



131 VOTE: 8-0 Motion passes. Rep. Mannix to carry.

AYE: Brian, Clark, Edmunson, Johnson, Mannix, Miller, Bell, Baum NO: 0  
EXCUSED:

SB 402 - OREGON CONTROL SHARE ACT - PUBLIC HEARING 145 GREG CHAIMOV:  
EXHIBIT A Summarizes SB 402. Deletes unintended statutory  
crossreferences from the Oregon Control Share Act.

SB 402 - OREGON CONTROL SHARE ACT - WORK SESSION House Judiciarg  
Committee February 18, 1991 - Page 3 174 MOTION, REP. MILLER: Moves SB  
402 to Full Committee with a "do pass" recommendation. 175 VOTE: 8-0  
Motion passes. Rep. Baum to carry.

AYE: Brian, Clark, Edmunson, Johnson, Mannix, Miller, Bell, Baum NO: 0  
EXCUSED:

HB 2459 - ACCIDENT REPORTS FOR COMMERCIAL PURPOSES - PUBLIC HEARING

Witnesses: . Stevie Remington, American Civil Liberties Union Thomas  
Howe, Attorney William J. Birhanzl, Data-Flo Bob Olson, Oregon State Bar  
Charles Burt, Oregon State Bar Mr. Shoemaker, Accident Victim Lawrence  
Wolbbrock, Oregon Trial Lawyers Association Carl Meyers, Oregon State  
Bar William Berkshire, Attorney Errol Lindstrom, Accident Victim Lilly  
Lindstrom, Accident Victim

199 GREG CHAIMOV: Summarizes HB 2459.

210 STEVIE REMINGTON, AMERICAN CIVIL LIBERTIES UNION: EXHIBIT B Speaks  
in favor of HB 2459 with some reservations. Is concerned about the  
privacy for personal information that is submitted to government for  
purposes of gaining a benefit or because they are required to do so.  
About the same time that Congress enacted the Freedom of Information Act  
Congress also enacted the Privacy Act. Oregon lacks that kind of  
statutory provision to protect personal information. HB 2459 is but a  
tip of the iceberg. Talks about Exhibit B, Information America  
publication. Other companies also practice in dissemination of  
information.

276 REP. CLARK: Is surprised that the ACLU supports HB 2459. Isn't  
there a tension with this bill and the tenants of the ACLU?

285 REMINGTON: Yes, just as there is a tension between the Free  
Exercise Clause and the Establishment Clause. The ACLU is concerned  
about the privacy of personal information. Believes that the bill makes  
a distinction on the content of speech and will most likely be struck  
down on constitutional grounds. As long as consent to dissemination of  
this information is

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proceedings, please refer to the tapes. House Judiciary Committee  
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present then that is all right.

324 REP. EDMUNSON: Refers to HB 2459-2. EXHIBIT C. Defines  
"commercial purposes" as including the bse of accident reports for  
solicitation of clients by an attorney." That would appear to address

your concern that commercial purpose be in the context of invading one's privacy or contacting someone as opposed to simply using it for commercial purposes. 330 REMINGTON: Hopes that the HB 2459-2 amendments would prohibit other people from contacting the individual for purposes other than commercial. 384 THOMAS HOWE, ATTORNEY FOR ACCIDENT VICTIMS: 90% of these cases settle out of court. The important point is that we as attorneys have to put on the outside of these pamphlets the word "advertisement." That is what is important.

TAPE 27, SIDE A

027 REP. MANNIX: HB 2459 does not make it illegal to communicate with accident victims. HB 2459 attempts to prevent the means of dissemination of accident information. 033 HOWE: Mailing will still happen, but the reports are the main source of information for mailing. As a result, a lot of accident victims will suffer. 039 REP. EDMUNSON: Do you agree that a simple filing of an accident report required by law is a private act or that by its very nature essentially opens up that record to public scrutiny? 046 HOWE: Thinks it is public information. 048 REP. EDMUNSON: Do you think that a person who files for divorce and goes into court where very private affairs are being discussed becomes a public figure? 052 HOWE: Any court proceedings are open to the public. 057 REP. EDMUNSON: Are you aware of the Firestone case with respect to burden of proof in libel actions? Encourages Mr. Howe to review that case. 063 HOWE: Relies on Shapiro v. Kentucky for authority. 065 REP. EDMUNSON: That case dealt only with the action of solicitation of an attorney, not with the rights of privacy. 073 REP. MILLER: If you opposed the DMV not revealing this information would you oppose a significant charging for the release of this information. House Judiciary Committee February 18, 1991 - Page 5 079 HOWE: It costs \$.24 a report and \$800 a month. If a significant charge is a compromise position to enable attorneys to continue to use this information then he is all for it. 095 BILL BIRHANZL, DATA-FLO: EXHIBIT B Opposes HB 2459. Reads from Exhibit -Responding to ACLU's support of HB 2459 --In 1983 the ACLU supported SB 36 which dealt with confidentiality of police accident reports. The ACLU supported access to accident reports. Oregon's public records law exempts release of information that would constitute an unreasonable invasion of privacy. This should be enough to protect against the dangers that HB 2459 attempts to deal with.

