

SENATE COMMITTEE ON  
JUDICIARY

February 22, 1993 Hearing Room C  
1:00 p.m. Tapes 30-31

MEMBERS PRESENT: Sen. Dick Springer, Chair  
Sen. Bob Shoemaker  
Sen. Catherine Webber  
Sen. Grattan Kerans

MEMBERS EXCUSED: Sen. Jeannette Hamby  
Sen. Neil Bryant

STAFF PRESENT: Bill Taylor, Committee Counsel  
Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Executive Appointment - Susan Hammer  
Public Hearing - SB 288, SB 361  
Work Session - SB 285, SB 220

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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 30, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:02pm.

Executive Appointment

012 CHAIR SPRINGER: Introduces Susan Hammer, appointee to  
Dispute  
Resolution Commission.

020 BILL TAYLOR, COMMITTEE COUNSEL: Describes Dispute  
Resolution  
Commission. Is this a reappointment?

HAMMER: No, appointed to serve out term of Jose' Motta.

028 CHAIR SPRINGER: How long have you been serving?

033 HAMMER: Attending meetings for about 6 months. Describes  
Commission  
and projects.

054 MOTION: SEN. KERANS: moves Susan Hammer be CONFIRMED to the  
Dispute

Resolution Commission.

VOTE: In a roll call vote all members present vote AYE. SEN. HAMBY and  
SEN. BRYANT are excused.

CHAIR SPRINGER: The motion CARRIES.

070 TAYLOR: Reviews LC drafts.

LC 94: At request of Spencer Neil (EXHIBIT O).

LC 457: At request of Senate Judiciary (EXHIBIT P)

LC 562: At request of Oregon Alliance for Mental Health (EXHIBIT Q)

LC 562-2: At request of the Oregon Alliance for Mental Health (EXHIBIT R)

LC 562-3: At request of the Oregon Alliance for Mental Health (EXHIBIT S)

LC 562-4: At request of the Oregon Alliance for Mental Health (EXHIBIT T)

LC 820: At request of the Governors Advisory Council on DUII (EXHIBIT U)

LC 994: At request of Oregon Trial Lawyers Association (EXHIBIT V)

LC 1214: At request of Oregon Board of Realtors (EXHIBIT W)

LC 1703: At request of Juvenile Rights Project (EXHIBIT X)

LC 2299: At request of Senate Judiciary Committee (EXHIBIT Y)

LC 2406: At request of Carl Myers (EXHIBIT Z)

LC 3094: At request of the Juvenile Rights Project (EXHIBIT AA)

LC 3450: At request of the Oregon Bankers Association (EXHIBIT BB)

LC 3451: At request of the Oregon Bankers Association (EXHIBIT CC)

115 MOTION: CHAIR SPRINGER: moves INTRODUCTION of LC drafts as read  
by  
counsel.

VOTE: Hearing no objection, LC drafts are introduced.

SB 288: Revises professional corporation law.

WITNESSES:

CRAIG SMITH, OREGON STATE BAR

MORTON ZALUTSKY, CITIZEN

CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

GARY BURROUGHS, OREGON SOCIETY OF CPA'S

BOB WYNHAUSEN, OREGON SOCIETY OF CPA'S

KATHLEEN DOTTE, CONSULTING ENGINEERS COUNCIL OF OREGON

JIM MARVIN, CONSULTING ENGINEERS COUNCIL OF OREGON

RAY MILLER, CONSULTING ENGINEERS COUNCIL OF OREGON

TOM COONEY, OREGON MEDICAL ASSOCIATION

JANE MYERS, OREGON DENTAL ASSOCIATION

145 CRAIG SMITH: Submits and reviews written testimony in support of  
the  
bill (EXHIBIT C & D).

214 MORTON ZALUTSKY: Submits and reviews written testimony in support  
of  
the bill (EXHIBIT E).

281 CHARLES WILLIAMSON: Submits and reviews written testimony  
and  
amendments (EXHIBIT A & B). References amendments by committee counsel  
(EXHIBIT B-1). Not opposed if bill amended.

345 CHAIR SPRINGER: Committee has been asked to review limited  
liability

corporation. Do these two bills conflict with each other?

