

SENATE COMMITTEE ON
JUDICIARY

March 1, 1993 Hearing Room C
1:00 p.m. Tapes 34-35

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
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Public Hearing on SB 94 and SB 245
 Work Session on SB 240 and SB 334

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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 34, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:34pm.

SB 94: Decreases blood alcohol concentration requirement for
adult
 drivers to .04.

WITNESSES:

SANDRA BISHOP, WINE INSTITUTE
JANE AIKEN, GOVERNORS ADVISORY COMMITTEE ON DUII
DR. JOHN TONGUE, GOVERNORS ADVISORY COMMITTEE ON DUII
BARBARA STOEFFLER, GOVERNORS ADVISORY COMMITTEE ON DUII
CAPTAIN JAMES STEVENSON, OREGON STATE POLICE
HUBERT DUVALL, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
MIKE MCCALLUM, OREGON RESTAURANT ASSOCIATION
BILL NELSON, OREGON WINE GROWERS ASSOCIATION
GINA MULFORD, TILLAMOOK COUNTY COMMISSIONER
JOHN POWERS, GOVERNORS ADVISORY COMMITTEE ON DUII
PAUL ROMAIN, OREGON BEER AND WINE DISTRIBUTORS ASSOCIATION

SANDRA BISHOP: Submits general information on drinking and driving

(EXHIBIT A).

020 JANE AIKEN: Submits and reviews written testimony in support of
the

bill (EXHIBIT B).

082 DR. JOHN TONGUE: Submits and reviews written testimony in support
of
the bill (EXHIBIT C).

149 BARBARA STOEFFLER: Submits and reviews written testimony in support
of
the bill (EXHIBIT D).

189 CAPTAIN JAMES STEVENSON: Submits and reviews written testimony
in
support of the bill (EXHIBIT E).

213 HUBERT DUVALL: Testifies with reservations about the bill.
>.08 BAC is the level where officers can most objectively determine
impairment with field sobriety test. Questions probable cause if level
is lower than .08.
>Based on personal experience, officers may or may not arrest at .08.
>Oregon is effectively already zero tolerance. Officers have broad
leeway in arresting for duii.
>Lowering to .04 takes human element and discretion out of situation.
Would leave determination to a machine which may be faulty.

280 MIKE MCCALLUM: Submits and reviews written testimony in opposition
to
the bill (EXHIBIT F).
>Expresses concern about drunk-driving issue however.

385 BILL NELSON: Testifies in opposition to the bill.
>.04 is a social level of consumption equivalent to a glass of wine at
dinner.
>Minimal increase in risk between two levels.

410 CHAIR SPRINGER: Recalls Captain Stevenson

417 SEN. SHOEMAKER: Notes testimony that person would not flunk
field
sobriety test at .04, how would OSP administer law at that low level?

STEVENSON: Officer is giving test to determine if person is effected.
Not correlated to BAC. Arrest is based on discretion of officer.

441 SEN. SHOEMAKER: If person does not flunk field sobriety test
then
officer cannot take them in?

STEVENSON: Yes. People are often released if not impaired.

452 SEN. SHOEMAKER: Discretion on the part of the officer? Can they
be
taken if they haven't failed the field sobriety test?

STEVENSON: Poor case if they did so.

461 SEN. SHOEMAKER: Expect more people to be brought in for breathalyzer
if
.04 implemented?

STEVENSON: Don't think so.

470 SEN. SHOEMAKER: Intending to get people impaired in driving not
just
those above level?

STEVENSON: Officer needs probable cause to stop individual, which is
based on actions of driver and circumstances.

TAPE 35, SIDE A

041 SEN. HAMBY: What percentage of stops are released?

STEVENSON: Tough to estimate. Personally, arrested 100-110 duii
drivers per year, released another 100 or more.

053 SEN. HAMBY: What percent arrested were poor cases?

STEVENSON: Hope all were good. Low blood alcohol was small number of
people.

062 SEN. HAMBY: Comfortable conducting field test and
recognizing
impairment?

STEVENSON: Officer still has decision to make.

