

the small claims court. This is not a concern for two reasons. In order to prevail in a UTPL claim you have to plead it and that is beyond most small claims litigants. The Act provides that before a judgement may be entered on a small claims action, a copy of the pleading raising the claim has to be sent to the Attorney General's Office. As Tim Wood plans to testify, between 1991 and 1992 they received 264 notices as compared to 66,000 information calls and 17,000 written complaints. It is difficult for the average citizen to find an attorney to pursue a UTPL claim and that is due, in part, to the low amount of damages that may be recovered.

054 KEITH BURNS: Testifies in opposition to the bill.
in - Notes constitutional concerns. Section 3, Article 7, provides that actions of the law, where the value at controversy exceeds \$200, the right of trial by jury shall be preserved (EXHIBIT C).
- You are telling people that, even if they want the case in small claims court, it can't be handled there.
- If the person wants to ask for more than \$200 they can ask for it and move it up to district court. They can plead up to \$3,000.

092 CHAIR SPRINGER: How did this issue escape the scrutiny of the House?

095 BURNS: It's a small thing, and they probably overlooked it.

101 SEN. SHOEMAKER: What would you think of giving the plaintiff the option of either going to Small Claims for \$200 or actual damages, which is greater, or going to a higher court?

105 BURNS: They can do that now.

106 SEN. SHOEMAKER: No, you can't plead damages you can't prove. The \$200 or \$500 is when you know you don't have damages that exceed that. It's a slap on the wrist for having violated the Act. Maybe the person should be given the option.

113 BURNS: Under this bill the minimum that will be pleaded will be \$500.

115 SEN. SHOEMAKER: We would amend the bill. You wouldn't have a problem with the amendment.

120 BURNS: No.

122 CHAIR SPRINGER: I believe Sen. Webber, who has been delayed, had an amendment. Is counsel aware of the amendment?

123 QUIGLEY: Sen. Webber suggested included ORS 746.230, the Unfair Claims Settlement Act.

127 BURNS: I would have the same concern that people have the option.

132 CHAIR SPRINGER: That might be outside the "relating to" clause.

140 TIM WOOD, ATTORNEY GENERAL'S OFFICE: Submits and reviews written testimony in support of the bill (EXHIBIT B).

164 CHAIR SPRINGER: Carries the bill over for further review. HB 3601: Allows suit to quiet title against county and other governmental units.

WITNESSES:

BILL PERRY, OREGON FARM BUREAU
EDMUND DUYCK, OREGON FARM BUREAU

180 BILL PERRY, OREGON FARM BUREAU: Submits and reviews written testimony in support of the bill (EXHIBITS D,E).

195 EDMUND DUYCK, OREGON FARM BUREAU: Testifies in support of the bill. I purchased a piece of property in Tillamook County from a family who has owned it since 1854. I bought a 40-acre parcel that had no value to the dairy farmer owner who allowed hunters on the land. I planned to continue to allow this, as a means of paying for the property. I was told by county that I had to have an easement to the 40-acre parcel, otherwise it would be landlocked. I got the easement, and six months later, I get a notice from the county is claiming this roadway the prior owner built for the hunters. The county records supported that it was the prior owner's. The county has taken away my means to pay for the property. Had I known this, I wouldn't have purchased the property. I want my day in court. I have spent a lot of money by going through the process. Five days before the trial, the county pleaded sovereign immunity and refused to go to court.

258 CHAIR SPRINGER: This would be a good location for a summer home,
but
you are not going to do that?

261 DUYCK: No, it is not buildable; it is on a flood plain. I only
bought
it because I owned contiguous land, and the owner was going to lose it
due to financial difficulties. I believe the county wouldn't have
pleaded immunity if they thought they were right.

275 SEN. SHOEMAKER: How did it get this far along in 1993?

280 DUYCK: I understand that there have been 22 suits since 1962 and
the
counties have allowed themselves to be sued. The issue of sovereignty
has never come up.