365 SMITH: Defers to proponents of limited liability companies.

369 SEN. SHOEMAKER: Have you seen Oregon Trial Lawyers amendments?

ZALUTSKY: Have approved those amendments.

375 SMITH: Can only endorse personally, not on behalf of the task force  
or  
OSB .

381 SEN. SHOEMAKER: Section 16, page 7, is there a discretionary right  
to  
redeem shares of disqualified individual?

SMITH: Correct.

403 SEN. SHOEMAKER: What is the intent of time limit that director  
may  
remain? Under 6 months individual may remain, over 6 months  
corporation  
has a right to redeem but individual may remain?

SMITH: Intent was to leave to regulatory body for appropriate  
sanction.

418 SEN. SHOEMAKER: Section 17, lines 4-8, should "a" and "b" run  
together  
and disjunctive be on "c"? Insert "and" on page 5 after semicolon?

430 SMITH: Correct.

437 SEN. SHOEMAKER: Section 4, substitute language about  
corporate  
identifying initials? Will that be confusing?

SMITH: Reason for difference is foreign corporations who may have P.A.  
or P.A.S. and were formed in another state.

459 SEN. SHOEMAKER: Is task force set on this arrangement? Seems to  
create  
confusion?

SMITH: Consideration was given to corporate designations with the  
conclusion that consumers don't pay attention to initials. >Doesn't  
effect consumers understanding but does allow foreign corporations to  
practice in the state.

480 SEN. SHOEMAKER: Can we make it explicit and limited to  
foreign  
corporations?

SMITH: That would be fine.

TAPE 31, SIDE A

061 GARY BURROUGHS: Submits and reviews written testimony in support of the bill (EXHIBIT F).

067 BOB WYNHAUSEN: Testifies in support of the bill as co-signor on previous testimony (EXHIBIT F).  
>Not opposed to conformity with the limited liability company bill.  
>Concurs with amendments.

082 CHAIR SPRINGER: Could you tell me why you think this is a good bill?

WYNHAUSEN: From stand-point of constituents it protects from unlimited vicarious liability.  
>Bill also provides protection for public.  
>It is a good compromise.

104 KATHLEEN DOTTEEN: Reviews Consulting Engineers Council of Oregon. Introduces additional testifiers.

118 JIM MARVIN: Testifies in opposition to the bill.  
>Object to the inclusion of engineers on page 5.  
>Suggests amendment and requests engineers be exempted from bill.

216 SEN. SHOEMAKER: What imposes unlimited personal liability on engineers?  
What is the legal basis?

MARVIN: The stamp placed on all engineering work which establishes it as work product.

234 SEN. SHOEMAKER: But what authority, is it law or a rule of professional engineers?

MARVIN: Reviews example of truck driver and trucking company, where driver has unlimited liability and company does not.

245 SEN. SHOEMAKER: So it is common law?

MARVIN: Yes.

252 CHAIR SPRINGER: Is personal liability uninsurable risk?

RAY MILLER: In 1988, insurance industry notified engineers they were going to become uninsurable.  
>Most firms are carrying insurance for errors and omission, it is required.

268 MARVIN: Percentages refer to percentage of gross.  
>In addition, deductibles are high and there are diminishing policy limits. This expands liability.

281 CHAIR SPRINGER: This is "surplus lines"? Not regulated by state?

MARVIN: No this is regulated by the state and insurance commission.

287 CHAIR SPRINGER: How many covered?

MILLER: 21% "going bare" or uncovered.

296 MARVIN: "Going bare" refers directly to availability of insurance.  
>Some firms cannot buy insurance at any costs.

320 TOM COONEY: Testifies in support of the bill.  
>Change in field requires amendment to the bill.  
>Section 26, subsections 2 and 3 need to be changed.

407 SEN. SHOEMAKER: Paying passive shareholder first makes  
negligible  
shareholder "bare"? Only up to certain amount?

COONEY: Yes. Sometimes carrier won't cover all shareholders to certain  
amount.  
>Some companies do not stack policies.

437 SEN. SHOEMAKER: Is capacity for corporations to have \$300,000  
per  
shareholder either stacked or unstacked?

COONEY: Limits are almost always the same on the entity itself, unless  
you are in stacking situation.

