

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

April 27, 1993 Hearing Room 357 1:00 p.m. Tapes 91 - 92

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson
Rep. Tom Mason

STAFF PRESENT: Carole Souvenir, Committee Counsel Sarah May,
Committee Clerk

MEASURES CONSIDERED: HB 2588 - Relating to domestic relations
HB 2946 - Relating to domestic relations HB 3166 - Relating to adoption
HB 2062 - Relating to student records

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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 91, SIDE A

006 CHAIR BRIAN: Calls meeting to order at 1:15 P.M.

HB 2946 - PUBLIC HEARING

Witnesses: Rep. Del Parks, District 53 Rep. Kate Brown, District 13
Diane Thelen, School Teacher Laurie Wimmer, Oregon Commission for Women
Helenjane Williams, Older Women's League

017 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2946, requires court,
under certain circumstances, to treat income from and value of
enhanced

earning capacity as property for purposes of property settlement in
marital dissolution. -1 amendments proposed by Rep. Parks. (EXHIBIT A)

025 REP. DEL PARKS, DISTRICT 53: Testifies in favor of HB 2946.
Proposed this last session, passed. Refers to Stuart case. (EXHIBIT B)
103 REP. BAKER: If doing civil disillusion of partnership, then
not alimony. How do you distinguish between alimony and enhanced
earning

capacity?

108 REP. PARKS: One partners has to take business.

113 REP. BAKER: But you don't have alimony in civil disillusion. Proposing to make election of alimony or earning capacity?

115 REP. PARKS: Alimony is entitled to equalize living standard that you attained if not divorced. Will attain living standard irrespective of

alimony, if awarded half of assets if include enhanced earning capacity. Differences: 1) received based on marital contributions, 2) assets is not effected by divorced. Law treat partner in marriage same as in business partnership, only in appropriate cases. Cites proposed amendments.

166 REP. KATE BROWN, DISTRICT 13: Testifies and submits written testimony, by Older Women's League, in support of HB 2946. (EXHIBIT C)

196 DIANE THELEN, PUBLIC SCHOOL TEACHER: Testifies and submits written testimony in support of HB 2946.(EXHIBIT D)

243 REP. BAKER: Did business grow before the disillusion?

244 THELEN: The year that our divorced occurred was the year that his business really took off, and I was going to be able to get on with my

career.

287 REP. PARKS: Older Woman's League, don't know the law. HB 2946 does not change the law except as to enhanced earning capacity. The bill that

passed last time did not require that contributing spouse made a material and substantial contribution for long duration, to the enhance earning capacity. It does require the spouse show those things only in area of enhance earning capacity. HB 2946 will help old HB to work more efficiently.

327 CHAIR BRIAN: How would this law work in Mrs. Thelen's situation? How would this be applied, as in a college degree, that enhances what a

certain percent more should be evaluated.

345 REP. PARKS: Person in a college degree program, will make certain amount of money. Compare value of degree with enhanced earning

capacity. Standpoint of, is wife supporter? They would have accumulated this much of an estate, subtracting living expenses.

381 CHAIR BRIAN: How would it work when spouse A helps spouse B receives masters, then gets great job, then after separation invents something,

would A be allowed money for that? Wife helps huSB and so as to get this degree that eventually led him to invent something and become rich off of it.

398 REP. PARKS: That's something that happened outside of marriage. Not enhanced earning capacity, because it was of investments or inventions.

411 CHAIR BRIAN: Application of acquired skills leads to enhanced earning capacity, isn't there connection? Spouse A puts spouse B through school. 416 REP. PARKS: Judged at time of divorce. That is a specified act. It is the capacity to earn money.

434 REP. BROWN: Gives example: spouse A puts spouse B through trucking job. Parties get divorced, years later spouse B hurt in trucking

accident, and awarded money. Jurisdiction terminated before injury occurred, spouse A wouldn't get any money.

TAPE 92, SIDE A

009 REP. PARKS: If trucker had started company that created wealth, assets, bill does not apply. It's enhanced earning capacity, other parts of

marital disillusion statute deal with acquisition of assets. Earning capacity is not assets.