289 SEN. SHOEMAKER: As I read the bill, it would allow a suit to
quiet
title, but not permit a suit for damages.

291 DUYCK: No, nor would the original bill.

298 SEN. SHOEMAKER: What does the title company say?

299 DUYCK: They say they insured the title based on what they were told
at
the time. They refused to become involved in the suit.

301 SEN. SMITH: Do you have title policy?

311 DUYCK: The title company puts in a disclaimer "excepting any claim
by
the public to any public access." They have an out and that is
standard
procedure.

320 MOTION: SEN. SHOEMAKER moves HB 3601 be sent to the floor with a
"do
pass" recommendation.

322 VOTE: The motion passes 4 - 0. Excused: Webber, Rassmussen

Executive Appointment: Psychiatric Security Review Board
Hilda Galaviz-Stoller

340 QUIGLEY: Reviews appointment and statutory authority (EXHIBIT F).

359 STOLLER: Comments and reviews experience for the position.
Looks
forward to using experience and Hispanic background in the position.

390 CHAIR SPRINGER: What kind of law practice do you have?

392 STOLLER: Presently my practice includes criminal law,
workers
compensation, personal injury, and employment discrimination.

399 CHAIR SPRINGER: This is a big responsibility. Have you had a chance to participate in any board hearings?

401 STOLLER: Yes; I was at a hearing and saw the importance of reviewing the case in advance. It is a big responsibility. I was a psychiatric nurse for a while.

419 SEN. SHOEMAKER: What do you think your tendency would be? Keep them in custody until they make a strong showing that they should be released, or a tendency towards release?

421 STOLLER: I have no views yet - I prefer to judge this on a case by case basis.

433 SEN. SHOEMAKER: You feel you will bring an objective perspective?

439 STOLLER: Yes; I've had clients committed and I've treated patients as a nurse, so I've seen the situation from both sides.

447 CHAIR SPRINGER: Notes Oregon's national reputation.

453 MOTION: CHAIR SPRINGER moves to confirm the Governor's appointment of Hilda Galaviz-Stoller to the Psychiatric Security Review Board.

VOTE: The motion is adopted, 4-0. Excused: Webber, Rasmussen. Springer will carry the appointment to the Floor.

HB 2083: Expands membership of local citizen review boards.

WITNESSES:

BILL LINDEN, STATE COURT ADMINISTRATOR
SARAH HOLMES, CHILDREN'S SERVICES DIVISION

TAPE 194, SIDE A

030 BILL LINDEN, STATE COURT ADMINISTRATOR: Testifies in support of the bill (EXHIBIT G).

065 SEN. HAMBY: Has it always been two days plus 8 hours of orientation and training?

068 LINDEN: The enabling legislation required training but was non-specific. We want to expand beyond that.
- We also want the explicit authority to remove members who won't go through the training.

075 SEN. SHOEMAKER: On page 4 there are deletions regarding court
appointed
special advocates. Can you explain those?

085 QUIGLEY: It is possible that C.O.S.A. duties were transferred in
the
course of the juvenile code reorganization.

089 SEN. SHOEMAKER: And if that shouldn't pass and this does?

090 LINDEN: The non-substantive reorganization has passed both
houses.
That has to be the reason this was deleted.

101 SARAH HOLMES: Submits and reviews written testimony in support of
the
bill (EXHIBIT H).

111 CHAIR SPRINGER: Does HB 2004 impact citizen review boards?

115 HOLMES: I am not aware of that bill and its impact.

121 CHAIR SPRINGER: Carries bill over for further review.

HB 2380: Establishes measure of damages for injuries resulting from
unprovoked
attack on assistance, search and rescue or therapy animal.

