

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: April 16, 1993 TAPES: 123- 124 PLACE: Hearing Room CTIME: 8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Joyce Cohen Senator Shirley Gold Senator Bob Kintigh Senator Bob Shoemaker Senator Gordon Smith MEMBERS EXCUSED: Senator Jim Bunn, Vice-Chair STAFF PRESENT: Peter Green, Administrator Chris Warner, Research Associate Pamella Andersen, Clerk MEASURES HEARD: SB 857 SR3 LC INTRODUCTION: LC 3913 EXECUTIVE APPOINTMENTS: Jon Mangis, Public Lands Advisory Committee Karsten Rasmussen, Public Lands Advisory Committee Christine Carman, Public Lands Advisory Committee EXECUTIVE REAPPOINTMENTS: Lewis Pitt Jr., Columbia River Gorge Commission Tony Van Vliet, Public Lands Advisory Committee

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 123, SIDE A

009 CHAIR CEASE: Calls the meeting to order at 8:00 a.m.

PUBLIC HEARING WORK SESSION ON SB 857 - EXHIBITS B through I WITNESSES: Betty Patton, Recycling Advocates Jeanne Roy, Recycling Advocates Senate Agriculture and Natural Resources April 16, 1993 Page 2

Lauri Aunan, OSPIRG Bob Danko, Department of Environmental Quality Paul Cosgrove, American Forest and Paper Association Terry Leggert, Department of Justice Cathryn Collis, City of Portland Betsy Bailey, AOI, ORC Kristan Mitchell, OSSI Bob Guttridge, AOR Mike Kerbs, representing Senator Joyce Cohen

020 JEANNE ROY: Notes that Recycling Advocates is the proponent of SB 857. - Introduces Betty Patton.

022 BETTY PATTON: (introduces EXHIBIT B) Offers testimony in support of SB 857 . - Reports on the need for the bill relative to consumer decision making. - States a practical definition of the term "recyclable." 047 - References her display of recycled materials, reviewing the need for proper, informative and accurate labeling. 126 - Continues with a second poster display, which contains packaging that doesn't indicate accurate post-consumer weight. 139 - Notes some positive examples on a third poster display. - Packagers and manufacturers should stop misleading consumers.

195 ROY: (introduces EXHIBITS C and D) Offers testimony in support of SB 857 . - States the purpose of the bill is to prevent deceptive labeling. - They sought to craft a bill that would be brief and simple with no anticipated opposition. - Percentages of pre-consumer and post-consumer material in a product or product package need to be delineated. - Post-consumer content can run from 10 to 90 percent. 233 - Notes the use of the term "recyclable," which should not be used unless it is on an item collectable by a collection system. - References definitions on the first page of the bill and where those terms and definitions were obtained.

CHAIR CEASE: How do we distinguish between the issue of deceptive labeling and products produced nationally to comply with differing laws?

289 ROY: Some manufacturers use these labels to impress the consumer. - Notes the alternatives in labeling for nationally marketed products. - Some manufacturers do have to print different labels. - Provides illustration of phosphates. . 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. Senate Agriculture and Natural Resources April 16, 1993 Page 3

302 SEN. SMITH: There are many issues before Congress and the EPA related to consumer product labeling. - Lists words related to foods that are being defined at the consumer level. This is like making a new nation out of Oregon in terms of interstate commerce. - This should be addressed at the federal level.

329 ROY: We would prefer federal standards. - In the mean time, at least five states have passed laws defining terms in their states. - When it becomes onerous enough, the manufacturers will be there helping develop the standards.

343 SEN. SMITH: Please list those states. - Some manufacturers are seeking to comply with federal rules that are insufficient in defining the standards. - Truth in labeling is very important.

354 ROY: We have created a two-page summary of state guidelines. - Lists the states with guidelines.

SEN. COHEN: If our definitions are consistent with those used in the bigger states such as California and New York, we would not really be creating new requirements.

381 SEN. SMITH: Oregon can't do this alone, or we will only be taking products off the shelf.

CHAIR CEASE: I don't detect we have lost business because we have this requirement.

SEN. KINTIGH: Are other states' definitions similar to Oregon's?