070 SEN. BRYANT: In a fatal accident situation is there usually a
field
sobriety test?

STEVENSON: If probable cause to believe alcohol involved.

074 SEN. BRYANT: Recall average blood alcohol level of those people?

STEVENSON: Don't have numbers. Traffic Safety and DMV do keep records.
Will provide for committee.

091 GINA MULFORD: Submits and reviews written testimony in support of
the
bill (EXHIBIT G).

122 JOHN POWERS: Testifies with reservations about the bill.

>Zero tolerance is not realistic goal.

>Testing equipment is not infallible and does not measure blood
alcohol.

>Suggests alternative charging structure. Bring back plea bargaining.

>Bill effects business owners and social drinkers which is too broad.

190 PAUL ROMAIN: Testifies in opposition to the bill.
>Creates new class of criminals.
>Skeptical of statistics, may or may not reflect real situation.
>Suggests vehicle forfeiture law to respond to this problem.

241 SEN. SHOEMAKER: Implied consent law? How would this work?
Field
sobriety will not be flunked at .04, and officer cannot administer
breathalyzer without cause, if person brought into station for another
infraction does implied consent law operate?

POWERS: Thinks not.

255 SEN. SHOEMAKER: Still need probable cause to believe impairment?

POWERS: Yes. Implied consent requires reasonable basis to believe
person driving under influence.

262 SEN. SHOEMAKER: If person in station for some other reason,
what
happens if they decline test?

POWERS: Reviews effects of declining test.

270 SEN. SHOEMAKER: If asked person has to do it and tests over .04
then
they are charged?

POWERS: Correct.

SB 245: Requires Chief Justice of Supreme Court to establish
minimum
standards for state court security.

WITNESSES:

BOB OLESON, OREGON STATE BAR

JUDGE TIM ALEXANDER

PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES

BILL LINDEN, STATE COURT ADMINISTRATOR

304 BOB OLESON: Testifies in support of the bill.
>Submits statement by Jim Mountain, OSB , in support of the bill
(EXHIBIT
H).

332 JUDGE ALEXANDER: Submits and reviews written testimony in support
of
the bill (EXHIBIT I).

376 BILL LINDEN: Testifies in support of the bill.

425 PAUL SNIDER: Testifies with no position on the bill. Joint task
force
meets soon and will consider bill and issue position in the next
couple
weeks.

449 CHAIR SPRINGER: Expects an idea of costs and responsibilities soon?

>Do the counties and judiciary expect each other to carry the financial burden?

>What is the status of negotiations?

SNIDER: HB 3176 provides interesting funding mechanisms. May be possible to reach agreement about responsibility.

476 CHAIR SPRINGER: Anything to add?

TAPE 34, SIDE B

022 LINDEN: When state accepted responsibility for state courts and indigent defense, counties agreed to maintain facilities, including security.

>State in ten years has spent approximately \$860 million.

>Consequently, need convincing to agree to fee increases for county responsibility.

SB 240: Eliminates statute of ultimate repose for product liability actions and negligence actions arising out of death, injury or damage resulting from silicone or saline breast implant or other implant or injection containing silicone.

059 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Submits and reviews written testimony with concerns about the bill (EXHIBIT K).

097 TOM COONEY, CITIZEN: Testifies on section 2 of the bill.
>Section is overbroad.
>Reviews need for statute of limitations.

169 SEN. SHOEMAKER: What is present statute of limitations, ORS reference?

MOONEY: ORS 12.110 (4).

175 SEN. SHOEMAKER: Clarifies provision.

200 SEN. HAMBY: There are over 500 products made with or use silicone?
GALLANT: Correct.

206 SUZANNE MARTIN, CITIZEN: Submits and reviews written testimony with reservations on the bill (EXHIBIT L).

250 SEN. SHOEMAKER: Is possible for doctor to err and create leak that may not be noticed for some time?

MARTIN: Possible but have not seen it happen.
>Continues testimony.
>Cites federal research which indicates no health risk from silicone.

