

SENATE COMMITTEE ON
JUDICIARY

January 25, 1993 Hearing Room C
1:00 p.m. Tapes 6-7

MEMBERS PRESENT: Sen. Dick Springer, Chair
Sen. Neil Bryant
Sen. Jeannette Hamby
Sen. Bob Shoemaker
Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Grattan Kerans

STAFF PRESENT: Bill Taylor, Committee Counsel
Karen Quigley, Committee Counsel
Kate Wrightson, Committee Coordinator
Kirk Bailey, Committee Clerk

ISSUES DISCUSSED: Public Hearing and Introduction of LC drafts.

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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.

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TAPE 6, SIDE A

003 CHAIR SPRINGER: Calls the meeting to order at 1:00pm.

007 BILL TAYLOR, COMMITTEE COUNSEL: Reviews agenda and describes legislation before committee. LC 988 and LC 2311 are before committee for introduction. Rules are before committee for adoption.

021 CHAIR SPRINGER: Defer rules and bill introduction until quorum present.

WITNESSES:

BOB OLESON, OREGON STATE BAR
JULIE FRANTZ, PRESIDENT, OREGON STATE BAR

024 OLESON: Introduces Julie Frantz of the Oregon State Bar.

033 FRANTZ: Reviews State Bar organization, goals, mission and operations.

>Priorities include changes to Bar act. Fourth priority is a House of

Delegates.

CHAIR SPRINGER: Will we address the balance of Bar agenda today?

OLESON: No. Only want to deal with bills scheduled for today due to time and committee restraints.

SB 217: Expands Board of Governors of Oregon State Bar from 15 to 19 members.

WITNESSES:

JULIE FRANTZ, OREGON STATE BAR

GEORGE REIMER, GENERAL COUNSEL, OREGON STATE BAR

146 FRANTZ: Present proposal is a more accurate geographical distribution of board members. Provides better board representation. >Committee was diligent in forming regions according to geographic similarities and needs.

176 SEN. SHOEMAKER: Any opposition to bill?

178 FRANTZ: Not aware of any.

183 CHAIR SPRINGER: No speakers in opposition.

186 GEORGE REIMER, GENERAL COUNSEL, OREGON STATE BAR: Bill approved by members of the board.

190 SEN. SHOEMAKER: Noticed half of the board members come from Multnomah county, was that agreed to?

193 REIMER: Yes. Tried to come as close to one person - one vote as possible. Half the lawyers are in the Portland area.

214 SEN. SHOEMAKER: No district would have more than two on the ballot, right? Three year terms?

221 REIMER: Yes.

226 SEN. SHOEMAKER: What would you do about three?

227 REIMER: Implementation language will need to be introduced to deal with that concern. Legislative counsel draft may not meet implementation needs.

259 FRANTZ: No percentage increase in board representation from Multnomah County.

SB 219: Requires that all employees of Oregon State Bar be members of public

Employees' Retirement System.

WITNESSES:

JULIE FRANTZ, OREGON STATE BAR
GEORGE REIMER, OREGON STATE BAR

273 FRANTZ: Legislation is intended to bring practice of state
bar
employees to conform with statute. Little cost to bar membership.
Merely picking up people not currently involved in PERS.

296 REIMER: Error in bill, Section 1 at end, proposed to delete
reference
to PERS laws. Sentence begins "no member of the state bar shall be
considered an employee as defined in..." Believes definition should
remain in bill.

326 SEN. SHOEMAKER: Some members of bar staff also lawyers?

REIMER: Yes.

329 SEN. SHOEMAKER: Is a distinction required to avoid excluding them
from
PERS?

REIMER: Addressed in statute.

335 SEN. SHOEMAKER: Cost is not cost to state, its born by the
bar
association? This was agreed to by bar membership?

FRANTZ: Correct.

344 SEN. SHOEMAKER: Impact on membership dues?

347 FRANTZ: Financial analysis is underway. Do not expect any impact
on
dues.

360 TAYLOR: Explains PERS retirement system for Oregon State Bar
employees.

SB 220: Authorizes Supreme Court to adopt trust account
overdraft
notification program for attorneys.

WITNESSES:

JULIE FRANTZ, OREGON STATE BAR
GEORGE REIMER, OREGON STATE BAR
KEN SHERMAN, OREGON BANKERS ASSOCIATION

396 FRANTZ: Comments on reasons for bill. Passed by bar membership.
>First -Promotes education of bar members, as bookkeeping matters come
to bar attention.
>Second - aid protection of public by alerting bar and allowing action

on poor practices.

>Third - provides warning that bar member may be under stress,
financial pressures, drug addiction.

451 REIMER: Subsection 1 of Section 2 may need some amendment.

470 SEN. BRYANT: Section 6, recouped costs, is this the cost for
notifying the bar?

477 REIMER: Yes, one component.

481 SEN. BRYANT: What are reasonable costs, same charge for overdrafts
now?

REIMER: No experience in this area. Determined by trial and error.

Will be working with OBA to ensure a fair reasonable costs for
everyone involved.

490 SEN. BRYANT: Any idea how many overdrafts per year?

492 REIMER: 13-14 states have this. Information available, particularly
from Minnesota. Not a large number but more than you think.

TAPE 7, SIDE A

053 CHAIR SPRINGER: Does this need an emergency clause? Is date
certain preferable?

REIMER: Certainly a possibility. Process requires two steps,
legislation and Supreme Court rules. Date certain acceptable.

066 CHAIR SPRINGER: Does the Board formulate rules in line with
APA process?

REIMER: No, Board is not governed by APA rules. Reason for amendment
proposed earlier.

