

SENATE COMMITTEE ON
JUDICIARY

June 8, 1993 Hearing Room C
1:00 p.m. Tapes 185-186

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber

MEMBERS EXCUSED: Sen.

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

ISSUES DISCUSSED: Public Hearing & Possible Work Session on SB 1132, SB
111 7,
 HB 2259, HB 2915, HB 2223
 Work Session on SB 348, SJR27, HB 2256

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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 185, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:28 pm.

SB 1117: Prohibits merchants and wholesalers from charging
unconscionably
 excessive prices for essential consumer goods and services during

 first 90 days of emergency or periods of abnormal disruption of

 market.

WITNESSES:
TIM WOOD, DEPARTMENT OF JUSTICE

008 TIM WOOD: Submits and reviews written testimony in support of the
bill
 (EXHIBIT A).

068 CHAIR SPRINGER: Recesses SB 1117; opens consideration on SB 348.

SB 348: Requires search organization to inquire if person wishes contact with adoptee, birth parent or relative requesting search.

WITNESSES:

SENATOR FRANK ROBERTS

071 MOTION: CHAIR SPRINGER: moves to RECONSIDER SB 348.
VOTE: Hearing no objection, the bill is RECONSIDERED.

074 SEN. ROBERTS: Testifies in support of the bill.
>Reviews SB 348-A6 amendments (EXHIBIT B).
>Reviews objections to language in section 5, page 3, line 32.

101 SEN. SMITH: What about concern from adoption agencies about search and confront process? Is there a way to ease that process?

SEN. ROBERTS: Only one agency opposed the bill.
>Bill provides that no confrontation take place. Contact is through the voluntary register and will be confidential.

138 SEN. SMITH: Thanks Sen. Roberts for his amendments. Provides vote explanation clarifying a aye vote in committee.

145 SEN. ROBERTS: Thanks Sen. Smith for his concern and interest.

148 SEN. RASMUSSEN: Questions if committee should wait for Sen. Smith's concerns to be addressed before we send back to the floor.

153 SEN. SMITH: Believes the concern has been addressed.

163 SEN. ROBERTS: Informs committee that opposition has indicated there is a majority to pass the bill. Other problems can be raised in the House.

170 MOTION: CHAIR SPRINGER: moves to ADOPT SB 348-A6 amendments, dated 6/7/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

172 MOTION: CHAIR SPRINGER: moves SB 348, AS AMENDED, be sent to the floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

176 CHAIR SPRINGER: The motion CARRIES.

SEN. ROBERTS will lead discussion on the floor.

179 CHAIR SPRINGER: Returns consideration to SB 1117.

SB 1117: Prohibits merchants and wholesalers from charging unconscionably

excessive prices for essential consumer goods and services during first 90 days of emergency or periods of abnormal disruption of market.

WITNESSES:

TIM WOOD, DEPARTMENT OF JUSTICE

GENE EBERSOLE, DEPARTMENT OF JUSTICE

BRUCE JOHNSON, ARCO

BRIAN DOHERTY, WESTERN STATES PETROLEUM ASSOCIATION

ROGER MILLER, BP OIL COMPANY

182 CHAIR SPRINGER: Inquires as to opposition in Business, Housing and Consumer Affairs?

192 SEN. RASMUSSEN: Comments on concerns and vote in business committee. >Unaware of any opposition to the bill except for Sen. Adams and himself.

200 CHAIR SPRINGER: It was voted out with unanimous committee support?

SEN. RASMUSSEN: Correct.

202 TIM WOOD: Continues testimony in support of the bill.

216 GENE EBERSOLE: Testifies in support of the bill. Concurs with Wood. >Notes this is not intended as anti-trust legislation. Aimed at response to the recent earthquake.

243 SEN. HAMBY: On page 1, line 15, could you define "any"?

>Would this apply to national state of emergency.

EBERSOLE: No, only applies to state wide emergency declared by governor. This provision works in conjunction with existing statute.

257 SEN. WEBBER: Is it appropriate for committee to review the concept as well as penalty?

259 CHAIR SPRINGER: No. Chair will not prohibit discussion on any subject a member wishes to address.

263 SEN. WEBBER: Notes problem with the underlying philosophy. Skeptical about assumptions and implementation.

274 WOOD: This is a preventative measure. Is not intended to assume that Oregon retailers would gouge Oregonians.

280 SEN. WEBBER: Questions whether state should anticipate and regulate in this fashion?

284 SEN. SHOEMAKER: Observes that the bill creates cause of action and

is

therefore appropriate for the entire bill to be before the committee.

