

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 COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

April 1, 1991Hearing Room 357 1:00 p.m.Tapes 65 - 67

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

STAFF PRESENT: Greg Chaimov, Committee Counsel Jeff Steve,
Committee Assistant

MEASURES HEARD:HB 2010 PH/WS HB 3304 PH SB 61 PH/WS HB 2037 PH

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TAPE 65, SIDE A

005 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial Administration at 1:30 p.m.

HB 2010 - PUBLIC HEARING Witnesses:Jim Markee, Oregon Collectors Association Kenneth Ryder, Oregon Collectors Association Roy Newman, Oregon Collectors Association Ron Smith, Oregon Process Servers William Linden, State Court Administrator David Nebel, Oregon Legal Services

012 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Refers to HB 2010-1 amendments (EXHIBIT A).

HB 2010 would allow an individual to institute a lawsuit by service of summons, personal service only. The defendant would have 14 days to respond and would be given notice to that effect. If the defendant did not respond within those 14 days, the papers would be filed with the court and the case would proceed as a normal lawsuit.

Believes debtors would respond to this process, which would avoid filing fees. This type of legislation is in effect in 17 other states and works fairly well. This should reduce court filings.

041 KENNETH RYDER, LEGAL ANALYST FOR OREGON COLLECTORS ASSOCIATION: With

respect to the notice provision on page 2, line 25 of HB 2010 we find that there is a mandatory statement on line 34 that says the court will enter a judgement against you. Would like to negotiate that because if the small claims complaint or district court complaint is to be initially served on a defendant, a judgement will not be entered if an appearance is not filed within 14 days.

Would like an agreement that a judgement would not necessarily be entered, but may be entered if proper procedures have been followed and an appearance has not been filed after the actual commencement of the suit through the filing.

HB 2010-1 amendments, line 20 contains a procedure for the court clerk to enter a register number on a filing received by a defendant in response to the complaint prior to the complaint's actual formal filing with the court. That could be extended to the small claims proceeding as well.

Believes that the consumer will gain substantially through passage of HB 2010 by saving substantial filing fees.

067 ROY NEWMAN, OREGON COLLECTORS ASSOCIATION: Three main advantages to the

passage of HB 2010: 1. The consumer defendant will have the opportunity, once served with the summons and complaint, to negotiate the case without having to pay the filing fees 2. The plaintiff would not have to pay the filing fee up front. 3. The court would be able to eliminate paper work.

085 MARKEE: Oregon has a Fair Debt Practices Act and there is also a Federal Fair Debt Practices Act. Under both of those Acts, no creditor can threaten to do anything that they don't intend to do. Once these papers are served to a defendant, and if he does not respond in the 14 days, the creditor has no course of action other than to file them in District Court. The only revenue lost to the courts would be on those cases that are taken out of the system.

096 CHAIR BAUM: There must be a lot of filing fees in the Small Claims Court that are not reimbursed when the judgement occurs. Is that one of the problems that the collectors face?

100 MARKEE: That happens occasionally.

105 CHAIR BAUM: The only way you will save yourselves or the court money is if some of these cases that would have gone uncollected are disposed of prior to the actual filing in court.

Are you saying that your collection people are going to make a determination in the 14 day period whether or not you can collect?

110 MARKEE: There are two kinds of situations where the case will never go to court: 1. Where the debtor is motivated by getting the papers and actually makes arrangements to pay prior to the 14 days running. We believe that number will be substantial. 2. Where the defendant is never found.

123 REP. EDMUNSON: The filing fees are recovered at the end of a successful action. Does the judgement include the filing fees?

127 MARKEE: Yes.

129 REP. EDMUNSON: Under this system the debtor would not have to pay as much.

150 RON SMITH, OREGON PROCESS SERVERS ASSOCIATION: Concurrs with what was previously said by Mr. Markee. 10% of all process is returned to the court "not found". This is often due to people moving from the area. HB 2010 would speed up the process and ensure greater success in service.

