

SENATE COMMITTEE ON
JUDICIARY

March 5, 1993 Hearing Room C
1:00 p.m. Tapes 39-41

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 Assistant

ISSUES DISCUSSED: Public Hearing and Work Session on SB 208
 Public Hearing on SB 340 and SB 372
 Work Session on SB 216, SB 212, SB 229, SB 407

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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 39, SIDE A

003 SEN. SHOEMAKER: Opens the hearing at 1:05 pm.

Public Hearing and Work Session

SB 208: Allows notice of appeal to be filed with clerk of trial court for purpose of time limitations on filing.

WITNESSES:

HENRY KANTOR, ATTORNEY

JUDGE BILL RICHARDSON, COURT OF APPEALS

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

011 HENRY KANTOR: Submits and reviews written testimony in support of the bill (EXHIBIT A).
>Submits letter from Callahan & Shears with amendments to the bill (EXHIBIT B).

120 SEN. SHOEMAKER: Opportunity to review amendments?

KANTOR: Have only seen hand written counsel amendments.

129 SEN. SHOEMAKER: Summarizes SB 208-2 amendments (EXHIBIT C). What
do
you think?

KANTOR: Correct. Amendments are an improvement on the existing law.

148 SEN. SHOEMAKER: Doesn't correct some of the other problems, such
as
notifying opposing counsel.

KANTOR: Then I am concerned. Nobody has proposed changes to time limit
for filing.

>Amendment is trying to remove requirement to notify opposing counsel.

Most important reason for the bill.

164 SEN. SHOEMAKER: Jurisdiction is established by filing notice of
appeal
within time limit, correct?

KANTOR: Correct.

170 SEN. SHOEMAKER: Incidents of filing appeal are not
jurisdictional
fundamentally?

KANTOR: They have been in the past.

173 SEN. SHOEMAKER: Leaves 30 days in place, allows it to be overlooked
if
sent to wrong court and all other aspects are discretionary?

KANTOR: Can support that draft.

178 SEN. BRYANT: SB 208-2 does leave in section 1, subsection 5,
which
would address the issue.

183 SEN. SHOEMAKER: Clarifies provision citations. Committee
discusses
citation and effect of amendments.

219 JUDGE RICHARDSON: Comments on the bill generally on behalf of
the
Judicial department.
>Requests clarification of draft under consideration.

238 SEN. SHOEMAKER: SB 208-2 amendments essentially replace the
bill.
Committee is concerned with that draft.

248 JUDGE RICHARDSON: Comments generally with concerns about the bill.
>Important for opposing counsel to be notified when appeal has
started.
>If that not jurisdictional then something must be done.

292 SEN. SHOEMAKER: Clarifies intent and effect of the bill.

JUDGE RICHARDSON: Bill places substantial burden on the court.

Summarizes appeal process and effect of bill.

404 CHARLIE WILLIAMSON: Testifies in support of the bill. Urges passage.

414 KANTOR: Provides additional testimony in support of the bill.
Comments

on SB 208-2 amendments.

>Remove 2.a. or we are stuck at status quo.

474 SEN. SHOEMAKER: Not ready to move bill.

>Bill tabled for further consideration.

TAPE 40, SIDE A

036 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews LC drafts

LC 3564: At the request of Oregon Bankers Association (EXHIBIT S).

LC 3667: At the request of Judiciary (EXHIBIT T)

LC 2578: At the request of Senator Cohen (EXHIBIT U)

047 MOTION: SEN. SHOEMAKER: Moves introduction of LC drafts.

VOTE: Hearing no objection, drafts are introduced.

Public Hearing

SB 340: Allows disclosure of material for information produced during

discovery related to personal injury action or action for wrongful

death even though protective order has been entered if disclosure

is

to another attorney representing client in similar or

WITNESSES:

HENRY KANTOR, COUNCIL ON COURT PROCEDURES

CHARLES RUTTAN, OREGON ASSOCIATION OF DEFENSE COUNSEL

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

JON STUBENVOLL, OSPERG

MIKE WILLIAMS, COUNSEL FOR MEGAN CLARKE

SCOTT GALLANT, OREGON MEDICAL ASSOCIATION

RAY MENSING, CITIZEN

JIM GARDNER, PHARMACEUTICAL MANUFACTURERS ASSOCIATION

CHARLES RUTTAN, OREGON ASSOCIATION OF DEFENSE COUNSEL

BETSY BAILEY, ASSOCIATED OREGON INDUSTRIES

MEGAN CLARKE, CITIZEN

JEFF FOOTE, TRIAL LAWYERS FOR PUBLIC JUSTICE

059 SEN. SHOEMAKER: Due to similarity of SB 372 and SB 340 the bills will be

considered together.

