

HOUSE COMMITTEE ON GENERAL GOVERNMENT Subcommittee on Government

February 23, 1993 Hearing Room 357 8:30 a.m. Tapes 21 - 24

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Jim Edmunson Rep. Cedric Hayden Rep. Patti Milne Rep. Sharon Wylie

VISITING MEMBER: Rep. Ken Baker

STAFF PRESENT: Janet Adkins, Committee Administrator Kimberly Burt, Committee Assistant

MEASURES CONSIDERED: HB 2180 HB 2651 HB 2678 HB 2679 [--- Unable To Translate Graphic ---]

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. [--- Unable To Translate Graphic ---]

TAPE 21, SIDE A

CHAIR PARKS: Calls meeting to order. (8:35 a.m.)

PUBLIC HEARING ON HB 2180 Witnesses: Barbara Pelett, OLCC Mike McCallum, Oregon Restaurant Association

010 BARBARA PELETT, OLCC: Testifies in support of HB 2180; we designed this on a formula that will replenish itself, so it is no burden on the

state, while at the same time it proves to be good for Oregon business.

_ Submits written testimony and informative material, (EXHIBIT A).

047 JANET ADKINS, COMMITTEE ADMINISTRATOR: Is the local government recommendation part of the application and granting of the class "c"

license?

PELETT: Absolutely, yes.

REP. MILNE: Is there still a waiting list for these licenses and how long is that?

PELETT: We ran out of these licenses last August and we set up waiting lists; if we can't channel people into other licenses to get into businesses, they begin without alcoholic beverages.

REP. MILNE: Is there a lot of activity in this type of business and what type of business is this?

PELETT: These are always restaurants; there is no lounge, no bar; these

are restaurants that offer ethnic food or twenty four hour service rather than short order or fast food.

Rep. Edmunson arrives. (8:40 a.m.)

095 REP. MILNE: There is a fairly good rate of new licenses; is there an attraction to adding beer and wine whereas people didn't used to?

PELETT: We've used 225 in twelve years; the businesses have a broader economic base when they have distilled spirits, beer and wine in addition to food.

115 REP. HAYDEN: How long is the usual waiting period?

PELETT: Until August last year there was no waiting, since then, approximately six weeks.

REP. HAYDEN: How do you ascertain which restaurant will get these?

PELETT: We give it to every restaurant that qualifies.

REP. HAYDEN: How many licenses are there?

PELETT: 225.

REP. HAYDEN: How many "a" and "b" license are there in the state?

135 PELETT: I would estimate approximately 1350 dispenser licenses for commercial establishments and private clubs with full privileges that

would allow lounges as well.

REP. HAYDEN: Why so many more "a" and "b" licenses than "c"?

PELETT: The "a" and "b" are tied to population.

REP. HAYDEN: I wonder why 225 comes close to filling the need.

PELETT: The demand fits the number of licenses authorized; we funnel people to other kinds of licenses such as beer and wine.

171 JANET ADKINS, COMMITTEE ADMINISTRATOR: In the class "c" premise, do servers have to have the servers permit and go through the alcohol

education program?

PELETT: Yes; all of the servers need permits and take server education before they are issued their service permit; both "a" and "c" licenses

may hire people that are eighteen years of age and we will get a limited permit for them to serve in the restaurant section.

ADKINS: Under a class "c" you can take an unfinished bottle of wine from the premises?

CHAIR PARKS: It says so on the testimony.

191 MIKE MCCALLUM, OREGON RESTAURANT ASSOCIATION: Testifies in favor of HB 2180; more people would apply for these licenses if there were more available.

_ These tend to be upper scale dining places; these are low controversial licenses.

ADKINS: There is a fiscal impact statement, (EXHIBIT B).

245 MOTION: REP. EDMUNSON MOVES THAT HB 2180 BE SENT TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION.

255 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES.

PUBLIC HEARING ON HB 2651 Witnesses: Paul Romain, Oregon Beer and Wine Distributors Association Darrin Quillen, Student Group, OSU

268 JANET ADKINS, COMMITTEE ADMINISTRATOR: Describes HB 2651; submits (-1) amendments and hand engrossed version, (EXHIBIT C).

295 PAUL ROMAIN, OREGON BEER AND WINE DISTRIBUTORS ASSOCIATION: The intent of this was to simply change the definition of alcohol as it pertained

to labeled beer and wine products.

_ Some of my distributors so that some of my have taken a different position on the bill.

_ These beverages have natural alcohol such as fruit juice; we tried to figure out a way to get a limited control of the product.

_ I would request that we have time to look at this to see if there is a way to control it without regulating it in the way I have suggested here.

375 CHAIR PARKS: I would suggest you come up with something workable for you.

385 DARREN QUILLAN, STUDENT GROUP, OSU: Testifies in opposition to HB 265 1; this bill caught my eye because as a college student we are made aware

of the dangers of drunk driving and this bill would take away from moderation.