130 REP. MILLER: As between prohibiting the practice of being able to obtain this information for commercial purposes or being charged more for it do you have a preference? 135 BIRHANZL: Public records should be available to the people at actual cost. Is against charging more than actual costs. 153 REP. MILLER: What agencies are charging more than actual costs for the information? 163 BIRHANZL: Troutdale Police department is one. Oregon City is \$10, Clackamas County Sheriff's Department is \$12. 165 REP. MILLER: They would suggest to you that that fee is clearly over their cost? 174 REP. BELL: When Mr. Howe testified he indicated that his main interest was in serving the victims. Who do you service? 181 BIRHANZL: Provides this information to different groups of people.

185 BIRHANZL: Reads from memorandum. Exhibit B.

238 REP. CLARK: Privileges and Immunities Clause in the Oregon state constitution and the Federal Equal Protection Clause are not synonymous anymore. 267 BIRHANZL: Continues to read from Exhibit B.

367 BOB OLSON, OREGON STATE BAR: The Bar's general response is to favor

reasonable restrictions on abusive direct mail solicitation. The Bar is working on ways of providing more generic information to the public on the issue of accident victim's rights.

376 CHARLES BURT, PROCEDURE AND PRACTICES COMMITTEE WITH THE OREGON STATE BAR: The Committee is in favor of this type of legislation. Direct mailing is a bad practice. . . 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. -  
~ . House Judiciary Committee February 18, 1991 - Page 6 TAPE 26, SIDE B

019 REP. EDMUNSON: Are you concerned with the constitutionality of HB 2459?

020 BURT: Has no concern about constitutionality.

024 MR. SHOEMAKER, ACCIDENT VICTIM: Testifies about his personal experiences. Received a direct mailing that contained information about the accident he was involved in. Was offended that some attorney should know all about the accident.

040 REP. BRIAN: Would it have offended you if it had been from a non-profit group or local politician? 041 SHOEMAKER: Yes.

050 REP. MILLER: If the letter you received was clearly stamped advertisement would you have opened it anyway?

058 SHOEMAKER: Yes. Not offended by the advertising, but by the fact that the attorney knew so much about his own situation.

067 REP. BAUM: There is a potential that someone could get killed in an auto accident and their parents or spouse could be notified by an attorney attempting to solicit business instead of the authorities or someone else.

069 REP. BELL: Asks whether the advertising stamp would make any difference since what is most offensive is the fact that this information is known by somebody else.

078 REP. EDMUNSON: Did you learn anything from these letters in terms of your legal rights? 080 SHOEMAKER: No.

084 REP. MILLER: After you got injured and sought counsel how did you obtain that counsel?

086 SHOEMAKER: Looked in the yellow pages. Already knew the attorney.

089 REP. MILLER: Did that attorney have an advertisement in the yellow pages? 091 SHOEMAKER: No. Only his name. 093 LAWRENCE WOLBBROCK, OREGON TRIAL LAWYERS ASSOCIATION: EXHIBITS E and F. House Judiciary Committee February 18, 1991- Page 7

-Accident reports are kept private, why not the DMV reports? Doesn't that rationale apply to both? OTLA strongly supports HB 2459.

165 REP. MILLER: Does your organization also condemn television advertising and the yellow pages advertising?

167 WOLBBROCK: The OTLA has recently formed a task force to look into television advertising and yellow pages advertizing.

180 REP. MILLER: My concern is with the less sophisticated avenue of advertizing such as an introductory advertizing. Do you want to ban this type of advertizing as well?

192 WOLBBROCK: Dislikes any form of lawyer advertizing.

200 REP. EDMUNSON: Concerning the letter by Teenya Sherrod. See Exhibit F Could this type of lawyer advertizing give rise to civil damages under the theory of negligent infliction of emotional distress?

223 WOLBBROCK: As far as he knows the Oregon Supreme Court has not recognized the negligent infliction of emotional distress.