COONEY: Urges favorable consideration because of managed care  
reforms.

476 TAYLOR: Reviews drafting history of measure.  
>Notes that group felt that insurance products would be developed to  
address problems.

TAPE 30, SIDE B

030 JANE MYERS: Submits and reviews written testimony with concerns  
about  
the bill (EXHIBIT G).

090 SEN. SHOEMAKER: Observation on section 27. If articles of  
organization  
are broadly drawn corporation wouldn't have to file new statement.

WORK SESSION

SB 285: Establishes procedures, regulations and fees for formation  
and  
operation of limited liability companies.

113 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews bill. Reviews public  
hearing  
and proposed amendments.

167 DON DOUGLAS, OREGON STATE BAR: Submits and reviews written  
commentary  
and amendments (EXHIBITS H, I & J).  
>Amendment expressly prohibits professionals from utilizing limited  
liability companies.

DAVID CULPEPPER, OREGON STATE BAR: Comments on professionals and  
limited  
liability companies.

226 SEN. SHOEMAKER: Requests clarification of amendments for page 8,  
lines  
4-6.

DOUGLAS: Clarifies amendments.

245 SEN. SHOEMAKER: What is purpose of amendment #5 on page 8, line 7  
which  
adds new section 19(3)?

DOUGLAS: Purpose is in definition of foreign limited liability  
corporation.  
>Swept too broadly with original language.  
>Amendment language mirrors corporate statute.

266 CULPEPPER: Amendment also deletes emergency clause and makes October  
1,  
effective date.

269 SEN. SHOEMAKER: That is okay?

DOUGLAS: Yes, gives corporations time to respond to change in the  
law.  
>Good compromise.

275 SEN. SHOEMAKER: Problem with the date if session goes long?

CHAIR SPRINGER: Counsel will check. Could include emergency clause  
with specific date. Asks counsel about issues that need further  
discussion.

304 QUIGLEY: Amendments address most questions.

345 CHAIR SPRINGER: Holds bill for further review.

SB 361: Authorizes court or hearings officer to order obligor to  
make  
periodic, lump sum or other payments toward support arrearage.

WITNESSES:

CARL STECKER, MARION COUNTY DISTRICT ATTORNEYS OFFICE

354 CARL STECKER: Submits and reviews written testimony with amendments  
to  
the bill (EXHIBIT K & L).

420 CHAIR SPRINGER: Would court order provide for right to foreclose?

STECKER: Yes, other remedies do exist. Refers to subsection 3.

WORK SESSION

SB 220: Authorizes Supreme Court to adopt trust account overdraft

notification program for attorneys.

452 TAYLOR: Reviews bill and SB 220-1 and SB 220-2 amendments (EXHIBIT N).

Also notes hand-engrossed amendments to SB 220 (EXHIBIT M).

TAPE 31, SIDE B

040 CHAIR SPRINGER: Inquires if committee is comfortable with new language?

043 SEN. SHOEMAKER: Comfortable with new language.

047 TAYLOR: Reviews SB 220-1 amendments, deleting lines 7 through 12, page 1

and inserting: "Section 2. (1) Subject to the requirements of ORS 9.490, the Supreme Court may establish a trust account overdraft notification program for attorneys."

058 SEN. SHOEMAKER: Language in SB 220-2 amendment "on the attorney trust account", is that a word of art, colloquialism?

071 CARL MYERS, OREGON STATE BAR: Language dealt with attorney or firm who has the account. "On" refers to the lawyer or firm who's name is on the trust account.

092 SEN. SHOEMAKER: Agree with intent, is language "sufficiently artful"?

Notes committee could take action and revisit at later date.

MYERS: That is at the discretion of the committee.

112 CHAIR SPRINGER: Why are section 5 and 6 needed?

MYERS: Assumes it is to make measure part of the appropriate ORS section.

120 TIM MARTINEZ, OREGON BANKERS ASSOCIATION: Speaks to section 6. Wanted

to make clear in statute that reasonable fees could be assessed.

123 CHAIR SPRINGER: Duplicate language. Not appropriate to include in this

section.