087 KEN SHERMAN, OREGON BANKERS ASSOCIATION: Submits and reviews
written testimony (EXHIBIT A). Supports bill as presented to committee.

120 SEN. SHOEMAKER: Asks for questions in the absence of the Chair.
There are none.

SB 209: Authorizes Supreme Court to adopt rules to govern appearance in
legal proceedings by attorneys who are not licensed to practice in
Oregon.

WITNESSES:

JULIE FRANTZ, OREGON STATE BAR
GEORGE REIMER, OREGON STATE BAR

125 FRANTZ: Parachute lawyers bill. Critical to pass this bill
for
protection of public.

140 SEN. SHOEMAKER: What is present practice? Admitted at
judicial
discretion?

FRANTZ: Affidavit of good standing is required. Judge can allow
practice
with an attorney licensed in Oregon.

146 SEN. SHOEMAKER: Oregon member is always present?

REIMER: Current statute does provide for admission here if admitted
elsewhere. Parameters are unclear. This proposal is intended to
elaborate on standards.

167 SEN. SHOEMAKER: Court doesn't have authority to make rules now?

REIMER: They would prefer to have that authority clearly assigned.

181 SEN. BRYANT: Court can require proof of professional liability or
PLF
and ethics?

FRANTZ: Yes.

188 KAREN QUIGLEY, COMMITTEE COUNSEL: Anticipate no problem
collecting
items needed to establish professional liability and ethics?

FRANTZ: No, anticipate no problem. Not sufficient safeguards in
vouching situation.

209 CHAIR SPRINGER: Comments on SB 219. Spoke with Robert B.
Andrews,
Manager, PERS, who communicated support to chair. May also confer with
Labor committee chair as PERS bills generally go to Labor.

SB 214: Requires claims against estate of decedent that are insured
be
presented to personal representative in same manner as other
claims.

WITNESSES:

BOB OLESON, OREGON STATE BAR
WARREN DERAS, OREGON STATE BAR
CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

250 DERAS: Submits and reviews testimony (EXHIBIT B). Urges passage.
Cost
of change is that it cuts off possible valid claims.

TAPE 6, SIDE B

434 SEN. SHOEMAKER: Refers to testimony, asks for clarification of short time limit (30 days) to file claim.

DERAS: Clarifies. 30 days if uninsured claim. If insured, notice provision do not apply.

451 SEN. SHOEMAKER: Preempts statute of limitations for uninsured claim or uninsured portion?

DERAS: Yes. Most claims are uninsured.

462 SEN. SHOEMAKER: Insured portion would survive uninsured portion?

DERAS: Correct. Partially uninsured claims pursued as well as insured portion.

SEN. SHOEMAKER: Partially insured claim would have to be filed under this amendment?

487 DERAS: Now you have to do it for insured portion anyway. Effect is limited to fairly specific instance, such as after discovery claim.

TAPE 6, SIDE B

047 SEN. SHOEMAKER: Any claim against decedent, must be presented within estate, then must be sued upon within time limit?

DERAS: Yes. Discusses overall process of notification, claims and filing of suits against decedent's estate.

069 SEN. SHOEMAKER: Expiration of 30 days could be substantially sooner than expiration of statute of limitations?

DERAS: Yes.

087 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Statements are not an official position of Association. Concerned about eliminating meritorious claims. Agree with the Professional Liability Fund. Opposed to bill. Believes it would simply be a windfall to insurers. Does not think time limitation is appropriate.

129 SEN. SHOEMAKER: If statute of limitations problem could be eliminated, any other problems with bill?

WILLIAMSON: No. Agree with PLF.

136 SEN. SHOEMAKER: Meaning they would not have file notice with estate.

WILLIAMSON: Correct.

140 SEN. SHOEMAKER: Eliminate denial of claim and eliminate
problem
altogether?

WILLIAMSON: Not sure. We should eliminate notice requirement.

161 DERAS: Explains difference between probate code and Oregon law.

186 SEN. BRYANT: Problem from state's side is that you can't close
estate?

DERAS: Don't foresee asset exposure in fully insured claims. Could go
with a partial distribution.

214 CHAIR SPRINGER: Advise counsel about when to reschedule SB 214.

218 CHAIR SPRINGER: Asks Carl Myers, Oregon State Bar, about
whether
representation includes Professional Liability Fund?

238 CARL MYERS, OREGON STATE BAR: Notify PLF of bills which may have
impact
on PLF. They will comment as appropriate and necessary.

260 CHAIR SPRINGER: Moves on to other committee business.
>Adoption of committee rules.
>Introduction of LC drafts.

268 TAYLOR: Proposed rules are before committee.

283 CHAIR SPRINGER: Do members have any objections to
delaying
consideration of rules for January 27th agenda? Hearing none, so
ordered.

313 CHAIR SPRINGER: Proceeds to introduction of bills.

LC 286 AND LC 2311 (EXHIBIT C & D)

314 TAYLOR: Reviews LC 988 and LC 2311, at request of Oregon Trial
Lawyers
Association.

335 MOTION: Chair Springer moves LC 988 and LC 2311 be introduced.

346 VOTE: Hearing no objections, so introduced.

364 CHAIR SPRINGER: Adjourns meeting at 2:30pm.

Submitted by:

Reveiwed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

- A - Testimony on HB 220 - Ken Sherman - 4 pages
- B - Testimony on HB 214 - Warren Deras - 2 pages
- C - LC 988, Staff, 3 pages
- D - LC 2311, Staff, 3 pages