>Bill does not seem to be limited to Governor declared states of emergency. Language doesn't state who determines emergency or other disruption of the market and leaves to whoever brings action and is not limited to Governor?

306 WOOD: That is correct.

SEN. SHOEMAKER: That loses my support.

308 WOOD: Original draft had catch all provision broader than the current

language. We eliminated and defined that provision and tied in to current statute.

315 SEN. SHOEMAKER: Section 4, excessive price is question for the court

and describes evidence requirements, can it go up less than 20% and still fit definition? Is 20% bottom line before stature activates? >Is proof just prima facie?

328 WOOD: Intent was for 20% to be a clear bright line that would trigger inquiry.

332 SEN. SHOEMAKER: What if it is less?

WOOD: Then there is no cause of action.

337 SEN. SHOEMAKER: Committee may want to stiffen that provision if the bill continues.

339 SEN. SMITH: Notes philosophical opposition to the bill.

365 CHAIR SPRINGER: Comments on committee agenda regarding SJR 27 and HB 2386 which will be rescheduled.

375 BRIAN DOHERTY: Testifies in opposition to the bill.

>Concerned with emergency clause which goes farther than natural disasters.
>Supplier definition is bad.
>Well intended legislation but the problem is addressed by supply and demand.
>Bill doesn't address Governor's powers under ORS 176.150, Emergency Resource Plan.

445 CHAIR SPRINGER: What happened in Business committee?

TAPE 186, SIDE A

011 ROGER MILLER: Testifies in opposition to the bill.

054 DOHERTY: Didn't have time to get to the Business committee.

061 SEN. RASMUSSEN: Comments on desire to have seen witnesses in
Business
committee.

074 SEN. SHOEMAKER: Section 7 upgrades additional statutes from Class C
to
A, why?

WOOD: Bill begins with premise in Chapter 401, and then carries
through
other statutes.
>No intention to increase those penalties for frivolous reasons.

085 SEN. SHOEMAKER: That is the practical effect. It changes
many
statutes.

WOOD: Need to start with the philosophy and decide whether we agree on
that issue. Then we can address the specifics of the bill.
>Inquires if committee wants us to work out amendments?

102 SEN. SHOEMAKER: Expresses concern that the bill is brought quietly
and
amends so many statutes.

WOOD: Sen. Roberts' bill and Justice is working with him.
>Reviews bill's formulation process.

122 SEN. SHOEMAKER: Who suggested upgrade in all these statutes?

WOOD: That is in our draft.

127 EBERSOLE: Expresses willingness to review Emergency Services Act
with
the committee. Very few provisions are punitive.

141 SEN. SHOEMAKER: Observes it is a little late for that.

146 CHAIR SPRINGER: Notes temptation to rerefer to Business committee.

SB 1132: Makes technical changes to internal references in Oregon statutes.

159 QUIGLEY: Reviews bill.

163 CHAIR SPRINGER: Who is the proponent?

QUIGLEY: Kathleen Beaufait was notified and expected to attend.

166 CHAIR SPRINGER: Committee will take up other matters while
awaiting
witnesses on SB 1132.
>Reviews agenda with counsel.

HB 2259: Clarifies crime of intimidation in first degree.

WITNESSES:

FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION

178 TAYLOR: Reviews bill and HB 2259-A6 amendments with
background
information on the bill (EXHIBIT C & D).

196 FRED AVERA: Testifies in support of the bill.
>Reviews example cases and the requirements of the current statute.
>Intent is to make statutes internally consistent and make the
operative
fact the perception of victim's status, rather than the victim's
actual
status.
>No objections to the amendments.

273 CHAIR SPRINGER: Resumes consideration of SB 1132.

SB 1132: Makes technical changes to internal references in Oregon statutes.

279 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: Testifies in support of
the
bill. Bill updates and amends technical, non-substantive errors in the
Oregon Revised Statutes.

324 SEN. HAMBY: Page 10, subsection on railroads, log patrols, etc,
appears
to be substantive?

KATHLEEN: It is a rewrite, not substantive.

340 MOTION: SEN. HAMBY: moves SB 1132 be sent to the floor with a DO
PASS
recommendation.
VOTE: In a roll call vote all members present vote AYE.

349 CHAIR SPRINGER: The motion CARRIES.

SEN. RASMUSSEN will lead discussion on the floor.