WITNESSES: MARGARET EPPLING, OREGON COUNCIL FOR THE BLIND

130 QUIGLEY: reviews bill and amendments (EXHIBITS I,J).

142 CHAIR SPRINGER: Who can speak to amendments?

150 MARGARET EPPLING, OREGON COUNCIL FOR THE BLIND: Introduces self.

152 CHAIR SPRINGER: Have you reviewed the amendments with the
proponents?

156 MARGARET: Yes. We have spent a great deal of time working on
animal
classifications.

161 SEN. HAMBY: Confirms that she has been in contact with Ms. Eppling
and
Rep. Mannix.

172 MARGARET: Compliments senators on action. Introduces animals at
the
hearing. First bill of its kind in nation.

199 SEN. SHOEMAKER: Regarding the new language on page 2, lines 27-31.
It
says that the animal has been trained for either search and rescue or
a
therapy animal. There's no difference between the two types and that
either can be used for therapy or search and rescue. The language
needs

to be fine tuned.

214 QUIGLEY: The earlier discussion revolved around whether the animal
was professionally trained or not. This bill would not cover someone who
trains their own dogs.

228 CHAIR SPRINGER: We could proceed conceptually and have
Legislative Counsel clarify the language.

MOTION: CHAIR SPRINGER moves to adopt the -A9
amendments,
corrected as Sen. Shoemaker suggested.

VOTE: Hearing no objection, Chair Springer so moved.

MOTION: Chair Springer moves HB 2380-A as amended be sent to the
floor with a "do pass" recommendation.

VOTE: The motion passes 4 - 0. Sens. Webber and Rasmussen
excused. The bill will be carried by Sen. Webber.

HB 2543: Modifies provisions of Uniform Commercial Code Article 2A
concerning
leases.

MOTION: Chair Springer moves reconsideration of HB 2543.

VOTE: Hearing no objection, Chair Springer so moved.

260 QUIGLEY: Reviews bill and need to bring the bill back. They
missed setting an effective date. In addition the Bar has developed some
concerns they wish to address (EXHIBIT K).

270 SALLY LEISURE, OREGON STATE BAR: Submits and reviews written
testimony
with concerns about the bill (EXHIBIT L).

296 SEN. SHOEMAKER: The 1989 legislation was not uniform?

299 LEISURE: No; uniform legislation was proposed, but Oregon
adopted amendments to it. One of the important sections was the definition of
a finance lease and how the transaction qualifies as a finance lease.
- Continues testimony.

409 SEN. SHOEMAKER: How come these changes come to us so late?

411 LEISURE: We weren't aware of it until it was through the House.

431 MARTHA WALTERS, OREGON STATE BAR: I don't think these concerns are
a problem. To the degree uniformity helps Oregon, uniformity should be

adopted.

- If it is just a matter of wording, we think you should go with the uniform bill.

- If it is substantive differences, then the committee should use the Oregon version.

- The only substantive difference here is the definition of finance leasing. The bill has certain requirements for consumer leases that the Oregon version does not. That is the reason for the request in the 18-month delay, in order for practitioners to get their paperwork in order.

TAPE 193, SIDE B

040 CHAIR SPRINGER: Have you addressed the track leasing amendments that were proposed?

042 WALTERS: The amendments don't interfere with uniformity and I take no position on them. The Oregon Auto Dealers were going to be checked with.

047 CHAIR SPRINGER: The committee did check with the Oregon Automobile Association and they had no objections.

050 SEN. SHOEMAKER: If the effective date were extended for 18 months, would there be any reason to do that for the track leasing amendments?

051 WALTERS: I am unsure whether that can be done.

055 SEN. SHOEMAKER: It seems to be a different issue than finance leasing in general? There appears to be no reason why this should go into effect in ordinary course.

061 WALTERS: I agree; am unsure whether they two issues can be separated out, procedurally.

064 CHAIR SPRINGER: This can be done, but could be confusing for practitioners.

068 WALTERS: If you keep the current definition of finance lease then you don't need the 18-month delay.

071 LEISURE: I think the 18-month delay would be important for section 4 changes because they do have substantive changes in the leases.

