

SENATE COMMITTEE ON
JUDICIARY

February 1, 1993 Hearing Room C
1:00 p.m. Tapes 12-13

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: Karen Quigley, Committee Counsel
Kirk Bailey, Committee Clerk

ISSUES DISCUSSED: Public Hearing

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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 12, SIDE A

003 CHAIR SPRINGER: SEN. BRYANT opens the hearing at 1:03pm in the absence of the Chair.

021 KAREN QUIGLEY, COMMITTEE COUNSEL: Announces agenda for hearing.

SB 241: Exempts lessor under a finance lease from definition of owner in the Oregon Safe Employment Act (OSEA).

WITNESSES:

DAVID JACK, OREGON STATE BAR

CLAUD INGRAM, ATTORNEY

KATY EYMANN, OREGON TRIAL LAWYERS ASSOCIATION

032 DAVID JACK: Submits and reviews written testimony (EXHIBIT A).

059 CHAIR SPRINGER: Apologizes for being late. Delayed in the Senate President's office.

065 CLAUD INGRAM: Attorney for Moe in Moe v. Beck. Opposed to bill for

several reasons.

>Already have the Safe Employment Act. This will only weaken that

legislation. Need layers of protection in work place.
>Current law has no effect on leasing industry.
>Removing one inspection level with this legislation. Act isn't meant
to protect leasing companies.
>Leasing companies should bear both benefits and burdens of leasing
arrangements.

134 SEN. SHOEMAKER: This relates only to places of employment,
premises,
right?

INGRAM: Supreme Court held equipment was place of employment, such as
the cab of truck.

150 SEN. SHOEMAKER: Lessee purchaser would be subject to the law?
INGRAM: Owner has responsibility of maintaining safety standards.

159 SEN. SHOEMAKER: Financing lease, so it was a sale but cast as
lease?
Who has responsibility?

INGRAM: Correct. Owner has the responsibility.

175 SEN. BRYANT: Why wouldn't banks assume same responsibilities?

INGRAM: No, difference is that banks have never had title to equipment
and were not owners. If they hold title they are owners.

188 SEN. BRYANT: But they are facilitating the same
thing...different
financing options.

INGRAM: That is the problem. It encourages and allows financially
unstable companies to purchase equipment and not maintain safety
standards.

219 KATY EYMANN: Opposed to bill.
>Removes incentive to keep equipment safe.
>Lessor can protect themselves in this situation through a contract
with
indemnification clause with lessee.

232 SEN. SHOEMAKER: Does law place liability on financing company?

EYMANN: The definition of employee is person with workers compensation
insurance, so if operator/lessee had workers compensation coverage
then
probably, yes.

249 SEN. SHOEMAKER: If owner/operator is a sole corporation where they
are
sole employee, are they on workers compensation?

EYMANN: Not sure. Believes sole corporation may avoid workers

compensation requirements.

257 SEN. SHOEMAKER: What is liability of sole proprietor if they operate unsafely?

EYMANN: Liable under the Safe Employment Act.

267 SEN. SHOEMAKER: Sole proprietor could sue lessor if equipment is not in safe condition?

EYMANN: Only if they have workers compensation.

272 SEN. SHOEMAKER: Can proprietor go against financier for own negligence?

EYMANN: Possibly, but situation is still covered by operation of comparative negligence.

282 SEN. SHOEMAKER: Not blanket statutory liability divorced from negligence?

EYMANN: Can research that issue.

SB 242: Increases value of certain property exempt from attachment, execution and garnishment.

WITNESSES:

DAVID JACK, OREGON STATE BAR
JIM MARKEE, OREGON COLLECTORS ASSOCIATION
EDGAR STITZELL, private individual.
ERIC OLSON, Salem Attorney
STEVE RODEMAN, OREGON CREDIT UNION LEAGUE
JEFF SCHROTH, OREGON TELCO CREDIT UNION
DAVID NEBEL, OREGON LEGAL SERVICES

324 DAVID JACK: Submits and reviews written testimony (EXHIBIT B) in support of the bill. Considered with LC 2109. Requests LC 2109 be considered amendment to SB 242.