_ We feel that by changing the definition of an alcoholic beverage to

one of one tenth percent would harm the designated driver principal and some businesses also; we feel it is a bad bill as written.

PUBLIC HEARING ON HB 2678 Witnesses: Paul Romain, Oregon Beer and Wine Distributors Association Frank Conrad, Director, Fiscal Services, OLCC Merle Lindsay, Assistant Director, Taxation Program, OLCC

493 JANET ADKINS, COMMITTEE ADMINISTRATOR: Describes HB 2678.

TAPE 22, SIDE A

030 ADKINS: Continues.

040 PAUL ROMAIN, OREGON BEER AND WINE DISTRIBUTORS ASSOCIATION: On the second page, line eleven, delete five and insert ten.

_ The intent is to limit business expense; my members have never defaulted on taxes.

CHAIR PARKS: What is the cost of the bond?

ROMAIN: Usually it is a letter of credit; in some cases around \$60,000 of credit.

083 FRANK CONRAD, DIRECTOR, FISCAL SERVICES, OLCC: As of six o'clock last night our commissioners were having problems writing a recommendation on this bill.

_ There are benefits to the industry; there is a cost with the bonds.

100 CHAIR PARKS: How many individual businesses are we talking about?

CONRAD: 226; many wineries and small businesses.

_ The history wouldn't indicate losses have been major to the state.

CHAIR PARKS: What type of businesses; on line six, there is an expanded definition, sounding like just about everybody?

CONRAD: Whole sale dealers, manufactures, wineries.

120 ROMAIN: There is no hard liquor tax in this state.

CHAIR PARKS: Does the state buy the liquor and then sell it?

CONRAD: Yes; they buy it from around the world then we ship it to 225 stores around the state.

_ We buy the liquor then we own it while it is in those stores.

CHAIR PARKS: The bond covers the tax and the product?

CONRAD: Bonds only cover beer and wine.

157 REP. WYLIE: The OLCC can impose a bond or letter of credit

on a business? CONRAD: At this point all licensees have a bond or letter of credit;

under the proposed legislation, any licensee who had been in business up to ten years would have to have the bond and after that we would look at their history.

REP. WYLIE: If a business does well for ten years then opts to not have their bond then gets in trouble, would the OLCC know before the bank and also, could they get a bond at that point?

CONRAD: Some licensees put money aside for obligations.

REP. WYLIE: That letter of credit is like a line of credit, and could limit the amount of money available to them; in the case of a business going out of business, where would the state stand in a long list of creditors?

205 MERLE LINDSY, ASSISTANT DIRECTOR, TAXATION PROGRAM, OLCC: The state lines up first.

CHAIR PARKS: Everyone who operates a business in Oregon is indebted to the state in some way and they don't have to post a bond.

_ Even if someone has done well for ten years you can go back and require the bond?

CONRAD: Yes, we still have the authority to put a lien on their property; this is like an additional insurance policy.

_ As part of our reduction of staff in 1993 we reduced staff in this area as there are safeguards; there will be a small fiscal impact between the two bills.

288 REP. MILNE: The other auditor is in another bill?

CONRAD: That will be in the fiscal impact statement.

WORK SESSION ON HB 2678

297 MOTION: REP. EDMUNSON MOVES THAT HB 2678 BE AMENDED AT PAGE TWO, LINE ELEVEN, CHANGING FROM FIVE YEARS TO TEN YEARS.

304 VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

MOTION: REP. EDMUNSON MOVES THAT HB 2678, AS AMENDED, BE SENT TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION.

310 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES.

_ We will take a five minute recess. (9:25 a.m.)

PUBLIC HEARING ON HB 2679 Witnesses: Paul Romain, Oregon Beer and Wine Distributors Association Jim Bernam, Willamette Valley Vineyards Bill Cross, Oregon Winegrowers Association Gordon Hanna, Attorney Barbara Pelett, Manager, Regulatory Section, OLCC John Powell, Miller Brewing Company Mark Nelson, Public Affairs, Anheuser Busch Mike McCallum, Oregon Restaurant Association Sandra Bishop, Wine Institute

320 JANET ADKINS, COMMITTEE ADMINISTRATOR: Describes HB 2679; submits fiscal impact statement, (EXHIBIT D).

347 PAUL ROMAIN, OREGON BEER AND WINE DISTRIBUTORS ASSOCIATION: Testifies in support of HB 2679 with the proposed amendments, (EXHIBIT E).

_ Because the OLCC has fewer and fewer enforcement staff, there is an advantage to those who attempt to violate laws.

450 ROMAIN: HB 2679 allows for the private right of action; this is a new idea, so we said we would do it on a limited basis, only against those

with wholesaling privileges.