400 ROY: All the definitions are different. - On the word "recycled," some states were using that to require a certain percentage of post-consumer content. - That was not our purpose, but rather, to inform the consumer.

CHAIR CEASE: Certain information would be consistent for all states.

ROY: Different states were interested in different effects. - On the phrase "conveniently recyclable," California didn't clearly define that term, but we wished to do so. . 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. Senate Agriculture and Natural Resources April 16, 1993 Page 4

- We want this to be simple for the manufacturer, so we used information that could be obtained from DEQ.

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ROY: Manufacturers don't have to use the label at all. - Shouldn't a product be recyclable if it is being sold as such?

SEN. KINTIGH: It would be nice, but I don't know how to require it.

030 SEN. SHOEMAKER: Please address the enforcement mechanism. - This doesn't state the penalty for violation.

LAURI AUNAN: Reviews the process of enforcement. - This is consumer complaint driven. - Companies have opportunity to comply, following which there would be no penalty or fine. - There is the ability to get an injunction against the use of the offending label.

048 SEN. SHOEMAKER: So, the ultimate sanction is to prohibit use of the label on products in this state?

SEN. COHEN: When this legislative concept came to me it had all sorts of enforcement provisions and I recommended that be changed to the standard Unlawful Trade Practice procedures.

072 SEN. SHOEMAKER: Page 3, line 23 states, "engages in any other unfair or deceptive conduct in trade or commerce." - That may catch some concerns such as labeling something as recyclable when it is not. - The tennis ball jar mentioned earlier that can't really be recycled may already be illegal.

111 AUNAN: (introduces EXHIBIT E) Offers testimony in support of SB 857. - States the need for the bill. - Notes the number of new package products making some kind of green claim. - FTC guidelines fail to set definitive standards and do not require disclosure of preconsumer or post-consumer content.

126 SEN. GOLD: Rejoins the meeting.

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AUNAN: SB 857 will set standards enabling the consumer to believe what they read and make buying choices accordingly.

SEN. SMITH: Much of what is happening is driven by groups like OSPIRG.
142 - I don't see huge conspiracy on the part of manufacturers to defraud people.

AUNAN: My intent is only to ensure that what is being said is helpful.

161 SEN. SMITH: Industry is trying to respond and should not be castigated for making an attempt to comply. - Most of the companies cited are very reputable but may make mistakes.

SEN. SHOEMAKER: The enforcement mechanism gives companies opportunity to correct mistakes.

SEN. SMITH: It is very difficult to engage in interstate commerce when there are fifty attorneys general contacting you with fifty different regulations.

178 SEN. COHEN: Reads the FTC 1992 statement, noting that is all that is being asked. SEN. SMITH: Trade association groups are working around the clock asking the federal government for definitive guidelines so there aren't fifty different standards.

194 BOB DANKO: (introduces EXHIBIT :) Offers testimony in support of SB 857 . - Offers a specific illustration of why this legislation is important. - Notes the public and the manufacturers are confused about the requirements. - It is difficult for DEQ to educate and promote recycling when the issue is so confusing. - This bill is fashioned after what the Federal Trade Commission and the EPA are doing with guidelines.

SEN. SMITH: Could we get federal examples of what you are talking about? - We don't want to have to reshape the law later to conform with other standards.

DANKO: The representative from the Department of Justice will present that.

237 PAUL COSGROVE: (introduces EXHIBIT G) Offers testimony in opposition to SB 857. - Addresses the solid waste issues in SB 857.

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- Notes the need of federal guidelines for consistency - The national standards were promulgated last summer by the FTC. - Notes differing use of terms in the FTC guides. 278 - The guides will be the basis for the Federal Trade Commission to use in enforcement. - These are supported by the state attorneys general. - The Unlawful Trade Practices Act has a private right of action with minimum damages of \$200, costs of attorney's fees and punitive damages.

300 SEN. COHEN: Right now, we have no guidelines in Oregon to bring such an action. - Nothing is straightforward enough. COSGROVE: We expect the attorney general will use the federally promulgated guides to determine whether something is deceptive. - That would be the enforcement mechanism. - Another enforcement mechanism is the National Federation of Advertising. - Some believe they are most harmed by the advertisements of other advertisers. - That agency has also adopted those FTC guides.