354 CHAIR SPRINGER: Resumes consideration of HB 2259.

HB 2259: Clarifies crime of intimidation in first degree.

WITNESSES:

DOUG VANDE GRIEND, WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM

363 DOUG VANDE GRIEND: Testifies in support of the amendments.
>Urges committee to pass amendments.

391 SEN. SMITH: Those are -A6 amendments?

VANDE GRIEND: Yes. I have -A5, committee has -A6.

>Difference is on page 5, there are two "willingly"'s which should be "intentionally".

401 TAYLOR: -A6 includes the changes mentioned by Vande Griend.

410 SEN. SHOEMAKER: Acts constituting intimidation in the second degree are included in the bill. Does concept of perception play role in second degree and should it?

VANDE GRIEND: No idea.

429 AVERA: ORS 166.155 contains intimidation in second degree.
>Yes, perception is included.

445 DAVID FIDANQUE, ACLU: Testifies in support of the bill and -A6 amendments.

467 CHAIR SPRINGER: Inquires if Maura Roche & Gina Mattioda are comfortable with the amendments?

>Roche & Mattioda indicate in the affirmative.

472 MOTION: moves to ADOPT HB 2259-A6 amendments, dated 5/28/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

477 MOTION: SEN. HAMBY: moves HB 2259, AS AMENDED, be sent to the floor with a DO PASS recommendation.

482 CHAIR SPRINGER: Notes Governor Roberts will be signing HB 2518 on 6/9/93. Consequently, this bill may need technical, conforming amendments which may be handled by Legislative Counsel.

494 TAYLOR: Observes that if HB 2259 passes it will supersede HB 2518.

TAPE 185, SIDE B

035 CHAIR SPRINGER: We will leave the technical matters to Legislative Counsel.

039 VOTE: In a roll call vote all members present vote AYE.

041 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

HB 2915: Allows certain motor vehicle liability insurance policy disputes, at discretion of insured, to be decided by arbitration or in small claims department of justice or district court.

WITNESSES:

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

050 CHARLIE WILLIAMSON: Submits and reviews written testimony in support
of
the bill (EXHIBIT E).

094 SEN. SHOEMAKER: Refers to testimony, should we prohibit
insurance
agencies from removing cases from small claims to district court for
jury trial?

WILLIAMSON: Reviewed on the House side. Legislative Counsel stated
such a provision would be unconstitutional.
>An attorney fee provision is included with a six month waiting period
for plaintiff to file suit.

111 SEN. SHOEMAKER: Don't you need a pretty savvy lawyer for that?

WILLIAMSON: Most lawyers are aware of this.

119 SEN. RASMUSSEN: You don't want attorney fee provision in this bill?

WILLIAMSON: OTLA agreed not to.

122 SEN. SHOEMAKER: You mean the provision which provides attorney fees
if
the case is moved to district court?

SEN. RASMUSSEN: No, referring to the pip arbitration.

WILLIAMSON: We agreed to drop that provision if the insurance
companies
would not oppose this bill. They have kept their word and so will
OTLA.

128 SEN. SHOEMAKER: If the case is removed from small claims to
district
court by insurance company, and to avoid the six month waiting period,
why not provide that if case is removed that prevailing party is
entitled to attorney's fees?
>Would that deter insurance companies from taking to court just to
postpone and delay?

141 WILLIAMSON: Have to stick to agreement. Volunteers to bring
in
additional witnesses to clarify the issue.
>Insurance agencies have indicated they do not intend to avoid these
cases but want to see them resolved.

151 SEN. SHOEMAKER: Notes support for such a provision.

CHAIR SPRINGER: Could hold the bill to review the issue further.

158 SEN. HAMBY: What about the constitutional issue?
>What are the consumers options?

WILLIAMSON: Provision in constitution guarantees jury trial for certain claims in common law.

167 CHAIR SPRINGER: Holds bill over for further review.
>Notes intention to resume scheduling only 3 meetings per week.

HB 2223: Provides that contents of oral or wire communication lawfully intercepted by public officials in charge of certain law enforcement facilities are admissible in court.

WITNESSES:

JOHN FOOTE, DEPARTMENT OF CORRECTIONS

188 JOHN FOOTE: Submits and reviews written testimony in support of the bill (EXHIBIT F).

234 SEN. SHOEMAKER: Would Department be setting up a system which automatically records every phone call?
FOOTE: We already do.