019 REP. EDMUNSON: If the accident occurs with law suit occurs, before law suit is awarded trucker marries, the money received during the

marriage, but result of accident before marriage, is money received during marriage asset.

027 REP. BROWN: Depends on length of marriage and how couple used money during marriage. If short marriage and kept money in separate account,

it wouldn't be considered a marital assets. Depends on situation.

038 REP. BAKER: How do you identify who has the enhanced abilities?

051 REP. PARKS: The value in business, couldn't take licensing and duplicate value of business. Part of value is good-will of business.

Enhanced earning capacity doesn't have to do with good will. Mostly in licensing or accreditation, building of marketable skills.

071 REP. BAKER: Cites alimony statute.

078 REP. PARKS: You will find no case in Oregon where they followed

statute and awarded one spouse interest based on earning capacity without direct link to equate one to other. Demonstrate economic necessity.

084 REP. BAKER: Don't you find equivalent in that court will award larger alimony sum to compensate for disparity?

087 REP. PARKS: Only to extent to put on plane. Example of judges divorce case.

099 THELEN: I was awarded alimony to make me equal, but I'm remarrying and I've lost that.

109 REP. MASON: One thing about field, I've seen situations where there wasn't enhance earning capacity, but earner would do about anything to

avoid giving money. This is an unanticipated result of no-fault divorce.

153 REP. PARKS: If you believe in equal rights, then you believe in equal disillusion. I have got alimony for husbands.

170 REP. MASON: Do prenuptials have a great deal of impact? 172
REP. PARKS: I'm not sure.

192 LAURIE WIMMER, OREGON COMMISSION FOR WOMEN: Testifies and submits written testimony in favor of HB 2946.(EXHIBIT E)

234 CHAIR BRIAN: In 3rd Paragraph, reference is made to friendly amendment.

239 REP. BAKER: Judges like to be able to separate cases, but when have property distribution, court hate to prolong agony. Balance out

emotional pressure, versus financial issues.

257 REP. PARKS: Most of time, cases go on history. If there was not track record, this law wouldn't apply. Have to balance interest.

274 HELENJANE WILLIAMS, OLDER WOMEN'S LEAGUE: Testifies against HB 296 4. Submits written testimony.(EXHIBIT C).

355 REP. BROWN: The intent of the bill is that a substantial and material contribution would include non-income work.

363 WILLIAMS: It is applying to enhanced earning power.

371 REP. PARKS: This bill does not effect any other part, of the disillusion statutes of Oregon, it is addition to. A substantial

contribution can be anything.

400 REP. EDMUNSON: By talking about material contribution, your concern is that court will see that as cash money, all the unpaid labor will

somehow go disregarded. Would your concern be taken care of, if we added words that said, it could be money, labor, etc?

426 WILLIAMS: I don't want "the contribution by one spouse to the education training and earning power of the other spouse...." taken out of the

bill.

452 REP. PARKS: That's why it says a substantial contribution over a long period of time.

455 REP. EDMUNSON: Mrs. Williams is talking about spousal support, the new language talks about division of property.

TAPE 91, SIDE B

017 REP. EDMUNSON: Should they get both alimony and enhanced earning capacity?

021 WILLIAMS: It could be counted twice if long term marriage could get regular alimony. That you did give help, it doesn't have anything to

do with alimony.

033 REP. EDMUNSON: You agree that alimony and earning capacity are separate things.

034 WILLIAMS: Can't disregard older women.

061 REP. EDMUNSON: Problem we have is writing a law that gives the judge ability to exercise judgement, and make it clear how to judge division. It would be unfair to get double value.

071 WILLIAMS: Label these things as different so as to get the most money. Clarify as spousal support or earning capacity.

082 REP. BROWN: The determination of whether the wife made substantial should be up to judge?

086 WILLIAMS: No, because the first thing they will ask is how much money did you pay. We didn't necessarily give money, but everything else that made it possible for our husbands to earn the money.