_ We don't want profit, but to make the rules be enforced; the fines should go to the state, so that we aren't benefiting and no one makes money off this.

494 CHAIR PARKS: What kinds of unenforced violations?

TAPE 21, SIDE B

035 ROMAIN: Private label wine is sold directly sometimes; there is no enforcement of any substantial kind against that violator.

_ This would allow us to go to the winery and tell them that they can't do that and that we will report it.

064 CHAIR PARKS: You can't use the unfair trade practice rules?

ROMAIN: I think that is a personal, family or household situation, not used for businesses.

_ The consumer protection statute has dual enforcement mechanisms; there is also a section that allows a private litigant to enforce and that has been helpful.

_ We are asking for a two year sunset on this; this is an experiment.

100 CHAIR PARKS: Wineries are selling directly, avoiding the distributor?

ROMAIN: That is one form of violation; that is probably 50% of the bill.

CHAIR PARKS: The distributor is the other side?

ROMAIN: Yes; Safeway fired a manager of twenty five years for accepting a jacket from a distributor.

123 REP. WYLIE: When you say rules, are you referring to OLCC rules?

ROMAIN: Yes, rules adopted by the OLCC.

REP. WYLIE: Wholesaling of malt beverages or wine; does that cover distilled beverages?

ROMAIN: No, distilled spirits aren't sold by wholesalers, but by the state.

REP. WYLIE: If your clients had a preference, would it be to loosen the rules or have uniform enforcement?

ROMAIN: Uniform enforcement would be our preference; there are certain rules we'd like to do away with.

150 REP. EDMUNSON: Why are you asking for double attorney fees; ORS 20.105 already provides for awards of attorneys fees when an action is brought in bad faith, or solely for the oppressive purposes.

_ I question the policy of allowing double recovery in these actions that aren't available for other business facing the same situation.

_ I would suggest that you withdraw this as there is a law on the books that is broader, although the recovery isn't as great.

175 ROMAIN: We are trying to show everyone concerned that this is a legitimate attempt to get enforcement of the rules on the books; we are willing to go as far as necessary to show we don't want frivolous law

suites, or harassment law suits.

REP. EDMUNSON: ORS 20.105 is available to anyone if a law suit is brought for oppressive reasons.

ROMAIN: I would concur, all we ask is that there be a mechanism.

_ The same amendment in the second paragraph should also appear in line thirteen also; after "person", delete "licensed" and insert "whose license allows wholesaling of malt beverages or wine" and if you wish to do away with the next paragraph it's fine with me.

REP. BAKER: A two year sunset is impractical; it takes four years to get going.

245 JIM BERNAM, WILLIAMETTE VALLEY VINEYARDS: Gives history of Willamette Valley Vineyards.

_ We have been under a constant barrage of OLCC investigations, which is puzzling while you are told they don't have resources to investigate.

CHAIR PARKS: Asks for examples.

311 BERNAM: We had meetings at our winery and had classes, so our shareholders could take wine to restaurants and retail stores to sell

and one complaint was that we didn't have a sales license and our accounts were talked to by OLCC investigators.

REP. EDMUNSON: What was the outcome?

BERNAM: It was fine, we are licensed.

_ Wineries do in store tasting; in the law there is a provision that says we can, but there is also a law that says we can't; we've been told now we can't.

_ The problem is that Paul Romain doesn't like the answers he is receiving from the OLCC, so he wants to move this to the courts where they are unfamiliar with the situation.

380 BERNAM: If you look at the statutes, they were written for the OLCC to enforce, in order to have this new private right of action adopted, you need to know if they are written in such a way that the courts can

interpret them.

CHAIR PARKS: Is the issue the cost of selling the products through the distributor?

BERNAM: The bigger you are the less you pay; we do use some distributors and pay between 25% and 28%.

CHAIR PARKS: Is shelf space a problem for a small winery?

BERNAM: Yes; the distributors provide "re-sets", designing the selves; it is difficult to get shelf space.

444 CHAIR PARKS: What is your volume dollar wise?

BERNAM: We are a public common stock company; last year it was \$1.8 million in revenues.

CHAIR PARKS: Are you typical, large or small compared to Oregon wineries?

BERNAM: We are large.

TAPE 23 SIDE A

_ Tape 22, side B is blank - recorder malfunction.

016 REP. EDMUNSON: Do you feel that these investigations were in bad faith?

BERNAM: No; I believe Paul Romain believes that what he is doing is right and he is very aggressive in pursuing his point of view.

_ The point I'm making is that Romain is saying there aren't resources for investigators and that isn't true.

044 BILL CROSS, OREGON WINEGROWERS ASSOCIATION: Testifies in opposition to HB 2679; submits written testimony for Bill Nelson, (EXHIBIT F).

108 CHAIR PARKS: Many statutes provide that you have to give notice to the party to stop the practice; would that be acceptable?