166 BILL LINDEN, STATE COURT ADMINISTRATOR: Submits and reads (EXHIBIT B).

273 CHAIR BAUM: If this is a bad idea, why have 17 other states adopted the practice?

277 LINDEN: Does not think it is good public policy to extend the judicial process to private parties.

282 REP. CLARK: Is it illegal under current Oregon law to send a draft copy of the complaint to the debtor and say this is what will be filed against you in two weeks unless we can work something out?

287 NEBEL: No, but sending something that is not designated "draft" is illegal. The better practice would be to use it with opposing counsel, but not with opposing parties.

300 REP. MILLER: Agrees with Rep. Clark.

315 REP. EDMUNSON: Would you feel more comfortable if the document the proponents talked about had big red letters on it stating it is not a complaint?

342 NEBEL: That would make the whole process even more confusing.

HB 2010 - COMMENCEMENT OF SMALL CLAIMS ACTIONS - WORK SESSION

TAPE 66, SIDE A

042 REP. CLARK: Wants more time to think about HB 2010.

HB 3304 - VEHICLE FORFEITURE PILOT PROGRAM - PUBLIC HEARING
Witnesses: Rep. Ted Calouri Judge William Keys, Multnomah County District Court Fred Lanzer, Multnomah County District Attorney Jim Hunter, Department of Motor Vehicles David Fidanque, American Civil Liberties Union Paul Romain, Oregon Beer and Wine Distributors Marie Brown, MADD Al Elkins, Oregon Tow Truck Association Gary Coe, Speed's Towing Frank Brawner, Oregon Bankers Association

050 REP. TED CALOURI: Presents (EXHIBIT D) and (EXHIBIT E).

Speaks in favor of HB 3304. The objectives of HB 3304 are directed toward people who drive cars while their license is suspended when the reason for suspension was DUII.

144 REP. MANNIX: What percent of those presently cited for driving while suspended were convicted of drunk driving?

148 JUDGE WILLIAM J. KEYS, MULTNOMAH COUNTY DISTRICT COURT: Fifty

percent of felony driving while suspended cases. About 4,000 per year. Gives history behind HB 3304.

210 REP. R. JOHNSON: Understands that in Sec. 1 the driving while suspended is being changed from a felony to a Class A infraction. That is all right if the person who violates that law owns a car. What if a person rents or borrows a car? Thinks this is too lenient.

221 JUDGE KEYS: Less cases like this are coming up. When a person borrows a car the lender will lose the use of the car for up to 10 days. The lender will also have a civil cause of action against the defendant.

264 CALOURI: Agrees.

282 CHAIMOV: What would be wrong with adding "driving while suspended for drunk driving" to prohibited conduct under the current forfeiture law and use those procedures?

287 KEYS: There are a number of problems with that. 1. We are not decriminalizing the situation. 2. Local governments are going to use that vehicle forfeiture as a money raising measure. They are not willing to spend scarce municipal resources to use it as a device to change peoples behavior. HB 3304 is designed to reduce the cost as much as we can with an administrative hearing unless there is a specific request for a jury trial which is provided for and to cut down the times and the notice.

333 CHAIR BAUM: When a person falls into this scenario, is there any discretion in HB 3304 for a district judge to forfeit?

345 KEYS: If the state can show that a person has violated the law then the vehicle is forfeited, with the exception that the first time you get picked up you can get your car back if you pay \$500.

360 CHAIR BAUM: You get three chances then you lose your car?

380 CALOURI: Yes.

380 CALOURI: There is evidence that there will be savings. Urges Committee not to get bogged down by the issue of cost.

TAPE 65, SIDE B

002 REP. MILLER: The Committee endorses the policies of HB 3304.

007 REP. CLARK: The Staff Measure Summary says "Although a Class C felony is punishable by 5 years in prison, few people spend time in jail for driving with suspended licenses."

HB 3304 raises the stakes for driving while suspended. What would be the case if we had the capacity to imprison those driving while suspended as a result of drunk driving? What would be the incentive or disincentive to drive while suspended under that scenario?

022 CALOURI: It would not be the only consideration, but also a court consideration. We want to get people where it hurts.

043 KEYS: Even in a perfect world, is not sure that this is an experiment worth trying. Agrees with Calouri.

058 REP. CLARK: Supported the forfeiture bills last session. Where do you stop? This is the first time that we are asked to extend the forfeiture provisions beyond the drug context.

