

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 12, 1993 Hearing Room 357 3:00 p.m. Tapes 103 - 104

MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

STAFF PRESENT: Holly Robinson, Committee Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED: HB 2033 - Relating to unclaimed property
HB 2201 - Relating to the Public Utility Commission HB 2479 - Relating to motor vehicles

[--- 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 103, SIDE A

004 CHAIR TIERNAN: Calls meeting to order at 3:05 p.m.

HB 2201 - WORK SESSION

007 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2201 provides that all final orders of the Public Utilities Commission are subject to judicial review only by the Oregon Court of Appeals. There are -2 amendments which need to be adopted. (EXHIBIT A)

021 REP. BROWN: Spoke with the Public Utilities Commission who was supportive of the bill.

MOTION: REP. BROWN: Moves to ADOPT HB 2201-2 AMENDMENTS.

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

032 MOTION: REP. BROWN: Moves HB 2201 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

HB 2479 - WORK SESSION

039 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2479 provides that a person's driving privileges will be revoked if a person is convicted of any degree of murder or manslaughter and the court finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the death of the victim. Committee attempted but could not adopt amendments into HB 2014 so will use HB 2479 as a vehicle. (EXHIBIT B)

Summarizes amendments.

082 CHAIR TIERNAN: Calls recess at 3:12 p.m. Reopens the meeting at 3:14 p.m.

086 MOTION: REP. COURTNEY: Moves to ADOPT HB 2479 AMENDMENTS dated May 11, 1993.

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

092 MOTION: REP. COURTNEY: Moves HB 2479 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

HB 2033 - WORK SESSION

Witnesses: Marcella Easley, Division of State Lands Phil Goldsmith, Portland lawyer Rep. Liz Van Leeuwen, District 37 Frank Brawner, Oregon Bankers Association Steve Sanders, Dept. of Justice

110 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2033 changes procedures and processes related to the reporting and remitting of unclaimed assets.

There are -2 amendments (EXHIBIT C), a section by section summary of the bill (EXHIBIT D) and relevant statutes (EXHIBIT E). Discusses main issues of the bill and reviews section by section analysis.

193 CHAIR TIERNAN: If the \$50 amount regarding gift certificates doesn't

apply to Section 7, we need a requirement to get the name and address of the purchaser. Refers to class action law suits and unclaimed shares of money in Section 23 and 24.

209 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains class action law suits.

237 REP. BROWN: In your example, you are a member of the class but you didn't claim your share of the judgement.

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes. Would already have to be identified as a member of the class.

REP. BROWN: What happens to your money if you fail to claim your share?

HOLLY ROBINSON, COMMITTEE COUNSEL: Doesn't know. Believes you can come in after the judgement and claim your share.

267 MARCELLA EASELY, DIVISION OF STATE LANDS: Defers to Mr. Goldsmith.

271 PHIL GOLDSMITH, PORTLAND LAWYER: Describes Section 24 of the bill.

Where monies go now depends on where the case is brought. Describes what federal judges can order in class action suits. Describes fluid class recovery. Federal court and courts in other states can make orders that by Oregon rules of civil procedure can't be done. Bill does not address civil procedure.

371 CHAIR TIERNAN: Who does the money belong to when a gift certificate expires?

GOLDSMITH: Should defer to Attorney General's office. ORS 98.376 says expiration doesn't prevent money from coming to common school fund. The individual who is the original owner of the money could not bring a lawsuit to recover the money.

399 CHAIR TIERNAN: Could you sue those who bought certificates purchased

and had not redeemed them?

GOLDSMITH: Unclaimed money results at the end of the case. The state to which the money goes is the state of last residence of the owner of the money.

HOLLY ROBINSON, COMMITTEE COUNSEL: Gives hypothetical example to explain class action law suits.

TAPE 104, SIDE A

031 CHAIR TIERNAN: The company being sued keeps the unclaimed money?

GOLDSMITH: The judge decides in federal cases. In state court the money goes back to the defendant.

048 CHAIR TIERNAN: And that is what you are trying to change.
GOLDSMITH: Yes.

051 REP. BROWN: Has a problem with wording. We are awarding damages to someone who doesn't exist. We don't have an injured party because no one has claimed the money.

