

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

March 25, 1991 Hearing Room 357 1:00 p.m. Tapes 59 - 60
MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix
Rep. Randy Miller VISITING MEMBER: Rep. Larry Sowa, District 26 STAFF
PRESENT: Greg Chaimov, Committee Counsel Jeff Steve, Committee
Assistant

MEASURES HEARD: HB 2363 - Commissions to Resident Salespersons (PH)
SB 395 - Modernizing Judgement Statutes (PH/WS) HB 2662 - Enforcing
Restraining Orders From Other States (PH/WS) HB 2594 - Vaccine Injury
Act (WS)

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.

TAPE 59, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial
Administration at 1:00 p.m.

HB 2363 - COMMISSIONS TO RESIDENT SALESPERSONS - PUBLIC HEARING

Witnesses:

Bruce Rose, Bureau of Wholesale Sales Representatives Representative
Larry Sowa, District 26 Gill Thomas, Self

010 JIM DOLE: Summarizes HB 2363. Requires foreign companies to pay
commissions owed to resident sales representatives within 14 days of
termination of the contract between the parties. 025 BRUCE ROSE, THE
BUREAU OF WHOLESALE SALES REPRESENTATIVES: EXHIBIT A. Reads from Exhibit
A. House Committee on Judiciary March 25, 1991 - Page 2

089 REP. MILLER: You mentioned that 29 other states have statutes
similar to HB 2363. Are those statutes or proposals? 092 ROSE:
These are statutes that are in effect now. 096 REP. MILLER: Do most of
them contain the treble damages provisions that you mentioned?

106 ROSE: Cannot answer that. Doubts that any are less than double.

119 REP. MILLER: What is the extent of the problem in this state?

125 ROSE: In his industry, it is a very common practice. It is also
very difficult for salesmen to press any charges against the foreign
company for failure to pay because the salesman does not have the time.

132 REP. MILLER: Understands that it is part of the practical dilemma
of the industry and that if you cause trouble for a well known brand the
chances are that the well known brand is still going to be sold and
someone else is going to get whatever commission even though it is not
necessarily the full agreed upon commission.

136 ROSE: What happens more often than not is the sales representative

invests his time and money in opening the account and establishing relations. It is not uncommon for the manufacturer to take over the account or fire the representative. The representative has no ongoing residual order to count on. 149 REP. EDMUNSON: You talk on page 2 of Exhibit A concerning the independent contractor situation where principles often use independent contracts to avoid employment and employer obligations when in fact Oregon has changed the law of independent contractors and if you are a "servant" under the common law test you probably are also an employee under Oregon law. There may be protection there for you.

158 ROSE: Testimony was developed in Atlanta. 165 REPRESENTATIVE LARRY SOWA, DISTRICT 26: Is here to support passage of HB 236 3.
177 GILL THOMAS, REPRESENTING SELF: EXHIBIT B Testifies in favor of HB 2363. Recommends a few amendments. It is a fairly common practice in his industry, home improvement sales, that when you leave the firm you lose all your commissions. This is always held over your head. A salesman cannot collect unless the sale transaction is completed. If he quits the company, under current law, he will never see his commission.
237 REP. CLARK: Refers to Section 2, line 20 of HB 2363 it says, "the principle shall pay the sales representative all commissions accrued under the contract to the sales representative within 14 days after the date of termination. Is it the intent of Section 2 to move the 14 days up in priority over what the agreement would normally be namely, that payment would not occur until a specified event down the line.
256 THOMAS: With the type of sales that he does, 14 days after the job has been paid for is a