373 CHAIR SPRINGER: Listing of exemptions, 23.160 sub K, interpreted to address cash such as a bank accounts?

JACK: Doesn't know but does not believe that is true. Bank accounts already exempt.

393 CHAIR SPRINGER: What about cash in the mattress?

JACK: Could be.

409 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Opposed to

bill.

Organization has not taken an official position.

>Concerned about sub.K (referenced by Chair). Many cases where this exemption interpreted as money, either cash or bank accounts. Will provide case cites prior to work session. Believes amount is excessive.

>Concerned about time period in which debtor must file. Conflicts with date certain for remittance of collections to creditor.

TAPE 13, SIDE A

042 MARKEE: Time period should coincide with period collection agency must remit to creditor.

057 ERIC OLSON: Introduces Edgar Stitzell.

063 EDGAR STITZELL: Provides personal history and explains impact of increased taxes without increase in Homestead exemption. Supports increase of Homestead exemption.

091 OLSON: Supports increase in Homestead exemption. Exemption limits are archaic. Provides examples.
>Exemption is used to intimidate debtors by finance companies. Bill would protect people in difficult financial positions.
>\$1000 would include cash. Sub. K exemption is not designed just for cash but to cover broadly.
>Problem is that current limitations are forcing many people from their homes.

156 CHAIR SPRINGER: Calls Steve Rodeman, Oregon Credit Union League and Jeff Schroth, Oregon Telco Credit Union. Notes for record that his wife is a member of Telco Credit Union.

158 STEVE RODEMAN, OREGON CREDIT UNION LEAGUE: Submits and reviews written testimony (EXHIBIT C) in opposition to bill.

194 JEFF SCHROTH, OREGON TELCO CREDIT UNION: Submits and reviews written testimony (EXHIBIT C) in opposition to the bill. Telco experienced \$500,000 losses due to bankruptcy last year. Increasing exemption amount would circumvent motivation to pay off debts. Former testifier is not average case.

244 JACK NEBEL, OREGON LEGAL SERVICES: Submits and reviews

testimony

(EXHIBIT D) in support of the bill and amendments by the Oregon State Bar.

SB 258: Increases amount of minimum damages that maybe recovered for unlawful debt collection practices from \$200 to \$500.

WITNESSES:

RICHARD SLOTTEE, OREGON STATE BAR

GARY ROBERTS, PRIVATE ATTORNEY

291 RICHARD SLOTTEE, OSB : Submits and reviews written testimony (EXHIBIT E) in support of the bill. Requests consideration with LC 2108. Introduces amendments to bill referenced in testimony.

398 SEN. BRYANT: Reasonable response time?

SLOTTEE: Didn't include reasonable time limit. Federal law has time limit, approximately 10-15 days. Put reasonable period of time rather than certain date.

414 SEN. BRYANT: Allows attorneys fees, isn't that the real deterrent?

SLOTTEE: Doesn't appear to be. Clients look at whether it is worth their time. Look at relief rather than fees.

436 SEN. BRYANT: Why do you think increase will be deterrent?

SLOTTEE: Compromise. If it was really a deterrent then it would be substantially higher. That is not practical however. \$500 is enough to get people's attention.

TAPE 12, SIDE B

014 GARY ROBERTS: Submits and reviews written amendments (EXHIBIT F) to the measure.
>Amendments-no objections from Markee.

094 CHAIR SPRINGER: Proceeds with LC introduction.

LC 1267 (EXHIBIT J)

QUIGLEY: Reviews LC 1267. Introduced at request of Oregon Criminal Defense Lawyers Association.

MOTION: CHAIR SPRINGER moves introduction of LC 1267.
>Hearing no objection, so ordered.

SB 255: Allows holder of perfected security interest to recover

certain

amounts from specified lien-holders if lienholder fails to send
notice of lien claim to secured party.

