253 CHAIR PARKS: Questions the clause of expiration on page 4 of the -8 amendments, line 13-16.

267 MAX WILLIAMS, COMMITTEE COUNSEL: The purpose of that was to prevent someone who has appeal rights and the right to pursue on a criminal conviction, from being pulled into a RICO suit until the matter has been essentially adjudicated.

278 SEN. SORENSON: Requests orientation of the -7, -3, and the -8 amendments. Questions the Appellate court's statute which is referenced in the civil RICO; State vs. Henry.

303 REP. BROWN: Discusses ORS 167.087 and that it is not covered in these amendments.

308 MAX WILLIAMS, COMMITTEE COUNSEL: Provides further clarification regarding the private write of action under the statute.

320 CHAIR BRYANT: Wouldn't it require a different statute in order to be violated and to come to RICO?

327 REP. JOHNSTON: Discusses the differences of criminal action vs. civil RICO.

378 SEN. SORENSON: On page 4 of the old language which refers to a series of statutes; where is the private right of action under civil RICO? The statute is contrary to the constitution and should be deleted in regard to the civil RICO.

432 MOTION: REP. TIERNAN: Moves to ADOPT SB 386 -8 AMENDMENTS.

452 REP. BROWN: Does the statute of limitations on page 4, for racketeering, toll while the criminal case is on appeal?

TAPE 41, SIDE A

033 MAX WILLIAMS, COMMITTEE COUNSEL: Criminal conviction is a prerequisite to the right of bringing a RICO case. This right would not arise until the criminal conviction had either been appealed through it's court of last resort, or the appeal rights expire. The statute of limitations would begin to run at the point when the right to bring the action to RICO arose.

046 REP. JOHNSTON: Looking at this, the District Attorney or the Attorney General, does not need to rely upon a criminal conviction. The statute is begins to run once an action occurs that would give rise to this type of proceeding. Discusses the possibility of some alternative language.

094 MAX WILLIAMS, COMMITTEE COUNSEL: Suggests language "for purposes of this civil right of action under RICO, the statute of limitations is tolled pending the outcome of the appeal right on the criminal conviction". Discusses possible conceptual motion.

104 VOTE: Hearing no objection the amendments are ADOPTED. All members are present.

113 MOTION: REP. JOHNSTON: Moves to ADD on PAGE 3 SECTION 6A "FOR PRIVATE PARTIES THE STATUTE OF LIMITATIONS DOES NOT BEGIN TO RUN UNTIL AFTER THE APPEAL RIGHTS HAVE BEEN EXTINGUISHED ON A CONVICTION".

VOTE: Hearing no objection the amendments are ADOPTED. All members are present.

120 SEN. SORENSON: Comments in regard to Page 4, line 21 of the -8 amendments; the provision for the recovery of attorney fees given the relationship of portions of SB 385. When changing from the word "such" to the word "a", are we changing the method in reputing the attorney fees and the criteria by which they are awarded?

156 REP. BROWN: Addresses the child porn issues; Section T and the statutory cite within T.

181 MOTION REP. BROWN: Moves the TO CHANGE SECTION T, LINE 19, PAGE 4.

188 CHAIR BRYANT: Discusses the conceptual amendment.

224 REP. TIERNAN: I am confused as to what is being suggested as an amendment here, and I am not sure how it impacts the bill before us.

232 CHAIR BRYANT: That's my question too. If it's currently unconstitutional it would not apply under this act. It would take that out if we accept the motion. Discusses the constitutionality portion of the legislation in the -8 amendments.

301 MOTION: REP. BROWN: Restates the motion.

VOTE: 5-4 MOTION FAILS

AYE: Sen. Baker, Sorenson - Rep. Brown, Johnston, Parks.

NO: Sen. Miller, Bryant - Rep. Lewis, Tiernan.

336 MOTION: REP. TIERNAN: Moves SB 386 AS AMENDED to HOUSE AND SENATE JUDICIARY COMMITTEES with a DO PASS recommendation.

350 REP. TIERNAN: Withdraws the motion.

364 SEN. SORENSON: Discusses the dash three amendments to SB 386. The amendments propose that all of the incidents of racketeering activity occur within five years of each other. They also provide that a private right of action to seek injunction relief for damages occur under one of the following two circumstances: 1.) If the racketeering offense constitutes a felony, 2.) and if the racketeering offense relates to bribery, perjury etc.