079 KEYS: Forfeiture would be good in this case since it applies to those who have already had a chance.

114 REP. CLARK: Would you admit that HB 3304 is an admission of failure of the criminal justice system to deal with this problem?

116 KEYS: Yes.

118 REP. EDMUNSON: This is a forfeiture bill, an in rem proceeding, and your comments appear to be pointed at the behavior of the offender rather than the offense of the property as an instrumentality of activity. Concerned that in all the forfeiture laws suggested this session the Committee not lose track of the unusual nature of these forfeiture laws. If this is a substitute criminal sanction will vote No on HB 3304.

140 KEYS: No doubt that when you talk about forfeiture you talk about an inanimate object misused by human beings.

176 REP. EDMUNSON: The distinction he makes is between in rem and in persona.

182 REP. BRIAN: If the purpose of the incarceration is not just to keep someone off the street but punishment, there are different ways to punish. One way is by economic means such as taking a person's car away. Is there the assumption that those who have had their licenses suspended because of drunk driving will, if they drive while suspended, be driving drunk?

202 KEYS: Started applying this to all felony driving while suspended cases. The Governor's office thought it was a good idea, but too broad. Subsequently narrowed HB 3304 to apply only to those individuals who had their licenses suspended while DUII.

216 REP. BRIAN: Is there an implication that this law would help with the drunk driving situation or just with the suspended driver situation?

219 KEYS: Believes every time you let people know that driving under the influence has serious consequences the chances of stopping people from drinking and driving improves.

237 REP. BRIAN: That helps to distinguish where to stop and start with forfeiture.

251 KEYS: There are legitimate philosophical questions concerning the expansion of this law into other areas. Not sure he would support extension.

Summarizes sections of HB 3304. Wants to make clear that HB 3304 does not intend to interfere with a bank's right to foreclose under any provision of their own contract even though HB 3304 does not give them the right to do that.

312 FRED LENZER, MULTNOMAH COUNTY DISTRICT ATTORNEY: Multnomah County supports HB 3304 as an effective means to enforce the law.

342 JIM HUNTER, DEPARTMENT OF MOTOR VEHICLES: Reads from (EXHIBIT F). Testifies in favor of HB 3304. Uncertain about the cost estimates and suggests limiting the geographic scope of the pilot program.

TAPE 66, SIDE B

026 HUNTER: Gary Coe has some great ideas to help save money in terms of storing the vehicles.

038 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION (ACLU): Opposes HB 3304.

Sees some constitutional violations. Section 4 which gives authorization to the police to seize these vehicles clearly violates the constitutional protection against unreasonable search and seizure. The ACLU has a problem with carrying out forfeitures outside the criminal justice process due to the fact that there may be a disproportionate penalty. If this was changed to deal with the problem in the context of a nuisance with a specific penalty that would attach to the owner of the vehicle with due process protections, thinks that would be constitutional.

Under HB 3304 there will be disproportionate penalties depending on the value of the vehicle.

105 PAUL ROMAIN, OREGON BEER AND WINE DISTRIBUTORS ASSOCIATION: HB 3304 focuses on the abusers. Supports HB 3304.

125 MARIE BROWN, MADD: Reads from (EXHIBIT G).

167 AL ELKINS, OREGON TOW TRUCK ASSOCIATION: Supports passage of HB 3304.

177 GARY COE, SPEED'S TOWING: Discusses cost savings that could be made with HB 3304.

185 REP. BRIAN: What is your opinion of DMV's proposal for a geographic pilot program?

193 COE: Estimates that 70% to 75% of the activity would happen in the greater metropolitan area. Thinks it is a good idea to have a pilot program.

206 FRANK BRAUNER, OREGON BANKERS: Supports adoption of HB 3304-1 amendment

(EXHIBIT E) and passage of HB 3304.

SB 61 - PUBLIC HEARING

219 JIM DOLE, COMMITTEE COUNSEL: Summarizes SB 61. SB 61 amends ORS 41.675

which excludes evidence of certain records relating to medical care providers. The change is intended to bring the statute up to date with federal law regulating peer review organizations under the Medicare statutes. The federal law on this does not comport with SB 61 and an amendment will probably have to be made.