GOLDSMITH: That is not correct because the individuals could be identified from the defendant's records and their claims determined.

REP. BROWN: And that is how the courts determine how much the judgement is awarded against the defendant.

065 GOLDSMITH: In federal court there will be identified individuals

who

are owed money who don't receive it or at least a class whose membership is owed the money and hasn't received it. In state court the defendant's records will be used to determine what the defendant believes individuals will owe. Unclaimed amounts will be based on defendants calculations.

078 REP. BROWN: Mr. Brawner believes we should keep the current law and the money should go back to the defendant. This is saying that someone who has harmed someone else doesn't have to pay. By putting this into a common fund, the defendant isn't unjustly enriched, the plaintiff maybe never sees the money but everyone benefits.

GOLDSMITH: In limited cases, plaintiffs come forward after time has run out.

092 CHAIR TIERNAN: How many cases of class action come up a year?

GOLDSMITH: \$3-600,000 per year in unclaimed monies. Guesses less than five cases per year.

CHAIR TIERNAN: How do lawyers get paid when representing these cases?

GOLDSMITH: The court sets attorneys fees.

CHAIR TIERNAN: Based on total amount or amount collected?

102 GOLDSMITH: In federal court it is based on total amount. In state court, it is likely the amount recovered by individuals who submit claim forms. The alternate position is that the rule in federal court applies. Then it is based on the total amount.

113 REP. BROWN: Having the defendant benefitting from losing plaintiffs,

encourages the defendants to drag out the law suits.

GOLDSMITH: Agrees.

128 REP. LIZ VAN LEEUWEN, DISTRICT 37: Refers to Section 3 of the bill.

Time period has been changed from five years to two years. Wants it left longer. Do the amendments say that if the two year period had expired and the rightful owners presented themselves of the property that had been claimed, then they could be reimbursed for that property?

141 HOLLY ROBINSON, COMMITTEE COUNSEL: The rightful owners always have the opportunity to be reimbursed for their property.

REP. VAN LEEUWEN: Then what do lines 16-19 of page 1 of the -2 amendments do?

HOLLY ROBINSON, COMMITTEE COUNSEL: That section deals solely with securities and stock.

REP. VAN LEEUWEN: Which might or might not be in that safety deposit box?

156 HOLLY ROBINSON, COMMITTEE COUNSEL: It is the substitute language which replaces the language on lines 5-7 of p. 8 of the bill.

EASLEY: Presently the Division of State Lands assumes custody for stock that is due a person but is only responsible to hold that certificate for three years. We would like to liquidate the security when we receive it. You will be able to recover the value for the stock that we sell.

179 REP. VAN LEEUWEN: Refers to Sections 3 and 4. Any properties in safety deposit boxes can be claimed but heirs can retrieve it.

EASELY: Correct. We hold property for one year and then sell at auction. Other items are held indefinitely.

206 REP. VAN LEEUWEN: In section 20, p. 9 of the bill, concerned about language that the Division may conduct examination. That is left as is?

HOLLY ROBINSON, COMMITTEE COUNSEL: The -2 amendments were conformance and technical changes requested by the Division. No action has been taken yet. Discusses audit language added to Section 20.

238 REP. TARNO: Concerned about Section 3 and auctioning of heirloom items from safety deposit boxes after two years.

EASELY: Discusses claims and fair time limits.

REP. VAN LEEUWEN: Asks about retention time for unclaimed items.

EASELY: We auction anything of commercial value. We hold papers, photos, wills, etc. We do make every effort to find the owners. Items are appraised for fair market value.

299 HOLLY ROBINSON, COMMITTEE COUNSEL: Currently the items are held for a total of six years.

306 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Discusses the process for

unclaimed items. We did not offer this amendment.

REP. VAN LEEUWEN: If the amendment is passed, you would not have to keep it for five years?

BRAUNER: We would maintain for two years instead of five and then send to Division of State Lands who would hold it for one year.

345 REP. BROWN: Isn't that in addition to the year you spent trying to notify the owners? Or is that included in that two year period?

BRAUNER: It is included in the two period.