385 TAYLOR: Reviews LC drafts. text above.

LC 1497: At the request of Interim Task Force on Indigent Defense
(EXHIBIT Y).

LC 2579: At the request of Oregon Criminal Justice Council (EXHIBIT
Z).

LC 2579-1: At the request of Oregon Criminal Justice Council (EXHIBIT
AA).

LC 2579-2: At the request of Oregon Criminal Justice Council (EXHIBIT
BB).

LC 2580: At the request of Oregon Criminal Justice Council (EXHIBIT
CC).

LC 2774: At the request of Oregon Criminal Defense Lawyers Association
(EXHIBIT DD).

LC 3037: At the request of Oregon Criminal Defense Lawyers Association
(EXHIBIT EE).

LC 3038: At the request of Oregon Criminal Defense Lawyers Association
(EXHIBIT FF).

LC 3102: At the request of Anton Ionazel (EXHIBIT GG).

LC 3122: At the request of Mark Kramer (EXHIBIT HH).

LC 3337: At the request of Oregon State Bar (EXHIBIT II).

LC 3338: At the request of Oregon State Bar (EXHIBIT JJ).

LC 3452: At the request of Oregon Bankers Association (EXHIBIT KK).

LC 3488: At the request of Interim Judiciary Committee Task Force on
Indigent Defense (EXHIBIT LL).

LC 3572: At the request of Oregon Women's Coalition (EXHIBIT MM).

LC 3610: At the request of Oregon Advocacy Center (EXHIBIT NN)

LC 3623: At the request of Oregon Trial Lawyers Association (EXHIBIT
OO).

LC 3624: At the request of Oregon District Attorneys Association
(EXHIBIT PP).

LC 3648: At the request of Oregon Check Cashers Association (EXHIBIT
QQ).

LC 3674: At the request of Jerry Wegler (EXHIBIT RR).

445 MOTION: CHAIR SPRINGER: moves introduction of LC drafts as read
by
counsel.

VOTE: Hearing no objection, LC drafts are INTRODUCED.

455 CHAIR SPRINGER: Resumes Work Session on SB 240.

>Asks committee to review amendments to both SB 240 and SB 334.

>Will hold bills for vote at later date.

TAPE 35, SIDE B

027 TAYLOR: Reviews amendments.
>Begins with SB 240-3 amendments (EXHIBIT M).
>Reads statement of legislative intent from Jim Gardner and Diana Godwin
(EXHIBIT N).
>Reviews SB 240-4 amendments (EXHIBIT O). Similar to SB 240-2 amendments (EXHIBIT P). Technical amendments.

053 CHAIR SPRINGER: Inquires about requestors of amendments?

TAYLOR: SB 240-1 evolved into SB 240-2 and then into SB 240-4.

059 DIANA GODWIN, WILLIAMS AND TROUTWINE: Submits additional testimony and information on silicone implants (EXHIBITS Q - T).
>Agrees with SB 240-4 amendments on page 2, deleting lines 8-22.
>Concurs with SB 240-3 amendments.
>Offers to draft amendments addressing concerns of Oregon Medical Association.
>Recommends amendments to p.1, ln.7 and ln.19 deleting "or other implants or injections".

083 SEN. BRYANT: With SB 240-4 amendments, are doctors still included as possible defendants?

GODWIN: Yes. Provision is still in original bill.
>Want chance to review doctors statute of ultimate repose as it relates to specific issue of breast implants.

096 SEN. SHOEMAKER: On doctors liability, there are 2 types of negligence - failure to warn and active negligence?
>Troubled by failure to warn, because doctors did not know effects of silicone themselves, doesn't seem fair?

GODWIN: Question to be reviewed.
>May or may not be appropriate to hold responsible for failure to warn but there are situations where it is appropriate to hold doctors responsible.

JAMES GARDNER: Submits written testimony only in support of the bill (EXHIBIT U)

116 TAYLOR: Reviews LC draft for introduction.

LC 3092: At the request of Governors Advisory Council on DUII (EXHIBIT SS).