230 REP. EDMUNSON: Do you think that enactment of HB 2459 would in any way affect that question? 232 WOLBBROCK: Very possibly. If the people knew that as soon as they report everything that has happened with them to a police officer that that information is going to be made public, people are not going to be as willing to give out that information. The trial lawyer's position would be that solicitation should be prohibited, period. At least the state should not be involved in this business. 297 CARL MEYERS, OREGON STATE BAR: The Bar Association promotes the information to the public concerning their rights. However, by less intrusive ways. If information is to be made available it should be made available to all.

330 WILLIAM C. BERKSHIRE, ATTORNEY: EXHIBIT G

334 ERROL LINDSTROM, ACCIDENT VICTIM: Testifies about his personal experience in an automobile accident and the receipt of direct mailing. Supports Direct Mail Advertising. Without it he would not have known about his rights.

365 LILLY LINDSTROM, ACCIDENT VICTIM: Testifies about her personal experience.

- 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. . . House Judiciary Committee February 18, 1991 - Page 8 376 BERKSHIRE: There is a little confusion as to how people get this information. Describes the process of obtaining the information. The information is in bulk form. The state does not make any money and it does not lose any money. They are only police accident reports, not those filed by individuals. There is a need for this type of advertizing. The number of people that have complained to me is very small compared to the people who have called up and said that they liked receiving this information.

TAPE 27, SIDE B

021 REP. MILLER: If we arrived at a situation where individual attorneys cannot relate so freely with accident victims, but rather the Oregon State Bar sent them a letter advising them of their rights and opportunities, would you support that? 027 BERKSHIRE: In the event that HB 2459 should pass then yes. 030 REP. MILLER: Would that be preferable to individual attorneys seizing on the moment of the accident? 035 BERKSHIRE: The problem with generic information to the

public is that it provides no information about who to call.

067 REP. BELL: The previous victim did state that the advertisement did not tell him that the information was about him. Does not think Berkshire's comments are valid.

073 BERKSHIRE: Does not send out advertisement that speaks specifically about the person. .. 075 REP. BELL: Some of the letters are very specific. 078 BERKSHIRE: Still, people do not have to open that information up.

080 REP. BELL: What if there were pornography inside?

082 BERKSHIRE: Believes in freedom of speech. HB 2459 - ACCIDENT REPORTS - WORK SESSION

087 MOTION, REP. MANNIX: Moves the hand engrossed HB 2459-2 amendments. EXHIBIT C The thrust of the amendments is to take "commercial" out of the bill and insert "invasion of individual privacy." DISCUSSION ON THE MOTION

. House Judiciary Committee February 18, 1991 - Page 9 155 REP. CLARK: Is there really any difference between section 3, line 12 of HB 2459-2 which states "to contact any person for commercial purposes" and your phrase "to contact any person for purpose of soliciting a customer/client or patient." 166 REP. MANNIX: Thinks it does. It is a more specific limitation than before. 179 REP. CLARK: If the Committee can state what the State's purpose of having the records in the first place is then it seems that a provision could be made that a person commits this offense if he or she uses the records for purposes other than the stated purpose with some listed exceptions. 212 REP. BELL: Thinks it would create a problem. This still allows for the records brokers to go in and get all the records to sell out to people. 218 REP. MANNIX: Thought we needed to exempt the press. 236 REP. BELL: What if we said, for the invasion of individual privacy, either "directly or indirectly."

240 MOTION, REP. MANNIX: Withdraws his previous motion. Moves HB 2459-2 amendments. See Exhibit C 264 VOTE: No objection. Motion passes. - 265 MOTION, REP. MANNIX: Moves 2 technical changes to HB 2459-2 amendments. On line 18 where it says "of accident reports" substitute "of division records.. On line 19 where it says "does not include use of accident reports" substitute "of division records."

273 VOTE: No objection. Motion passes. 279 MOTION, REP. MANNIX: Moves to amend HB 2459-2 amendments on line 24 to read "by persons involved in an accident, attorneys representing such persons, or insurers of such persons." DISCUSSION ON THE MOTION 337 REP. BRIAN: Is the phrase "individual privacy" no longer in use? 339 REP. MANNIX: No. 373 VOTE: No objection. Motion passes. House Judiciary Committee February 18, 1991 - Page 10 . 376 MOTION, REP. MANNIX: Moves that an emergency clause be added to the bill. 378 VOTE: No objection. Motion passes. 379 MOTION, REP. MANNIX: Moves HB 2459 as amended to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION 383 REP. BELL: Is worried about the potential commercialization of people's misfortunes if HB 2459 does not pass. 397 REP. MANNIX: Did not hear a convincing case for this practice. Supports HB 2459 as amended 414 VOTE: 8-0 Motion passes. Rep. Mannix to carry.