063 HENRY KANTOR: Testifies in general on the bill.

118 CHARLIE WILLIAMSON: Submits and reviews written testimony in support of

the bill (EXHIBIT N). Submits hand-engrossed amendments to SB 340

(EXHIBIT I).

165 JON STUBENVOLL: Submits and reviews written testimony in support of
the
bill (EXHIBIT F).

218 MIKE WILLIAMS: Testifies in support of the bill, on behalf of
Megan
Clarke.
>Summarizes her case involving Dow-Corning.
>Information obtained by Dow-Corning indicated safety problems with
silicone breast implants but was suppressed after lawsuit. Information
would have saved Ms. Clarke significant medical problems.

261 MEGAN CLARKE: Testifies in support of the bill.
>Describes medical history and effect of silicone breast implants.

318 JEFF FOOTE: Testifies in support of the bill.
>This legislation expedites discovery process and still leaves
discretion to the courts.

393 WILLIAMSON: Plays videotape with background information from
national
media (EXHIBIT O).

TAPE 39, SIDE B

041 SCOTT GALLANT: Testifies in opposition to the bill.
>Courts already have the authority to release information if
necessary.
>Changing the process will increase litigation.

066 RAY MENSING: Testifies in opposition to the bill.
>Court already has authority to release information.
>Bill is confusing in what it tries to accomplish.
>Affects more than product liability such as medical records where
privacy is at issue.
>On SB 372 - no definition of dangerous products, present or future
danger, improvements to land, dangerous procedures.
>SB 372 also removes right to settlement.

112 SEN. SHOEMAKER: Parties can enter protected agreement, then if
one
wishes to disclose they can be prevented by the court, how does it get
to the court?

123 WILLIAMSON: Summarizes process of judicial review.

158 SEN. SHOEMAKER: So burden is on defendant to take to court?

WILLIAMSON: Burden on both parties if they want judge to agree.

164 GALLANT: Section lacks definition; it is over-broad and vague.

176 SEN. SHOEMAKER: Vagueness would lead defendant to take agreement
to
court to define and court could decide on balance between privacy or
public interest?

GALLANT: Suggests alternative interpretation.

199 MENSING: This bill will force everything back to court despite
effort
to avoid court in the first place.

209 WILLIAMSON: Expresses appreciation of OMA concerns and is open
to
consider definitions of dangerousness.

227 JIM GARDNER: Testifies in opposition to the bill. Submits
written
transcript of Council on Court Procedures, December 1992 meeting with
background on the bill (EXHIBIT H).

313 CHARLES RUTTAN: Submits written testimony on SB 340 (EXHIBIT D) and
SB
372 (EXHIBIT E), and statement before committee (EXHIBIT M) in
opposition to the bills.

357 BETSY BAILEY: Submits and reviews written testimony in opposition
to
the bill, particularly SB 340 (EXHIBIT G).

413 SEN. SHOEMAKER: Gardner's position is SB 372 is inappropriately
vague?

GARDNER: Correct.

418 SEN. SHOEMAKER: Judge should be able to decide dangerousness
and
balance of public interest and privacy. Response?

GARDNER: Comments generally on the appropriate balance of public
policy
issues and privacy.
>Council on Court Procedures was given authority to balance these
issues.

TAPE 40, SIDE B

023 SEN. SHOEMAKER: Proposal has not been brought before council?

GARDNER: SB 340 has been before the Council. Council was not willing
to move on the policy issues in SB 372.

027 SEN. SHOEMAKER: Would SB 372 be brought to the Council, or should
it
stay with legislature?

GARDNER: Legitimate issue. Believes it is within Council's jurisdiction.