120 MOTION: CHAIR SPRINGER: moves LC 3092 be introduced.
VOTE: Hearing no objection, LC 3092 is INTRODUCED.

SB 334: Adds person in possession of firearm or other dangerous weapon
within
school zone to category of persons subject to prosecution.

ROD COUGHLIN, FOUR CORNERS ROD AND GUN CLUB: Submits written testimony
only in opposition to the bill (EXHIBIT V).

132 HAMBY: Reviews engrossed amendments (EXHIBIT W).
>Reviews SB 334-3 and SB 334-6 amendments (EXHIBIT X).

200 General discussion of the amendments.

220 CHAIR SPRINGER: Reminds committee they must adjourn and requests
any
further amendments.

SEN. HAMBY: Reviews SB 334-2 amendments.

CHAIR SPRINGER: Counsel?

228 TAYLOR: Received amendments from individual but did not
receive
amendments from members and cannot introduce amendments without member
request.

244 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION:
Submits
further amendments to line 26 stating "any person who intentionally
possesses a loaded or unloaded firearm or any other instrumentality
used
as a dangerous weapon."

SEN. HAMBY: Excellent idea.

254 KEVIN STERRETT, GUN OWNERS OF AMERICA: Inquires if Sen. Hamby will
be
introducing SB 334-7 amendments?

SEN. HAMBY: Will distribute to committee.

257 STERRETT: No mention of deleting language about license holders?

SEN. HAMBY: Decision will be discussed at work session. The issue is a
point of contention.

264 STERRETT: Will SB 334-7 amendments be seen by committee?

SEN. HAMBY: They will be provided to committee. If someone chooses to
move amendments they will become part of the bill.

278 CHAIR SPRINGER: Adjourns hearing at 3:10pm

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

A - Testimony on SB 94 - S. Bishop - 11 pages
B - Testimony on SB 94 - J. Aiken - 17 pages
C - Testimony on SB 94 - T. Tongue - 7 pages
D - Testimony on SB 94 - B. Stoeffler - 2 pages
E - Testimony on SB 94 - J. Stevenson - 2 pages
F - Testimony on SB 94 - M. McCallum - 8 pages
G - Testimony on SB 94 - G. Mulford - 11 pages
H - Testimony on SB 245 - J. Mountain - 2 pages
I - Testimony on SB 245 - T. Alexander - 4 pages
K - Testimony on SB 240 - S. Gallant - 2 pages
L - Testimony on SB 240 - S. Martin - 5 pages
M - Amendments to SB 240 - Staff - 1 page
N - Testimony on SB 240 - J. Gardner, D. Godwin - 1 page
O - Amendments to SB 240 - Staff - 2 pages
P - Amendments to SB 240 - Staff - 2 pages
Q - Testimony on SB 240 - D. Godwin - 7 pages
R - Testimony on SB 240 - D. Godwin - 4 pages
S - Amendment to SB 240 - D. Godwin - 2 pages
T - Testimony on SB 240 - D. Godwin - 2 pages
U - Testimony on SB 240 - J. Gardner - 9 pages
V - Testimony on SB 334 - R. Coughlin - 1 page
W - Amendments to SB 334 - Sen. Hamby - 4 pages
X - Amendments to SB 334 - Staff - 3 pages

Y - LC 1497, Staff, 2 pages
Z - LC 2579, Staff, 1 page
AA - LC 2579-1, Staff, 1 page
BB - LC 2579-2, Staff, 2 pages
CC - LC 2580, Staff, 2 pages
DD - LC 2774, Staff, 2 pages
EE - LC 3037, Staff, 7 pages
FF - LC 3038, Staff, 10 pages
GG - LC 3102, 2 pages
HH - LC 3122, 2 pages
II - LC 3337, 4 pages
JJ - LC 3338, 3 pages
KK - LC 3452, 13 pages
LL - LC 3488, 2 pages
MM - LC 3572, 7 pages
NN - LC 3610, 1 page
OO - LC 3623, 2 pages
PP - LC 3624, 3 pages
QQ - LC 3648, 1 page
RR - LC 3674, 1 page
SS - LC 3092, 16 pages