238 SEN. SHOEMAKER: You record and inform inmates? You don't inform inmates at each call but provide a general notice?

FOOTE: Our intention is to do both. We would like to have a warning before each call and a general notice.

245 SEN. SHOEMAKER: So in particular phone call inmates will have notice?

FOOTE: Intention is inmates would receive general notice.

249 SEN. HAMBY: What about inmate/attorney conversations?

FOOTE: Those calls have separate phone lines in each institution. Every phone call is eventually destroyed.
>The Department does not knowingly record attorney phone calls.

264 SEN. HAMBY: Vouches for Corrections procedures in recording phone calls.

271 CHAIR SPRINGER: Is there a prohibition on inmate use of cellular phones?

FOOTE: Yes. But that has never happened so far.

278 SEN. RASMUSSEN: Notes that there is a new cellular phone on the

market

that is extremely small.

282 TAYLOR: Are there amendments to the bill?

FOOTE: Yes. Reviews erroneous provision and amendments which make the bill consistent to ORS 165.540 (1) (a).

305 TAYLOR: That would mean that if inmate was notified and other party indicated criminal activity, the second party could be prosecuted because inmate was aware?

FOOTE: Yes. Which would be consistent with statute.

312 CHAIR SPRINGER: Do we have amendment language?

TAYLOR: On line 12, add "just one of" before "the" and amend "participant" to read "participants"; delete comma and "against whom the evidence is being offered".

326 FOOTE: That would accomplish make it consistent with existing statute.

328 SEN. SHOEMAKER: Would that create an entrapment situation?

FOOTE: If so that issue could still be raised in court.

331 SEN. SHOEMAKER: Understand that but questions whether we should establish possible entrapment as a matter of policy?

CHAIR SPRINGER: Observes that committee can hold the bill for further review.

348 FOOTE: Agrees with Sen. Shoemaker on the nature of inmate phone calls.

Only intention was to avoid creating additional protections for an inmate phone call than exist in any other situation.

376 SEN. SHOEMAKER: Entrapment occurs only when you induce someone to commit a crime, but this would also apply when you are obtaining evidence of a crime that has been committed.

385 SEN. RASMUSSEN: Reviews statute. Currently, information of criminal violations recorded by phone with the knowledge of one party but not the other can be used in criminal prosecution against the second party? >But if inmate has the same conversation it cannot be used?

FOOTE: Without the amendment that would be correct.

399 SEN. RASMUSSEN: What about present law?

FOOTE: Couldn't be used.

401 SEN. SHOEMAKER: Why?

FOOTE: Wouldn't be admissible in court, the telephone call can be lawfully intercepted.

404 SEN. RASMUSSEN: Because an inmate isn't intercepting it themselves, Corrections is?

FOOTE: Interesting point, hadn't considered that possibility. >Had not considered argument to have one section 1 supersede admissibility statute.
>Argument could be made but is problematic but under current law admissibility statute would supersede.

424 SEN. SHOEMAKER: That exchange illustrates that this bill isn't covered by 540-1 (a). The situations are different.

TAPE 186, SIDE B

006 DAVID FIDANQUE, ACLU: ACLU is not opposed to bill, but are opposed to proposed amendments.
>Concerned law enforcement soliciting inmates to phone co-conspirators to obtain evidence against them.
>Concerned about implementation at the local level. Suggests limiting to state facilities for two years and revisiting the issue.

028 CHAIR SPRINGER: Holds the bill for further review.
SEN. SHOEMAKER: Expresses readiness to move on the bill.

032 SEN. HAMBY: Notes she is not ready. Unclear on capabilities of local jails.

FOOTE: Issue was discussed extensively in the House. Jails around the state have varying systems to deal with this responsibility.
>House agreed that local jails would operate under the same rules as the state, they would be required to provide notice.

051 MOTION: SEN. SHOEMAKER: moves HB 2223 be sent to the floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

060 CHAIR SPRINGER: The motion CARRIES.

SEN. WEBBER will lead discussion on the floor.

063 CHAIR SPRINGER: Adjourns hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

- A - Testimony on SB 1117, Tim Wood, 4 pages
- B - Amendments to SB 348, Staff, 1 page
- C - Amendments to HB 2259, Staff, 2 pages
- D - Testimony on HB 2259, Staff, 1 page
- E - Testimony on HB 2915, Charlie Williamson, 6 pages
- F - Testimony on HB 2223, John Foote, 1 page