032 SEN. SHOEMAKER: Steps beyond procedure and addresses substantive issues. Isn't that the province of the Legislature?

GARDNER: Not certain. Intertwined with procedural issue.

037 RUTTAN: Perhaps the committee could send to the Council to deal with issues.
>Questions whether judge can decide without a mini trial to review case.

056 GARDNER: Suggests soliciting further input from Council and Judges associations.

064 SEN. WEBBER: If you accept assumption that role of government is to protect citizens, isn't it simpler to prohibit protective orders in product cases?

078 BAILEY: Business community concerned about revelation of important corporate information.

SEN. WEBBER: Then we say personal injury product cases.

BAILEY: That would be a start.

Work Session

SB 216: Provides that form of conveyance is not necessarily factor in determining market value of property.

QUIGLEY: Reviews bill and SB 216-2 amendments (EXHIBIT J).

>Amendments are acceptable to all parties.

>Advised by Legislative Counsel that relating clause needs to state

"Relating to appraisal". Amendment is included in SB 216-2 amendments.

>Statement on fiscal/revenue impact.

116 CHAIR SPRINGER: SB 216-2 amendments create essentially new bill.
Acceptable?

118 WALTER GOWELL: Acceptable, and reflects agreement between all parties involved.

124 JIM WILCOX, DEPARTMENT OF REVENUE: Supports amendment.

127 SEN. SHOEMAKER: Comments on redundancy in line 7 regarding mandatory adjustments.

GOWELL: "Mandatory" not necessary.

137 SEN. SHOEMAKER: It was not intended to make substantive change?
Next
line might say "to otherwise comparable sales."?

GOWELL: No. That would be agreeable.

144 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 216-2 amendments dated
3/4/93
with additional amendments described above.
VOTE: Hearing no objection the amendments are ADOPTED.

149 MOTION: SEN. SHOEMAKER: moves SB 216, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE. SEN. KERANS is
excused.

CHAIR SPRINGER: The motion CARRIES.

SEN. SHOEMAKER will lead discussion on the floor.

SB 407: Allows donor of semen used in artificial insemination and woman
who
is artificially inseminated to agree that donor shall be father of
child born as result of insemination.

166 BOB CASTAGNA, OREGON CATHOLIC CONFERENCE: Testifies in opposition
to
the bill.
>Suggests adoption as alternative.

262 REPRESENTATIVE KATE BROWN: Testifies in support of the bill.

277 MARK JOHNSON, OREGON STATE BAR: Testifies in support of the bill.
>Legislation is intended to resolve constitutional problem.

302 SEN. SHOEMAKER: Why doesn't third holding in the McIntyre case
address
problem.

JOHNSON: Addresses issue but forces parties to court.

312 SEN. SHOEMAKER: Why? If they have the agreement why do we
need
statute?

JOHNSON: Statute's purpose is to encourage parties to put agreement on
paper. Settles rights prior to insemination.

329 BROWN: Clarifies anonymous donors are still protected.

338 SEN. SHOEMAKER: Does that cure the constitutional problem?
>What happens if parties do not comply with statute?

JOHNSON: Due process rights are waivable, so if statute provides mechanism protecting those rights, if statutory action not taken then rights are waived.

>Assumption is that action would be taken in knowledge of the law whether that was the case or not.

370 CASTAGNA: Comments in rebuttal.

386 REPRESENTATIVE BROWN: Bill does not effect current Oregon law concerning surrogacy.

392 CHAIR SPRINGER: Inquires if committee is ready to move.

395 SEN. WEBBER: Prefers not to.

397 CHAIR SPRINGER: Tables issue for later hearing.

401 SEN. SHOEMAKER: Requests additional research on surrogacy law.

SB 229: Requires court to appoint certified court interpreters if available, willing and able to serve.

419 QUIGLEY: Reviews bill and SB 229-1 amendments (EXHIBIT L). Reviews SB 229-1 hand-engrossed amendments (EXHIBIT O).

>Letter from Linden describing amendments (EXHIBIT P).

>SB 229-1 includes Sen. Shoemaker's amendments.

>No revenue impact; fiscal impact which may require referral to Ways and Means.