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reasonable time to get paid. 267 REP. CLARK: Other kinds of commission may not all be due and payable by the time the 14 days has run. 263 ROSE: Would have no objection to changing the provision to read "when the commissions are due and payable." 266 REP. CLARK: Either " 14 days after the effective date of termination or when the commissions are entirely payable whichever is earlier." 281 THOMAS: Was told that this was the bill that addressed his business. Suggests amending HB 2363 to include other than wholesale sales. 299 REP. MILLER: Once you have engaged in a lawsuit with a manufacturer what are your prospects of employment with other manufacturers? As a practical matter, this may be a potential problem. 314 THOMAS: A manufacturer has nothing to lose by hiring you. They won't pay you until you begin making sales. SB 395 - JUDGEMENT STATUTES - PUBLIC HEARING Witnesses: William Linden, State Court Administrator 345 CHAIMOV: Summarizes SB 395. Modernizes the statutes about judgements by (1) replacing obsolete language with current terms and (2) applying some civil procedure rules to small claims judgements. 373 BILL LINDEN, STATE COURT ADMINISTRATOR: EXHIBIT C Reads from Exhibit C TAPE 60, SIDE A 007 REP. EDMUNSON: Do you have a position on whether interest should accrue on claims prior to the time judgement is entered? 008 LINDEN: Does not have a position on that. SB 395 - JUDGEMENT STATUTES - WORK SESSION 038 MOTION, REP. MILLER: Moves to SB 395 to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION 040 REP. JOHNSON: What does "OJIS" stand for and how does it relate to what we are doing here? House Conunittee on Judiciary March 25, 1991- Page 4

050 LINDEN: The OJIS system is the courts automated system. The judgement dockets are maintained on OJIS. SB 395 does not affect that records keeping function. It does get rid of some obsolete references to records we no longer keep.

074 VOTE: 8-0 Motion passes. Rep. Miller to carry.

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

HB 2662 - ENFORCING FOREIGN RESTRAINING ORDERS - PUBLIC HEARING

Witnesses:

Representative Kevin Mannix, District 32 Kate Brown, Women's Rights Coalition Vietta Helme, Women's Rights Coalition William Linden, State Court Administrator Russ Spencer, Oregon State Sheriff's Association

085 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testifies in favor of HB 2363. The bill arose out of testimony last session. One woman came to Oregon from another state with a restraining order. She thought that she was protected by that. Such was not the case. Under current law a foreign restraining order is only effective if it is filed in the Oregon courts. You cannot simply show the foreign restraining order to an Oregon police officer and have it be enforced. HB 2662 simply allows restraining orders to be effective for 30 days after a person comes into the state. This gives full faith and credit to the restraining order of another jurisdiction. After 30 days, then the person would have to file with the state of Oregon for continued protection. Supports the amendments from the Oregon Judicial Department.

130 REP. JOHNSON: What is the magic about the "30 days."

131 REP. MANNIX: There is no magic to that. Did want to set a time limit. Thirty days should be enough time for a person to make contact with state authorities. 139 REP. JOHNSON: You would not have to retry the original circumstances that lead to the restraining order, but would simply file the restraining order in Oregon?

142 REP. MANNIX: Yes.

143 REP. JOHNSON: With respect to full faith and credit, how does that work on a reciprocal basis? How many other states would allow Oregon residents to have the same privileges?

145 REP. MANNIX: Tried to find law on reciprocity, but found none. We are not getting reciprocity from other states by doing this, but at least we can protect those within our boarders. 156 REP. CLARK: Currently, a person does not have to be a resident to fall under the Oregon House Committee on Judiciary March 25, 1991 Page 5

Family Abuse Act do they?

159 REP. MANNIX: That is right.

160 REP. CLARK: Theoretically, if a person knew about the Family Abuse Protection Act as soon as they came to the state they could get an Oregon restraining order. HB 2662 just extends protection for a period of time until the person can get help and possibly apply for protection under the Act. Is that right?

165 REP. MANNIX: Yes. HB 2662 specifically addresses the scenario where a woman crosses the state line, is followed by someone trying to harass her and she can find no protection from the Oregon police because her restraining order against the person is from out of state.

170 REP. CLARK: Concerned about the provision in HB 2662, lines 11-12 page 3, which makes it a Class A misdemeanor to lie about residency. Suggests broadening HB 266 2 and say " 30 days under any circumstances." See page 2, Section 4(a). 191 CHAIMOV: Section 1 of HB 2662 refers to restraining orders. Is that intended to cover only domestic disputes or also other restraining orders? 198 REP. MANNIX: Checks on that.

204 KATE BROWN, WOMEN'S RIGHTS COALITION: Testifies in favor HB 2662. Supports Rep. Clark's suggestion at 170 supra. 214 VIETTA HELME, WOMEN'S RIGHTS COALITION: EXHIBIT D

234 REP. MANNIX: Answers counsel's previous question. The intention on line 6, page 1 was intended to protect "the person" as opposed to corporations or other entities.