SB 61 - WORK SESSION

250 REP. MANNIX: What is the particular problem with the nomenclature in SB 61?

251 DOLE: The current version of SB 61 states on lines 9-11 that "The term (data) also includes the written reports, notes, or records of utilization review and professional (standards) review organizations." The current federal statute refers to only "peer review organizations". Suggests after the first "of" in line 10, delete "utilization review and professional (standards) and insert the word "peer".

261 MOTION: REP. MANNIX: Moves adoption of amendment suggested by Counsel Jim Dole.

265 VOTE: Without objection, amendment is adopted.

268 MOTION: REP. MANNIX: Moves SB 61 as amended to Full Committee with a do pass recommendation.

275 VOTE: 6-0

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

HB 2037 - PUBLIC HEARING Witnesses: Roger Hediger, Portland Police Bureau Valencia E. Tolbert, City Attorneys Office Victor Mann, City of Eugene

284 REP. EDMUNSON: Discusses HB 2037. Should have one law in Oregon concerning forfeiture. Discusses HB 2037-1 amendments (EXHIBIT H).

341 ROGER HEDIGER, PORTLAND POLICE BUREAU: Reads from (EXHIBIT I).

TAPE 67, SIDE A

002 REP. MANNIX: Isn't the thrust of what the City of Portland does involved in forfeiture relating to the use of a motor vehicle in certain offenses, whereas what we have for the state law relates to the use rather than the nature of the crime?

007 HEDIGER: Yes. Refers to (EXHIBIT H).

023 VALENCIA E. TOLBERT, CITY ATTORNEY'S OFFICE: Reads from (EXHIBIT J) testifying in opposition to HB 2037.

049 REP. EDMUNSON: Is troubled by the tactic that these problems are exclusive to Portland. These problems are found statewide.

059 TOLBERT: Portland has more problems and deserves a higher priority in dealing with these problems.

065 REP. EDMUNSON: Thinks it should be a statewide law. If not, gamblers and prostitution rings will start up practice just outside the city limits.

072 TOLBERT: Nothing prevents other cities enacting this type of ordinance. Unfortunately, the state only wants to address the narcotics issue.

087 REP. CLARK: If HB 2037 is passed will that, in fact, prevent the

City of Portland from passing additional legislation?

091 TOLBERT: Thinks that it would invalidate Portland's forfeiture ordinance within the city code because under HB 2037 only the state could forfeit for prohibited conduct which the state has listed.

095 REP. CLARK: His experience is that cities and counties go ahead and enact laws anyway.

099 TOLBERT: Refers to testimony Judge Keys gave on HB 3304.

106 REP. MANNIX: If there was a change in HB 2037 that says that anything that is used in the commission of a crime would be subject to forfeiture would you accept this?

113 TOLBERT: Not necessarily because such language may be too broad.

117 REP. MANNIX: Is this a fairly novel area where a pilot program in a local jurisdiction could give us some more information on where to head in the future?

134 VICTOR MANN, CITY OF EUGENE: Testifies in opposition to HB 2037. Reads from (EXHIBIT K). This law serves no public safety interest.

166 CHAIR MILLER: Closes Subcommittee on Criminal Law and Corrections at 3:36 p.m.

Submitted by:Reviewed by,

J. Kennedy Steve,Pat Zwick, AssistantOffice Manager

EXHIBIT LOG: A:HB 2010 Amendment - Greg Chaimov - 26 pages B:HB 2010 Testimony - William Linden - 3 pages C:HB 2010 Testimony - David Nebel - 1 page D:HB 3304 Written Material - Rep. Calouri - 2 pages E:HB 3304 Amendment - Rep. Calouri - 4 pages F:HB 3304 Testimony - Jim Hunter - 2 page G:HB 3304 Testimony - Marie Brown - 1 page H:HB 2037 Amendment - Greg Chaimov - 2 pages I:HB 2037 Written Material - Roger Hediger - 9 pages J:HB 2037 Testimony - Valencia Tolbert - 3 pages K:HB 2037 Testimony - Victor Mann - 1 page