344 SEN. SHOEMAKER: What would be necessary for our attorney general to enforce the FTC guidelines?

COSGROVE: I don't think there has to be any legislative action for us to use the FTC guidelines. - They don't have to adopt any rules to enforce the FTC guides.

SEN. SHOEMAKER: What would be wrong for the legislature to adopt by statute the FTC guidelines?

COSGROVE: The guidelines are going to be reviewed on a biennial basis, requiring they be readopted as they are updated.

381 SEN. SHOEMAKER: The person bringing a private right of action must

be able to prove an ascertainable loss of property or money. - The kinds of damage this causes doesn't cause a monetary loss.

COSGROVE: Reviews ascertainable loss standards and past cases.

412 TERRY LEGGERT: (introduces EXHIBIT H) Offers testimony on SB 857. - Currently, a mechanism does not exist through which this bill could be enforced. . 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. Senate Agricultura and Naturai Resources April 16, 1993 Page 7

- ORS 646.608(1) (e) is the only statute that might be violated. - We do not have the authority to enforce federal rules.

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LEGGERT: Ascertainable damage for a private cause of action would not relate to packages that are mislabeled. - Few people would go to an attorney for such a problem, and many attorneys wouldn't consider taking the case to court. - Manufacturers and the public need to be educated about what the bill does. - Notes costs can be recovered in addition to notifying a manufacturer of noncompliance. 051 - Explains three specifics their office would like to see allowed in this bill. - This bill would add one more thing to the Unlawful Trade Practices Act; therefore, we would request a referral to Ways and Means. - Gives an example of educating the public on an issue (i.e. the telemarketing exemption). - We might be able to adopt a rule that would do part of what this rule does. 084 - We couldn't affirmatively require people to do certain things.

SEN. SHOEMAKER: What is necessary to encourage you to adopt a rule similar to the FTC regulations?

LEGGERT: I can review that possibility and return a finding.

CHAIR CEASE: Requests Ms. Leggert conduct that research. - Closes the public hearing on SB 857. - Opens the informational meeting on solid waste.

INFORMATIONAL MEETING ON THE SOLID WASTE COURT DECISION

106 BOB DANKO: Explains the state supreme court decision upholding the fee on out-of-state solid waste. - Notes history on disposal fees. - Relates the specific matter in dispute. - The state supreme court determined the fee is appropriate and does not violate the United States Constitution. - It also determined compensatory fees generally do not infringe on interstate commerce. - A large amount of money is not involved, it is the principle behind it. - About \$2 million is now owed us.

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-- CHAIR CEASE: Closes the informational meeting. - Opens the introduction of LC's.

INTRODUCTION OF LC DRAFTS

MOTION: CHAIR CEASE: Moves the committee introduce LC 3913. VOTE: CHAIR CEASE: Hearing no objection, the motion CARRIES. SEN. BUNN is EXCUSED.

CHAIR CEASE: Opens the public hearing on SR3.

PUBLIC HEARING ON SR3 - EXHIBIT J

WITNESSES: Pam Wald, Corvallis Disposal, Albany/Lebanon Sanitation Nathan Niemiec, Crescent Valley High School Laurel Hawl, Crescent Valley High School Brenna Hall, Cheldelin Middle School

167 PAM WALD: Offers testimony in support of SR3. - Students are gathering signatures on this petition. - Kids seem overwhelmed by the environmental concerns they face. - Their feelings are similar to our concern about nuclear arms when we were young. - This bill would give kids indication of adult support.

SEN. COHEN: I have great concern that we are not educating our kids today on the original Bill of Rights. - We are eroding that and offering them false hopes.

208 WALD: This is a statement that we are trying to achieve something.

213 NATHAN NIEMIEC: Offers testimony in favor of SR3. - I hope to ensure future generations may have an equal or better environment. - If the bill is adopted, I hope it becomes an examples for others. - We have a responsibility to take care of our earth. - Notes the recycling program implemented in his school. - As a boy scout I participated in tree planting following clear cuts for three consecutive years.