250 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: EXHIBIT E Reads from proposed amendments. See Exhibit E. There is no filing fee for this restraining order.

284 REP. JOHNSON: What various forms do these protective orders take in the fifty states? What do they look like? Is there uniformity?

290 LINDEN: Does not know that there is any uniformity.

296 REP. JOHNSON: Wonders if the policeman will be able to tell every time whether the piece of paper presented to him is a legitimate foreign protective order.

301 LINDEN: It is a judgement call on their part.

308 REP. JOHNSON: If a policeman made an error do you think it would be appropriate to give the policeman some protection against lawsuits.

315 LINDEN: Section 3, page 3 of HB 2662 allows for limited immunity to the police officer who reasonably believes the restraining order is valid.

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325 CHAIR BAUM: Section 4 provides for criminal penalties for a person who knowingly lies about the validity of the restraining order.

331 REP. JOHNSON: If there was "nonaction" and it turned out that the restraining order was real and the person got beat up. Is there anything that protects the police officer in that case. 341 REP. MANNIX: That is a concern that any offcer has any time during his or her normal duty.

360 REP. JOHNSON: It is hard to require an officer to be familiar with restraining orders from 49 other states. It may not be reasonable to expect the officer to make a reasonable judgement if he or she is not familiar with the other restraining orders. 368 REP. MANNIX: On page 2, line 5 "restraining order" is defined as "a judgment, decree, or order restraining a person from molesting, menacing, abusing, harassing, intimidating, communicating with, telephoning, etc. The offcer can rely

on that criteria to determine whether the document is valid. 382REP.
JOHNSON: Still concerned about the policeman out there trying to second
guess. 385 REP. BRIAN: HB 2662 slightly weights the officer's
decision towards enforcing a restraining order that is presented to
them. Thinks this is good.

TAPE 59, SIDE B

005 REP. BELL: How many times do we find individuals with invalid
restraining orders.

008 REP. MANNIX: Not aware of counterfeiting restraining orders.

020 REP. BELL: Is there any situation where a spouse would use a
counterfeit restraining order to keep a child away from a spouse who is
not abusive.

024 REP. JOHNSON: The question is whether there are any instate
Oregonians involved in counterfeiting. This would not apply to out of
state persons since the laws do not protect them right now anyway.

033 RUSS SPENCER, OREGON STATE SHERIFFS ASSOCIATION: Both the Oregon
State Sheriff's Association and the Oregon State Police support HB 2662.
With respect to the counterfeit restraining order, unless the document
is written in Crayola crayons the police will err on the side of
intervening and enforcing the terms of the restraining order.

HB 2662 - ENFORCING RESTRAINING ORDERS - WORK SESSION 069 MOTION,
REP. MANNIX: Moves to adopt amendments of the Judicial Department See
Exhibit E. 075 VOTE: No objection. Motion passes. 076 MOTION, REP.
MANNIX: Moves to amend HB 2662 on line 6, page 1 change the words House
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"move to" to "arrival in". Also, on page 2, line 40 change "resided" to
"been located". - Also, on page 3, line 11 change "resided" to
"been located". 102 VOTE: No objection. Motion passes. 103 REP.
MANNIX: Moves HB 2662 as amended to Full Committee with a "do pass"
recommendation. 115 VOTE: 8-0 Motion passes. Rep. Mannix to carry.

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

HB 2594 - WORK SESSION

Witnesses:

Charles Williamson, Oregon trial Lawyer's Association Scott Gallant,
Oregon Health Association Art Keil, Oregon Health Division 128 GREG
CHAIMOV: EXHIBIT F Summarizes HB 2594. Sumarizes HB 2594-1 Amendments.
158 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: EXHIBIT G
Suggests some amendments. Directs attention to line 3 of Exhibit G to
the inclusion of "or incompetent." The federal law allows a tolling or
delay in the statute of limitations while the case is being processed.
The amendments between lines 23 and 24 makes it clear that HB 2594 does
not have any effect on the statute of limitations. 189 SCOTT GALLANT,
OREGON HEALTH ASSOCIATION: Comments on the "noneconomic damages" on
lines 38-39, page 2, Section 4(2) is intended to be a total cap for
non-economic damages of \$250,000. 200 WILLIAMSON: All these cases have
to go through the federal system first. Under the federal system there
is a provision for attorneys fees. It is very unlikely that a person is

going to go through the federal system and want to pursue an action in Oregon. Under the federal system you do not have to show fault. If a person did decide to bring an action in Oregon they would have to prove fault of the vaccine administrator. The main time a person would bring a case in Oregon is when the person had received nothing in the federal system. -The fear is that if we raised the cap to \$500,000 there would be incentive for injured people to ignore the federal award and risk having to prove fault and pay their attorney in order to bring the case in Oregon. This \$250,000 cap really is needed. 236 GALLANT: Would support an amendment to restrict attorney fees in state proceedings to \$30,000. 253 REP. EDMUNSON: It would be rare to see a fee in excess of \$30,000 except in very complex

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litigation. Most of the time the fees are going to fall far below that.

275 REP. BRIAN: To Mr. Williamson: You mentioned that in the federal action you would not have to prove fault. If they were dissatisfied then they could go to state court.

277 WILLIAMSON: They can choose to come to the state courts and sue in state court and prove fault. 280 REP. BRIAN: If a person cannot get a finding in a no fault situation what would the circumstances be to cause the person to bring the case in state court where they have to prove fault?

288 WILLIAMSON: They are finding that the federal system is very difficult. The fault issue is not that hotly contested in federal cases. One could lose the case in federal court on a causation basis and still win the case in a state court proceeding on the fault issue.

303 REP. BRIAN: Is it possible under the federal and state statutes to obtain satisfaction at the federal level and then seek it on the state level?

305 WILLIAMSON: Yes

312 REP. EDMUNSON: Was notified by counsel that the federal statutes simply provide for reasonable attorneys fees. Suggests that on the state level there should be an award for reasonable attorneys fees.

316 GALLANT: No one ever had a concern about attorneys' fees before today.

334 WILLIAMSON: His clients would probably choose to have attorney fees be added on to the award rather than have to pay the attorney a percentage or "reasonable fee."

364 ART KEIL, OREGON HEALTH DIVISION: Supports HB 2594.

374 REP. JOHNSON: Unclear whether a person has the luxury of bringing suit in both federal and state court.

381 WILLIAMSON: The person could not accept the federal award and also sue in state court. 386 REP. JOHNSON: Suggests that there should be an election of forum provision to prevent this kind of jumping around to different courts if a person fails in the federal forum.

394 WILLIAMSON: The federal system requires that persons go through their proceedings first.

400 REP. JOHNSON: To Mr. Gallant: Are you comfortable with the \$250,000 limitation? 406GALLANT: We are comfortable with the language as it is in HB 2594. TAPE 60, SIDE B

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006 MOTION, REP. EDMUNSON: Moves to amend HB 2549-1 amendments See Exhibit F in line 3, page 1 insert after "minor" the words "or incompetent". 010 VOTE: No objection. Motion passes.

011 MOTION, REP. EDMUNSON: Moves HB 2594-1 amendments as amended to HB 259 4. 013 VOTE: No objection. Motion passes.

014 MOTION, REP. EDMUNSON: Moves HB 2594 as amended to Full Committee with a

"do pass" recommendation. 027 VOTE: 8-0 Motion passes. Rep. Edmunson to carry

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

031 CHAIR BAUM: Adjourns Civil Law Subcommittee at 2 27 p.m

Submitted by: Reviewed by: J. Kennedy Steve,
Assistant David Harrell, Office Manager

EXHIBIT LOG:

A Testimony on HB 2363 - Bruce Rose - 5 pages B Written Material on HB 2363 - Gill Thomas - 6 pages C Testimony on SB 395 - William Linden - 9 pages D Testimony on HB 2662 - Vietta Helm - 1 page E Testimony on HB 2662 - William Linden - 8 pages F Amendment to HB 2594 - Greg Chaimov - 4 pages G Amendment to HB 2594 - Charles Williamson - 2 pages

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