089 REP. BROWN: The court already requires an equal contribution regardless of income.

091 WILLIAMS: It has been stated that they are not going to consider the equal contributions.

093 REP. BROWN: That is issue of spousal support and assets, this is another area.

094 WILLIAMS: Cites bill.

100 REP. BROWN: The barrier will be too difficult for anyone to prove.

103 WILLIAMS: Unless you can say that you gave a certain amount of money period.

104 REP. BROWN: What if she supported the family over that time period?

105 WILLIAMS: If you start breaking it down to certain examples, the judges won't see it.

116 REP. EDMUNSON: Couldn't we accomplish that so that it would be paid out over a period of time. If we can't accomplish the same thing by

property division.

130 WILLIAMS: It is so easy to get rid of unpaid labor and years of effort.

132 REP. EDMUNSON: Words will have to be crafted so that it says that.

HB 2946 - WORK SESSION

145 CAROLE SOUVENIR, COMMITTEE COUNSEL: Whether the contribution should be financial or other, cites amendments.

153 MOTION: REP. EDMUNSON: Moves to AMEND HB 2946 by inserting on line 28, Page 3, "financially or otherwise" after word contributed.

VOTE: 5-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian, Chair
Parks NO: None

156 CAROLE SOUVENIR, COMMITTEE COUNSEL: Concern for property settlement for enhanced earning capacity would be in one sum, rather than payable over time. 160 REP. EDMUNSON: If we are going to take out payment from ongoing spouse support, would be monthly support, and put it in property settlement,

that they wouldn't be short changed.

176 CHAIR BRIAN: If you have language as now proposed, wouldn't judge look at it as in past and now be aware of enhance earning emphasis, wouldn't ruling incorporate that?

184 REP. PARKS: Judge has power to decide on payments.

185 CHAIR BRIAN: Division of assets, specifics should be noted on circumstances.

190 REP. EDMUNSON: What we are amending is part of subsection F, concerned with present tense evaluation. Enhanced earning capacity is the ability to make money in future. How do you divide future money? Monthly

payment that reflects percentage of income.

209 CHAIR BRIAN: This enhanced earning capacity would be identified as property.

217 REP. EDMUNSON: When that earning capacity bears fruit, it will no longer be in reach of courts jurisdiction.

225 CAROLE SOUVENIR, COMMITTEE COUNSEL: Is it your concern that we would treat this as a structured settlement?

237 REP. PARKS: If we leave it to the court to decide, if they recognize interest, but judge on unique circumstances of people.

250 REP. BROWN: My concern is security, that the judgement gets paid.

255 CAROLE SOUVENIR, COMMITTEE COUNSEL: If you have disillusion it would attach to all the persons property, even though it was in the future.

262 REP. MASON: How long would this go on? Close to involuntary servitude.

273 REP. PARKS: It can be modified increased or lengthened.

281 CHAIR BRIAN: Is it necessary or not for statute to add anything. Should additional language be included to make sure the judge would have the flexibility to make it monthly or what ever they chose.

293 REP. EDMUNSON: If we are talking about value of enhanced earning capacity, present or future?

302 CHAIR BRIAN: The value of an income resulting from a degree.

303 REP. EDMUNSON: "But I have no income now."

305 REP. PARKS: It is a matter of proof.

309 REP. EDMUNSON: Make sure the judge doesn't only look at situation before him, defeat notion of only person out there.

324 CHAIR BRIAN: Whole purpose of bill is to capture some part of future income, is result of contribution made by spouse.

344 MOTION: REP. EDMUNSON: Moves to AMEND HB 2946 by inserting "present" between third "the", and "future" between "the" and

"enhanced. On Line 22 of Page 3.

VOTE: 5-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian, Chair Parks NO: None

360 REP. PARKS: HB 2946 -1 amendments are my proposals.

363 CHAIR BRIAN: Clarifies good faith or beyond control.

370 REP. BAKER: I'll move it, but I will look at the statutes because we could be causing some different sets of disillusiones.