446 CHAIR SPRINGER: Fiscal impact?

452 BILL LINDEN, STATE COURT ADMINISTRATOR: Needs to go to Ways and Means for other fund authorization and program has front end costs to begin program.

466 CHAIR SPRINGER: Bill already has prior referral to Ways and Means.

TAPE 41, SIDE A

022 LINDEN: SB 229-1 amendments incorporate amendments from all parties, who are in full agreement.

033 SEN. HAMBY: What is protocol for sending SB 229 to House before sending to Ways and Means?

LINDEN: The sooner the better. Plans to raise issue at budget hearings on 21st.

039 CHAIR SPRINGER: Consistent with Sen. Hannon's request.

041 MOTION: SEN. HAMBY: moves to ADOPT SB 229-1 amendments as further
hand
engrossed, dated 3/1/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

048 MOTION: SEN. HAMBY: moves SB 229, AS AMENDED, be referred to Ways
and
Means Committee with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE. SEN. KERANS is
excused.

052 The motion CARRIES.

SB 212: Exempt from execution amounts received by debtor under
certain
agreements for sale of real or personal property to the extent that
amounts are to be paid to another person.

060 QUIGLEY: Reviews bill and SB 212-1 amendments (EXHIBIT K).

077 WALTER GOWELL, OREGON STATE BAR: Amendments are result of
consultation
with interested parties and there is no opposition.

090 CHAIR SPRINGER: Any opposition from bankers.
GOWELL: No comment from bankers.

095 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: No objection to
amendments.

101 SEN. SHOEMAKER: Suggests change to line 10, page 4, reference to
ORS
23.160 (1)(1) to clarify statutory reference.

108 GOWELL: That section has been deleted.

109 SEN. SHOEMAKER: Where is that deletion?

112 GOWELL: That section is replaced by SB 212-1 amendments.

117 SEN. SHOEMAKER: So add to SB 212-1 amendments deletion of lines
8
through 10 on page 4?

122 GOWELL: Yes. Section no longer placed in exemption of statute.

125 MOTION: moves to AMEND SB 212-1 amendments by deleting lines 8-10
on
page 4 of the printed bill.
VOTE: Hearing no objection, the motion CARRIES.

131 MOTION: CHAIR SPRINGER: moves to ADOPT SB 212-1 amendments
further
amended, dated 3/4/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

133 MOTION: SEN. SHOEMAKER: moves SB 212, AS AMENDED, be sent to

the

floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. KERANS is
excused.

137 The motion CARRIES.

SEN. BRYANT will lead discussion on the floor.

143 CHAIR SPRINGER: Reviews LC drafts.

LC 3466: At the request of Judiciary committee (EXHIBIT Q)

LC 2256: At the request of Oregon Bankers Association (EXHIBIT R)

150 MOTION: CHAIR SPRINGER: moves LC drafts be introduced.

VOTE: Hearing no objection, drafts are introduced.

CHAIR SPRINGER: Adjourns hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

A - Testimony on SB 208 - Henry Kantor - 3 pages
B - Testimony on SB 208 - James Callahan - 3 pages
C - Amendments to SB 208 - Staff - 3 pages
D - Testimony on SB 340 - Charles Ruttan - 2 pages
E - Testimony on SB 372 - Charles Ruttan - 2 pages
F - Testimony on SB 372 - Jon Stubenvoll - 3 pages
G - Testimony on SB 340 - Betsy Bailey - 2 pages
H - Testimony on SB 340 and SB 372 - James Gardner - 6 pages
I - Testimony on SB 340 - Charlie Williamson - 3 pages
J - Amendments to SB 216 - Staff - 1 page
K - Amendments to SB 212 - Staff - 3 pages
L - Amendments to SB 229 - Staff - 5 pages
M - Testimony on SB 340 - Charles Ruttan - 8 pages
N - Testimony on SB 340 - Charles Williamson
O - Amendments to SB 229 - Staff - 7 pages
P - Testimony on SB 229 - Bill Linden - 1 page
Q - LC 3466, 13 pages
R - LC 2256, 118 pages
S - LC 3564, 2 pages
T - LC 3667, 30 pages
U - LC 2578, 11 pages