CROSS: Our concern is that if that isn't channeled through the OLCC, who is the front line on making policy, a notice of possible failure to comply, comply with whose interpretations?

CHAIR PARKS: What kind of monetary impact are we talking about if you had to use distributors?

CROSS: The average returns are 3% to 5% on sales and consequently, that could effect the ability of some operations to continue.

142 CHAIR PARKS: The effect of the Fair Trade Act, the protective provisions; are Oregon Wineries about to lose those?

CROSS: There are some proposals on that; conformance with the provisions doesn't appear to be a necessity.

168 GORDON HANNA, ATTORNEY: Testifies in opposition to HB 2679; submits written testimony, (EXHIBIT G).

CHAIR PARKS: What is the problem with not stating what court to go to?

HANNA: It is uncertainty in the law that shouldn't be there.

CHAIR PARKS: Most of the things you are bringing up are governed by some legal rule that handles the situation.

308 REP. EDMUNSON: If a wholesaler feels they are being damaged by a OLCC law, can they bring action for damages?

HANNA: I believe they could; I don't think a court or litigator will be quick to do so.

347 REP. BAKER: What is to prevent a friendly law suit to be

filed to effectively have a court ruling and then have an individual come to the OLCC and say, I have this private right.

HANNA: There are judges all over the state and they are going to be asked to create a body of public law and there is no definition about which takes priority.

400 BARBARA PELETT, MANAGER, REGULATORY SECTION, OLCC: The commission sent me with instructions to answer questions; the commission is neutral on

the bill.

_ Explains the process of OLCC.

454 CHAIR PARKS: The only ones to be disadvantaged by this law would be Oregon wineries?

PELETT: Small wholesalers; if this law is implemented we do anticipate some FTE impact on us.

TAPE 24, SIDE A

037 CHAIR PARKS: Why isn't the OLCC jumping at the chance to have someone else take care of this?

PELETT: I'm not sure any of us know how this would work.

PELETT: Willamette Valley Vineyards is a business with many stock holders who participate in the business, but we haven't trained each one, so sometimes over the last two years they have done some things to promote their business that may have been outside the law.

_ We see compliance flowing; we have suggested that it might be wise to sit down and have a class with us.

CHAIR PARKS: When you've pointed out the error of their ways they have corrected the problem?

PELETT: Yes.

084 PELETT: Wholesaler retailer relationships and financial assistance flow back from prohibition; at that time retailers were coerced into selling more products and that is the basis for the financial assistance laws.

REP. HAYDEN: What do you mean by protect small business?

PELETT: Historically if a big brewery were in control of a retailer by cutting prices, the small brewery wouldn't be able to compete.

134 JOHN POWELL, MILLER BREWING COMPANY: Testifies in opposition to the bill.

158 MARK NELSON, PUBLIC AFFAIRS, ANHEUSER BUSCH: Our concern is that we would change a system in place for many years, changing it in such a way that we will alter the landscape of liquor control in this state

forever.

_ Testifies in opposition.

NELSON: This bill doesn't apply directly to us, we are just concerned.

245 MIKE MCCALLUM, OREGON RESTAURANT ASSOCIATION: We are adamantly opposed to the bill as written and with the amendments.

_ We have grave concerns about liquor law being established in every court around the state; we think the consistency issue is paramount and should be your main focus of concern.

262 SANDRA BISHOP, WINE INSTITUTE: Testifies in opposition to HB 267 9, submits written testimony, (EXHIBIT H).

295 ROMAIN: I would support the testimony of John Powell; our first preference is that the OLCC have additional personnel to enforce this,

but the reality of the budget world is there isn't, so the question comes to how do you get enforcement of these laws.

_ We have a policy at the Beer and Wine Distributors Association that all complaints come to me from the distributors to go to the OLCC as the distributor who complains to the OLCC is the one who gets punished the worst, by retailers.

_ Describes complaints made to the OLCC against Willamette Valley Vineyards.

393 CHAIR PARKS: Being no further business to come before the committee we are adjourned. (11:05 a.m.)

Submitted by, Reviewed by,

Kimberly Burt Janet Adkins Committee Administrator Committee Administrator

EXHIBIT SUMMARY:

A - HB 2180: Written testimony submitted by Pelett, pp 9 B - HB 2180: Fiscal impact statement submitted by staff, pp 1 C - HB 2651: (-1) amendments, hand engrossed version and fiscal impact statement submitted by staff, pp 3 D - HB 2679: Fiscal impact statement submitted by staff, pp 1 E - HB 2679: Proposed amendments submitted by Romain, pp 1 F - HB 2679: Written testimony from Nelson, submitted by Cross, pp 2 G - HB 2679: Written testimony submitted by Hanna, pp 3 H - HB 2679:

Written testimony submitted by Bishop, pp 1