WITNESSES:

FRANK BRAUNER, OREGON BANKERS ASSOCIATION

111 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Submits and
reviews
testimony (EXHIBIT G) in support of the bill.

151 SEN. SHOEMAKER: Provide nothing to recover attorney's fees?

BRAUNER: Committee discussed and really want the notice. Similar to
construction lien.

172 SEN. SHOEMAKER: Would effective date, date certain be better?

BRAUNER: Good idea.

SB 238: Allows persons who are interested in trust to clarify of
modify
terms or administration of trust by written agreement.

SB 211: Allows persons who are interested in trust to modify terms
of
trust or clarify interpretation of trust by written agreement
filed in circuit court.

(CHAIR SPRINGER requests SB 238 and SB 211 be considered together)

WITNESSES:

CHARLES MAURITZ, DAVIS WRIGHT TREMAINE

FRANK BRAUNER, OREGON BANKING ASSOCIATION

JACK ROBSON, BANK OF AMERICA

BILL LINDEN, STATE COURT ADMINISTRATOR

189 CHARLES MAURITZ, DAVIS WRIGHT TREMAINE: Submits and reviews
written

testimony (EXHIBIT H) in support of both bills. Submits amendments to
either SB 238 or SB 211 (EXHIBIT I).

376 SEN. BRYANT: How do you represent unborn interest?

MAURITZ: Gingerly and adequately. Considerable deference given in
probate law.

SEN. BRYANT: Consideration for judge when reviewing case?

393 MAURITZ: Yes, place where special representative would be
evaluating
probabilities and equities involved.

416 SEN. BRYANT: Would you anticipate final disbursement happening most
of
the time in light of increasing administrative costs for the trust?

MAURITZ: If trust is less than \$25,000 then court may order termination. However, if there is a purpose to the trust it would limit termination of trust.

443 SEN. SHOEMAKER: Concerning acting trustee and consenting trustee, is there a difference?

MAURITZ: No. Testimony refers to trustee in office at the time.

457 SEN. SHOEMAKER: Is acting trustee a phrase of art? Could there be confusion with that?

MAURITZ: Not aware of. Theoretically only one trustee may serve at a time.

478 SEN. SHOEMAKER: You want to be clear this does not include those who may become trustees?

MAURITZ: That is correct.

TAPE 13, SIDE B

034 FRANK BRAUNER: Explains reason for two bills with such similar content and proposes tabling Banking Association bill and amending SB 211. Introduces Jack Robson, Senior Vice-President, Bank of America.

048 JACK ROBSON: Speaks in support of bill. Reviews purpose and effect of bills.
>Would grant trustees flexibility in dealing with changing circumstances.

091 BRAUNER: Reviewed with Oregon State Bar and proposes further amendment to line 33, p. 2: prefer to drop "resides". Will submit amendments before work session.

111 BILL LINDEN: Comments in opposition to bill. Two issues of concern which will be reviewed with proponents.
>Section 4: Concerned about staffing issues. Bill will require additional staffing to handle work-load.
>Section 5: Concerned about action without judicial intervention. Want to clarify impact with judges.

SEN. SHOEMAKER: Adjourns hearing at 2:36pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

- A - Testimony on SB 241 - David Jack - 1 page
- B - Testimony on SB 242 - David Jack - 12 pages
- C - Testimony on SB 242 - Steve Rodeman, Jeff Schroth - 1 page
- D - Testimony on SB 242 - David Nebel - 2 pages
- E - Testimony on SB 258 - Richard Slottee - 8 pages
- F - Testimony on SB 258 - Gary Roberts - 5 pages
- G - Testimony on SB 253 - Frank Brawner - 3 pages
- H - Testimony on SB 211 & SB 238 - Charles Mauritz - 6 pages
- I - Amendments to SB 211 & SB 238 - Charles Mauritz - 3 pages
- J - LC 1267 - Staff - 8 pages