MYERS: Concurs with Chair.

135 SEN. WEBBER: Paragraph 4 where lawyer/law firm trust account excluded

from liability, are clients able to receive money for failure to notify?

MYERS: Unclear on question.

147 SEN. WEBBER: For the banks failing to notify the bar.

MYERS: No, doesn't create any affirmative duty for bank to notify that gives liability to anyone else. Simply a notification method for OSB .

154 SEN. WEBBER: If intervention doesn't take place and clients account is

lost, will client have right of action against attorney, bank?

MYERS: Certainly against attorney, but doesn't think there is right of action against bank.

163 MARTINEZ: Understanding this is a method to aid OSB in tracking

possible misuse of client funds.

MYERS: Have no recourse under present arrangement, not the intent to create new recourse.

176 SEN. SHOEMAKER: Banks may want to be explicit on that point to protect

themselves.

>Presents different scenarios.

205 SEN. WEBBER: Throwing out huge net to catch a few fish?  
Need

convincing.

MYERS: Concedes it is a large net, in optimum situation they will catch

no one.

>Catching those that are in trouble managing accounts is worth the trouble.

>Public deserves oversight by OSB and the banks.

256 SEN. SHOEMAKER: Suggests adding after "on the attorney trust account";

"or to the beneficiaries of that trust account, or to the Oregon State Bar."

MYERS: That would be acceptable.

291 SEN. KERANS: Inquires about Chair's opinion of the bill.

CHAIR SPRINGER: Acceptable with amendments.

303 SEN. SHOEMAKER: Reviews additional amendments to SB 220-2.



319 MOTION: SEN. SHOEMAKER: moves to ADOPT the SB 220-1 amendments dated 2/3/93, and the SB 220-2 amendments dated 2/19/93 as further amended above.

VOTE: Hearing no objection the amendments are ADOPTED. SEN. HAMBY and SEN. BRYANT are excused.

332 MOTION: SEN. SHOEMAKER: moves SB 220, as amended, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote SEN. KERANS, SEN. SHOEMAKER, CHAIR SPRINGER vote AYE. SEN. WEBBER votes NAY. SEN. BRYANT and SEN. HAMBY are excused.

340 CHAIR SPRINGER: The motion FAILS.

382 CHAIR SPRINGER: Adjourns hearing at 2:50 pm.

Submitted by:

Reviewed by:

Kirk Bailey  
Assistant

Bill Taylor  
Administrator

EXHIBIT LOG:

A - Testimony on SB 288, Charles Williamson, 1 page  
B - Hand-engrossed amendments to SB 288, Charles Williamson, 6 pages  
B-1 - Amendments to SB 288, Staff, 1 page  
C - Testimony on SB 288, Craig Smith, 5 pages  
D - Testimony on SB 288, Craig Smith, 10 pages  
E - Testimony on SB 288, Morton Zalutsky, 3 pages  
F - Testimony on SB 288, Gary Burroughs, 1 page  
G - Testimony on SB 288, Jane Myers, 2 pages  
H - Amendments to SB 285, Staff, 1 page  
I - Amendments to SB 285, Staff, 1 page  
J - Testimony on SB 285, Don Douglas, 30 pages  
K - Amendments to SB 361, Carl Stecker, 2 pages  
L - Amendments to SB 361, Staff, 1 page  
M - Hand-engrossed amendments to SB 220, Staff, 2 pages  
N - Amendments to SB 220, Staff, 2 pages  
O - LC 94, Staff, 3 pages  
P - LC 457, Staff, 2 pages  
Q - LC 562, Staff, 19 pages  
R - LC 562-2, Staff, 11 pages  
S - LC 562-3, Staff, 6 pages  
T - LC 562-4, Staff, 2 pages  
U - LC 820, Staff, 2 pages  
V - LC 994, Staff, 19 pages  
W - LC 1214, Staff, 2 pages  
X - LC 1703, Staff, 3 pages  
Y - LC 2299, Staff, 2 pages  
Z - LC 2406, Staff, 3 pages

AA - LC 3094, Staff, 4 pages  
BB - LC 3450, Staff, 3 pages  
CC - LC 3451, Staff, 5 pages