382 REP. PARKS: It is intended to change things.

390 MOTION: REP. PARKS: Moves to ADOPT -1 AMENDMENTS TO HB 2946.

VOTE: 5-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian, Chair
Parks NO: None

397 MOTION: REP. PARKS: Moves HB 2946-1 TO FULL COMMITTEE with a DO
PASS recommendation.

VOTE: 5-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian, Chair
Parks NO: None

TAPE 92, SIDE B

HB 3166 - PUBLIC HEARING

Witnesses: Mark Kramer, Attorney Frank Sturgill, Citizen Charlene
Grant, Central Or. Grandparent Support Group

006 MARK KRAMER, ATTORNEY: Testifies and submits written testimony
in support of HB 316 6.(EXHIBIT F,G).

080 CHAIR BRIAN: If adoption were take place immediately after
child is born, would HB 3166 still apply?

084 KRAMER: It would not apply in substance because they would be
unable to demonstrate an ongoing personal relationship or substantial
relationship with that child.

089 REP. BAKER: Could demonstrate same way as parent does.

090 Kramer: No, HB 3166 would not expand rights to come to court and
seek rights.

093 CHAIR BRIAN: There would not be a need to notify them of an
adoption effort within a certain period of time?

097 KRAMER: In cases that adoption is envisioned from
beginning, no relationship. As bill is written now, would still have to
give notice

to grandparents.

101 CHAIR BRIAN: Do you know within when notification would take
place?

103 KRAMER: Not outside six months. After six months truly
building a relationship with child.

106 CHAIR BRIAN: Primary concern is when there has truly
been a relationship established.

108 REP. MASON: Where in the law does adoption cut off grandparents?

110 KRAMER: Adoption law specifies who you have to give notice to,
parents and CSD.

115 REP. BROWN: This relates to ORS 109.041, not in the family
relation statutes.

118 KRAMER: Reads on with testimony.

172 REP. MASON: The operate language there talks about effect of degree. The degree gets rid of the relationship between the natural parents of

the adopted person, their descendants and kindred. HB 3166 says you have to give grandparents notice. What if we repealed, deleted "kindred" so that it can go genealogically backward.

196 REP. BROWN: Not just in terms of relationships with grandchild, but in terms of legal relationships. Child would still have inheritance rights to grandparents, but not parents?

207 KRAMER: Initially I asked for these issues be brought forth in separate bills. Notice does get us somewhere. Many cases can be resolved

through notice, counseling and mediation.

228 CHAIR BRIAN: We will deliberate this later. But now we don't have adequate time.

252 FRANK STURGILL, CITIZEN: Grandparent in Kramer example. Testifies in support of HB 3166.

264 CHAIR BRIAN: Do you get to see your grandchild now?

266 STURGILL: No, she's around but we don't get to talk to her.

271 CHARLENE GRANT, CENTRAL OREGON GRANDPARENT SUPPORT GROUP: Testifies and submits written testimony in support of HB 3166. (EXHIBIT H)

314 GRANT: He was nine when his father died, and we had a relationship with him up until that time.

321 REP. EDMUNSON: What if tragedy where both parents were killed, and stranger has to step in.

328 GRANT: In many step parent adoptions, there is an ongoing relationship.

341 REP. BROWN: Your grandson is receiving social security from his father? And he's also able to inherit from your husband, is that via will?

344 GRANT: No, via law. Even though child has been adopted by step parent does not preclude inheriting from natural grandparents.

355 CHAIR BRIAN: Does not preclude, but does it require?

356 GRANT: Yes.

356 REP. BROWN: Conflicts with ORS 941.

359 CHAIR BRIAN: Adjourns the meeting at 3:03 p.m.

Submitted by:

Reviewed by:

Sarah May
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed Amendments to HB 2946 - Rep. Parks - 5 pages B -
Testimony on HB 2946 - Rep. Parks - 9 pages C - Testimony to HB 2946 -
Older Women's League - 2 pages D - Testimony to HB 2946 - Diane Thelen
- 2 pages E - Testimony to HB 2946 - Oregon Commission for Women - 1
page F - Testimony to HB 2946 - Mark Kramer - 8 page G - Proposed
Amendments to HB 2946 - Mark Kramer - 2 pages H - Testimony to HB 3166
- Charlene Grant - 2 pages I - Testimony to HB 3166 - Oregon Council of
Adoption - 1 page J - Testimony to HB 3166 - Packet