356 REP. VAN LEEUWEN: Suggests keeping it at least a three year period.

Discusses people who may be out of the country.

REP. TIERNAN: Asks if banks get reimbursement for holding costs.

BRAWNER: No.

376 REP. BROWN: Asks why defendants in a class action suit should get money back after harming someone.

384 BRAWNER: Submits and reviews testimony (EXHIBIT F).

TAPE 103, SIDE B

033 BRAWNER: Continues testimony.

064 REP. BROWN: We are here to make public policy. Asks Mr. Brawner why

the airlines should get the money back for over charging.

BRAWNER: Council on Court Procedures threw this out. An airline passenger may not feel he has been wronged and does not file a claim.

There is no unclaimed property.

REP. BROWN: What about the illiterate who don't know they can claim damages? Why should the airline get that money in profit?

BRAWNER: Discusses the expense of notification of a class, the responsibilities put on the defendant who is found guilty even before trial. Everything is done to explain to them that all they need to do

is sign a claim form. Discusses actions of the Council on Court Procedures.

114 REP. TARNO: Asks about a class action suit against a restaurant and if unclaimed funds go into the school fund.

131 STEVE SANDERS, DEPT. OF JUSTICE: Explains that people are not required to join the class. The amount of money is set by the people who file claims. The bill addresses the money of the people who have filed a claim and have moved away.

146 HOLLY ROBINSON, COMMITTEE COUNSEL: There are two groups of people. Primary focus of the bill is on the identified members of the class. It also deals with people who come forward later who want money after the

fact.

164 REP. BROWN: (Uses a diagram on the blackboard to explain groups of people within a class action suit.)

193 CHAIR TIERNAN: If I have been overcharged and decided not to fill out a claim form, that is part of the class.

GOLDSMITH: If decision is made at time of filling out the claim form.

201 CHAIR TIERNAN: Asks for information on waiving a right to file a claim.

EASELY: The law does cover gift certificates. You are the owner of the certificate, not the company.

CHAIR TIERNAN: Asks about property from safety deposit boxes reverting to the bank.

EASELY: Unclaimed property has to go the state.

223 REP. BROWN: How do you mesh subsection (a) of the bill with ORCP 32 cited by Frank Brawner?

GOLDSMITH: The claim form process in state court identifies what an individual must do to recover money in a class action. Does not address where unclaimed money goes. Discusses decisions made at December 1992

meeting of Council on Court Procedures.

REP. BROWN: They felt this was a substantive issue.

GOLDSMITH: Describes procedural and substantive issues.

260 REP. BROWN: How do we identify the amount of damages?

GOLDSMITH: If there is a mandatory claim process, the court determines defendant's responsibility in telling individuals what the recovery is. The people who submit claim forms are included in the judgement. The people who don't submit forms are known as well from defendant's records.

288 REP. TARNO: Some class actions entail more than financing and mandate that the defendant make changes. When a plaintiff is not available to

sign off on changes, it rules in favor of the defendant.

GOLDSMITH: This bill does not address that issue if the court does not order monetary payment.

317 BRAUNER: Does not agree with Mr. Goldsmith's evaluation of the December meeting of the Council on Court procedures. Suggests doing away with the Council on Court Procedures.

EASELY: States purpose of unclaimed property program. Has proposed changes to Section 28.

351 SANDERS: Proposes amendment to line 44 of p. 13 of the bill to delete "abandoned." At end of line 45 to restore italicized and bracketed language through to line 2 on p. 14.

HOLLY ROBINSON, COMMITTEE COUNSEL: Does this mean the changes in Section 28 in the -2 amendments are coming out also?

SANDERS: Yes. Explains purpose of the statute from Public Employee Retirement System perspective. On line 2 of the restored language on p. 14 delete "abandoned."

390 CHAIR TIERNAN: Adjourns meeting at 4:30 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 2201 - 5 pages B - Proposed amendments to HB 2597 - 15 pages C - Proposed amendments to HB 2033 - 16 pages D - Summary of HB 2033 - Committee Counsel - 3 pages E - Statutes relevant to HB 2033 - Committee Counsel - 9 pages F - Testimony on HB 2033 - Oregon Bankers Association - 4 pages