428 MOTION: SEN. SORENSON: Moves the to ADOPT SB 386 -3 AMENDMENTS to THE HOUSE AND SENATE JUDICIARY COMMITTEES with a DO PASS recommendation.

VOTE: 3-6 MOTION FAILS
AYE: Sen. Sorenson - Rep. Brown and Johnston.
NO: Sen. Baker, Miller, Bryant - Rep. Lewis, Tiernan, Parks.

449 MOTION: REP. TIERNAN: Moves SB 393 AS AMENDED to THE HOUSE AND SENATE JUDICIARY COMMITTEES with a DO PASS recommendation.

VOTE: 7-2 MOTION PASSES
AYE: Sen. Baker, Miller, Bryant - Rep. Johnston, Lewis, Tiernan, Parks
NO: Senator Sorenson - Representative Brown

TAPE 40, SIDE B

WORK SESSION SB 93

048 MAX WILLIAMS, COMMITTEE COUNSEL: Explains the bill and proposed amendments [EXHIBIT C, D, E].

078 CHAIR BRYANT: The last amendment (-3); there are only a few items left to resolve, and the 1998 deadline would be a sufficient amount of time.

081 MOTION: REP. JOHNSTON: Moves to ADOPT SB 93 -1,-2,-3 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED.

090 MOTION: REP. JOHNSTON: Moves SB 93 AS AMENDED TO THE HOUSE AND SENATE JUDICIARY COMMITTEE with a DO PASS recommendation..

VOTE: 8-0 MOTION PASSES.
AYE: Senators Baker, Miller, Sorenson, Bryant; Representatives Brown, Johnston, Lewis, Parks
NO: None
EXCUSED: Rep. Tiernan.

094 CHAIR BRYANT: Recesses the meeting for five minutes; 4:57 PM.

Re-opens meeting at 5:06 PM.

WORK SESSION ON SB 598

Witnesses: Ed Patterson, Oregon Association of Hospitals and Health Systems

105 ED PATTERSON, OREGON ASSOCIATION OF HOSPITALS AND HEALTH SYSTEMS: Testifies in support of SB 598 and introduces Bob Simpson.

127 BOB SIMPSON, OREGON ASSOCIATION OF HOSPITALS: Testifies in support of SB 598 with the proposed amendment. Discusses the function of the -1 amendments to SB 598. [EXHIBIT F].

136 MOTION: REP. TIERNAN: Moves to ADOPT SB 598 -1 AMENDMENTS.

VOTE: Hearing no objection the amendments are ADOPTED.

147 REP. BROWN: Line 15 referring to supervising M.D. liability; line three referring the addition of the word "licensed", prior to "health care provider".

-Discussion of the dash one amendments with Senate Counsel; discusses whether the Medicare requirements were met with the dash one amendments

177 SEN. SORENSON: Discusses the wording of the current amendment and the way it is written.

-Questions the intent of placing the word "applicable" between the words "any" and "protocols".

195 MOTION: REP. TIERNAN: Moves to AMEND SB 598 -1 AMENDMENTS, to include "APPLICABLE" between the words "ANY" and "PROTOCOLS".

VOTE: Hearing no objections the amendment is AMENDED.

210 MOTION: REP. TIERNAN: Moves SB 598 AS AMENDED TO THE HOUSE AND SENATE
JUDICIARY COMMITTEES with a DO PASS recommendation..

VOTE: 7-1 MOTION PASSES
AYE: Sen. Baker, Miller, Sorenson, Bryant - Rep. Lewis, Tiernan, Parks
NO: Rep. Brown
EXCUSED: Rep. Johnston

WORK SESSION ON SB 482

221 MAX WILLIAMS, COMMITTEE COUNSEL: Explains and summarizes the bill and
concepts. Reviews the dash eight amendments [EXHIBIT H]. These amendments
asked for "clear and convincing evidence beyond a reasonable doubt".

262 CHAIR BRYANT: Because there were not sufficient votes for the dash
eight amendments we have gone back to the dash seven amendments [EXHIBIT
I].