086 SEN. SHOEMAKER: I have some familiarity in this area, and I will
do
some homework on this.

090 CHAIR SPRINGER: Would be most appreciative.

097 WALTERS: It is important for the bill to pass; it is not important
to
have uniformity for the definition of finance lease.

105 CHAIR SPRINGER: Carries bill over for further consideration.

HB 3577: Provides that Children's Services Division shall not require
parents
to relinquish legal custody of child in order to have child placed
in
foster home, group home or institutional child care.

WITNESSES: REP. KATE BROWN, DISTRICT 16
JIM WRIGLEY, LEGAL AID

122 QUIGLEY: Reviews bill and -3 amendments (EXHIBIT N).

139 REP. KATE BROWN: Testifies in support of the bill. Reviews
A.G.
opinion and background (EXHIBITS M,O). I have several concerns.
- The opinion seems to address the original bill, not the amended
version.
- The memo doesn't address that Colorado and other states are already
doing this.
- The number of children eligible for Title E funding are few and it
is
worth the risk to allow these parents keep custody of the children.

159 JIM WRIGLEY, LEGAL AID: Testifies in support of the bill. Federal
law
specifically states that voluntary placements are allowed, and I have
been in touch with the Health and Human Services Department which
supports this good faith effort. It is unlikely that there would be
severe penalties if there was something wrong. Offers amendments
(EXHIBIT N).

190 NANCY SIMMONS, ATTORNEY GENERAL: Submits and reviews written
testimony
with concerns about the bill (EXHIBIT P). My written comments address
the earlier version of the bill. I believe the amendments address the
problems with the bill, with the exception of the use of "relinquish."
Relinquishment refers to the permanent surrender of custody by a
parent,
so I recommend "give up" or "transfer."

- I didn't address Colorado because it doesn't matter what other states are doing. They have not been audited and that is the bottom line.
- I agree that there are a small number of children involved, and they must be welfare eligible.
- I don't advise the agency on policy decisions, merely all the possible legal ramifications of a given action.

284 REP. BROWN: Muriel Goldman asked that I remind the members that last session the Family Support Act which tries to keep families together as much as possible and this bill also does this.

MOTION: Sen. Shoemaker moves to amend the -A3 amendments on line 5 to change the word, "relinquish" to "transfer" and to adopt the -A3 amendments.

VOTE: Hearing no objection, Chair springer so moved.

MOTION: Sen. Shoemaker moves HB 3577 to the Floor with a "do pass" recommendation.

VOTE: The motion passes, 4 - 0. Sen. Webber and Rasmussen excused. Sen. Hamby will carry the bill.

315 CHAIR SPRINGER: Carries over HB 2386.

HB 2083 WORK SESSION:

MOTION: Sen. Hamby moves HB 2083 to the Floor with a "do pass" recommendation.

VOTE: The motion passes 4 - 0. Sen. Webber and Rasmussen excused. Sen. Shoemaker to carry.

337 SEN. SPRINGER adjourns the meeting.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

A - Testimony, HB 2386, Slottee, 3 pgs.
B - Testimony, HB 2386, Wood, 2 pgs.
C - Constitution, HB 2386, Burns, 1 pg.
D - Testimony, HB 3601, Perry, 1 pg.
E - Testimony, HB 3601, Duyck, 2 pgs.

F - Executive Appointment background, Galaviz-Stoller, 8 pgs.
G - Testimony, HB 2083, Linden, 7 pgs.
H - Memo, HB 2083, Holmes, 1 pg.
I - Proposed amendments, HB 2380, staff, 2 pgs.
J - Proposed amendments, HB 2380, staff, 5 pgs.
K - Proposed amendments, HB 2543, staff, 1 pg.
L - Testimony, HB 2543, Leisure, 3 pgs.
M - AG memo, HB 3577, Simmons, 10 pgs.
N - Proposed amendments, HB 3577, Wrigley, 6 pgs.
O - Memo, HB 3577, Brown, 18 pgs.
P - AG opinion, HB 3577, Simmons, 2 pgs.