251 LAUREL HAWL: Offers testimony in support of SR3. - Reads a poem she wrote. - If we wait, options we have now may not exist later.

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284 BRENNIA HALL: Offers testimony in support of SR3. - Lists the reasons she values the forest. - Notes her family are members of the Nature Conservancy. - States impacts due to the loss of trees. - Reads a poem she wrote about the earth.

336 WALD: References questions raised during her testimony at a previous meeting relative to the use of the term "evolution" in the Bill. - Notes response statement by the Cousteau Society.

344 CHAIR CEASE: We will distribute the statement to members. - Closes the public hearing on SR3. - Opens executive appointments and reappointments.

EXECUTIVE APPOINTMENTS AND REAPPOINTMENTS

391 JON MANGIS: Reported his present position with the Department of Veterans Affairs and referenced the statute creating the Public Lands Advisory Committee.

MOTION: SEN. COHEN: Moves to recommend to the Senate that it confirm the appointment of Jon Mangis to the Public Lands Advisory Committee. VOTE: In a roll call vote, all members present vote AYE. SEN. BUNN is EXCUSED.

CHAIR CEASE: The motion CARRIES. SEN. BUNN will carry the appointment.

438 MOTION: CHAIR CEASE: Moves to recommend to the Senate that it confirm the appointment of Karsten Rasmussen to the Public Lands Advisory Committee. VOTE: In a roll call vote, all members present vote AYE. SEN. BUNN is EXCUSED.

CHAIR CEASE: The motion CARRIES. SEN. BUNN will carry the appointment.

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030 CHRISTINE CARMAN: States her experience in property management which is required of the person appointed to the position for which she is recommended .

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MOTION: SEN. SMITH: Moves to recommend to the Senate that it confirm the appointment of Christine Carman to the Public Lands Advisory Committee. VOTE: In a roll call vote, all members present vote AYE. SEN. BUNN is EXCUSED.

CHAIR CEASE: The motion CARRIES. SEN. BUNN will carry the appointment.

044 LEWIS PITT JR: I have learned a great deal from Don Clark who is temporarily filling a position on the commission. - I would like to continue my duties protecting the resources of the Northwest. - Introduces his son.

MOTION: SEN. COHEN Moves to recommend to the Senate that it confirm the reappointment of Lewis Pitt Jr. to the Columbia Gorge Commission. VOTE: In a roll call vote, all members present vote AYE. SEN. BUNN is EXCUSED.

CHAIR CEASE: The motion CARRIES. SEN. SHOEMAKER will carry the reappointment.

071 TONY VAN VLIET: We are an advisory committee, one job being to part public lands into real estate parcels. - This sometimes involves heavy controversy. - We seek to make prudent decisions.

MOTION: SEN. KINTIGH: Moves to recommend to the Senate that it confirm the reappointment of Tony Van Vliet to the Public Lands Advisory

Committee. VOTE: In a roll call vote, all members present vote AYE. SEN. BUNN is EXCUSED.

CHAIR CEASE: The motion CARRIES. SEN. KINTIGH will carry the reappointment.

088 CHAIR CEASE: Senator Bunn will carry the three new appointments. - Senator Shoemaker will carry the reappointment of Mr. Pitt. - Senator Kintigh will carry the reappointment of Rep. Van Vliet.

ADMIN. GREEN: Reviews issues to be heard at the next meeting.

106 CHAIR CEASE: Adjourns the meeting at 9:45 am.

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Submitted by: Reviewed by: Pamella Andersen Peter Green
Clerk Administrator

EXHIBIT LOG:

A Information Packet- Committee Staff - 62 pages B Testimony on SB 857 - Betty Patton - 3 pages C Comparison of Laws and Guidelines - Jeanne Roy - 2 pages D Testimony on SB 857 - Jeanne Roy - 1 page E Testimony on SB 857 - Lauri Aunan - 1 page F Testimony on SB 857 - Bob Danko - 2 pages G Testimony on SB 857 - Paul Cosgrove - 5 pages H Testimony on SB 857 - Terry Leggert - 4 pages I Testimony on SB 857 - Steve and Lari Rump - 1 page J Statement on SR3 - Pam Wald - 1 page

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