267 CHAIR BRYANT: Recesses the work session on SB 482.

WORK SESSION ON SB 450

270 MAX WILLIAMS, COMMITTEE COUNSEL: Discusses that the -8 amendments to SB
450 essentially raises the percentage of liability of the defendant who is
found to be at fault.

295 CHAIR BRYANT: The language, "the defendant acting in concert was
suggested by the law professor. The 40 percent is compromised; there were
other percentages.

284 MOTION: CHAIR BRYANT: Moves to ADOPT SB 450 -8 AMENDMENTS.

VOTE: Hearing no objection the amendments are ADOPTED.

316 MOTION: CHAIR BRYANT: Moves SB 450 AS AMENDED TO THE HOUSE AND SENATE
JUDICIARY COMMITTEES with a DO PASS recommendation.

320 VOTE 4-5 MOTION FAILS
AYE: Sen. Miller and Bryant - Rep. Johnston and Parks
NO: Sen. Baker, Sorenson - Rep. Brown, Lewis, Tiernan.

334 MOTION: CHAIR PARKS: Moves SB 450 BE TABLED.

VOTE: 5-4 MOTION FAILS
AYE: Sen. Baker, Sorenson - Rep. Brown, Johnston, Parks.
NO: Sen. Miller, Bryant - Rep. Lewis, Tiernan.

RE-OPENS WORK SESSION ON SB 482

350 MAX WILLIAMS, COMMITTEE COUNSEL: Explanation of the bill and the dash
seven amendments. Explains the amendments proposed by CHAIR PARKS; capping
the punitive damage award.

420 SEN. SORENSON: How does the plaintiff properly acquire the information
to prove their case while at the same time protect the defendant rights
from discovery?
-ROBINSON; responds to clarify for Chair Parks the correlation being drawn
by Sen. Sorenson.
470 -So the plaintiff is allowed to have full discovery except for the
wealth of the defendant.
-CHAIR PARKS; does not intend to restrict discovery with this amendment.

TAPE 41, SIDE B

044 SEN. SORENSON: No civil action could be filed alleging punitive damages
until such time as the court makes a determination that it was proper to
allege punitive damages. How would the plaintiff be lawfully entitled to
acquire information about the defendants activities to support a claim for
punitive damages until they had made the allegation.
-CHAIR PARKS; responds.

063 CHAIR BRYANT: Comments on the benefits of the bill.

074 REP. LEWIS: Questions punitive damages and the percentages.

083 MAX WILLIAMS, COMMITTEE COUNSEL: Clarifies the percentages.

090 CHAIR BRYANT: Discusses the language of SB 450.

095 REP. JOHNSTON: Section 2 regarding the amount of the judgment and that
it can be reduced. -Questions remedial measures for previous punitive
judgments.

119 REP. TIERNAN: Comments on his opposition to the bill. The standard of
clear and convincing evidence is not appropriate; the attorney's get 25% of
the gross award vs. 25% of the net to the plaintiff.

127 SEN. BAKER: Discusses attorney awards; Page 2, lines 14-20; awards and
proportionality.

142 SEN. SORENSON: Questions the drafting and laying out the percentages in

Section One; doesn't the case law use exemplary damages?

-Discussion with CHAIR BRYANT in regard to changing common law with
exemplary damages.

161 SEN. BAKER: Questions whether there has been a discussion of policy
issues.

-CHAIR BRYANT; damages are not required to compensate, therefore the state
should receive a larger share of the award.

176 CHAIR BRYANT: Adjourns the meeting at 5:42 PM.

Submitted by, Reviewed by,

Sarah Myers Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Proposed Amendments to SB 393 - Staff - 6 pages
- B. Proposed Amendments to SB 386 - Staff - 6 pages
- C. Proposed Amendments to SB 93 - Staff - 1 page
- D. Proposed Amendments to SB 93 - Staff - 1 page
- E. Proposed Amendments to SB 93 - Staff - 1 page
- F. Proposed Amendments to SB 598 - Ed Patterson - 1 page
- G. Proposed Amendments to SB 598 - Staff - 1 page
- H. Proposed Amendments to SB 482 - Staff - 2 pages
- I. Proposed Amendments to SB 482 - Staff - 3 pages