

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

April 29, 1991                      Hearing Room 357 1:00 p.m.                      Tapes 84 - 85  
MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Kelly  
Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep. Randy  
Miller MEMBER EXCUSED: Rep. Tom Brian STAFF PRESENT: Jim Dole,  
Committee Counsel Jeff Steve, Committee Assistant Holly Blanchard,  
Transcriber MEASURES HEARD: HB 3199, WS HB 3432, PH/WS SB 401, PHIWS  
SB 405, PH/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 84, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial  
Administration at 1:04 p.m.

HB 3432 - PUBLIC HEARING

011 JIM DOLE, COMMITTEE COUNSEL: Summarizes HB 3432 which limits  
liability of nonprofit corporations which provide senior services.  
Refers to the Oregon Tort Claims Act, ORS 30.270 that applies to these  
service providers. 024 REPRESENTATIVE GREG WALDEN, DISTRICT SC:  
Testifies in support of HB 3432 for senior centers. In light of Measure  
5 it makes sense to encourage senior centers to depend as little as  
possible on tax dollars for their operation and try to help hold down  
their overhead. Discusses liability protection of politically-chartered  
senior centers versus privately-chartered centers and costs involved.  
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058 JOYCE DILLINGER, MID COLUMBIA SENIOR CENTER, THE DALLES (EXHIBIT  
A): Testifies in support of HB 3432 and reads written testimony. HB 3432  
would not adversely affect the insurance industry or add any cost to  
taxpayers.

093 CHAIR MILLER: Who uses and senior center and is it open to the  
public?

094 DILLINGER: It's open to the public; the majority who use the  
facilities are 60 years of age and older. Mostly retired people. 102  
CHAIR MILLER: Have you talked to senior center users about this  
proposal? 106 DILLINGER: Yes, some. We've had to go without insurance  
for three to four months at a time because no one would insure us. 110  
CHAIR MILLER: You would characterize the visitors to the center as quite  
supportive of this legislative proposal?

112 DILLINGER: Yes. 117 REP. BELL: If your insurance premium is  
\$2,400 annually what part of your total budget is that?

121 DILLINGER: We only have one paid full-time employee, our  
director. The rest of the work is done by volunteers. Not sure what  
percent the premium is but it's quite a bite out of our total budget.

127 REP. BELL: Do you accept or solicit any kinds of donations from  
seniors who use the center? 130 DILLINGER: We have a membership of  
about 750 at \$15.00 per year. The remainder of our money comes from  
donations and special events. 137 REP. BELL: Any accidents that  
required claims in the last five years? 139 DILLINGER: There is one  
claim-a man fell during the icy weather. 148 RUSSELL SMITH, MID

COLUMBIA SENIOR CENTER, THE DALLES (EXHIBIT B): Testifies in support of HB 3432. 172 SENATOR WAYNE FAWBUSH, DISTRICT 28: Testifies in support of HB 3432. Discusses problem of senior centers getting insurance coverage. 228 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Opposes passage of HB 3432. The people who would be hurt by this bill are the ones who are injured and suffer damages in excess of the Tort Claim limits. There would be no recovery for those injured persons. The bill is not constitutional. Think the savings would be minimal. 256 REP. CLARK: The rationale for constitutionality is the same before?

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261 WILLIAMSON: Same as HB 3199. 275 REP. CLARK: The underlying weakness is the State Tort Claims Act itself? 280 WILLIAMSON: No. There's a real question as to whether the state can extend its Tort Claim limits to other people who are in private business. 287 REP. CLARK: Understand that. Are you saying the weakness comes from loaning the State Tort Claims limit to a private entity? 290 WILLIAMSON: You don't have to find the Tort Claims Act unconstitutional to find this bill unconstitutional. This sovereign immunity existed at common law-it existed when the Constitution was written. 299 REP. CLARK: The rationale is this bill interferes with the right of trial by jury. 306 WILLIAMSON: And the equal privilege and immunities. 312 CHAIR MILLER: Counsel suggests it's probably a bit strong to suggest that it's unconstitutional. 314 REP. CLARK: Questioning was along the line of constitutional challenge. 321 CHAIR MILLER: Closes public hearing on HB 343 2. HB 3432 - WORK SESSION 327 REP. BELL: Does this bill cover gross negligence? 335 JIM DOLE: This bill does not address the issues involving culpability-gross negligence. It merely sets limits as to damages. 341 REP. MANNIX: The concept here is not so much the amount of fault but rather a cap on pay given certain circumstances. 347 REP. BELL: May be willing to limit liability in all good faith cases but not in gross negligence. 355 MOTION, REP. CLARK: That's a good point. Moves a conceptual amendment for an exception for gross negligence. Explains the motion. 381 DOLE: Refers to HB 3432, Page 1, line 15. Might want to also delete the provision referring to "punitive damages." 389 REP. MANNIX: Depends on how the bill's written. Discusses punitive damages and gross negligence issue. TAPE 85, SIDE A House Committee on Judiciary April 29, 1991- Page 4

010 REP. MILLER: Agrees with pursuing those who are grossly negligent or willful misconduct but there should be recovery in punitive damages. 013 REP. BELL: Is the non-profit corporation's insurance the same policy as that for their officers, employees and agents? Could the liability for a nonprofit corporation be limited?

018 CHAIR BAUM: Want to be careful because of officers and board of directors of corporations are probably furthest removed from an incident that might occur. The motion is should the limits on liability be voided for injuries that occur as a result of gross negligence or intentional misconduct, right? 036 REP. CLARK: The motion was to exempt out of the bill gross negligence and intentional negligence. 042 There being no objection, it is so adopted. 044 REP. CLARK: Think the issue of punitive damages is wrapped up in a question of intentional negligence. If the bill doesn't apply to claims of intentional negligence, then it does apply to claims of punitive damages. 050 CHAIR BAUM: There's still a limit on the bill. 060 REP. CLARK: Interest is not in having punitive damages be available for ordinary negligence. 062 REP. MANNIX: That's

the point. Punitive damages are judicially established animals. Don't mind putting that there shall not be punitive damages. 080 REP. CLARK: The bill itself, including the prohibition on punitive damages, does not apply to cases of willful or intentional negligence. 082 REP. MANNIX: Think the amendment would say, "These caps do not apply where there has been willful misconduct or gross negligence." 085 REP. CLARK: Depends on whether it says, "These caps. or whether it says, "The provisions of this section." 089 REP. CLARK: "The intent of my motion was to remove from the bill cases of intentional or willful negligence which would include the question of punitive damages..

096 REP. JOHNSON: Suggests the word "negligent" be added before the word "operation" on Page 1, line 6 of HB 3432. - 102 REP. MANNIX: Moves to amend HB 3432 to provide that these caps do not apply in regard to willful misconduct and gross negligence. To further provide that in any event, even if it is willful misconduct or gross negligence, that punitive damages will not apply. Explains the motion. 126 REP. CLARK: Then for cases of willful misconduct involving a senior center, it could not get

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punitive damages even against the individual who committed the willful misconduct? 128 REP. MANNIX: Yes.

130 REP. EDMUNSON: That is a stricter standard than the State Tort Claims Act.

134 REP. MANNIX: Withdraws the motion. Makes another motion. Within the act, the caps apply for ordinary negligence. Within the act, gross negligence and willful misconduct-no caps on damages. Within the act, no punitive damages as to the organization. Within the act, punitives are available as to any individual for willful misconduct. 145 DOLE: HB 3432 is the identical language from the Oregon Tort Claims Act, ORS 30.270-the limit on punitive damages. 150 REP. EDMUNSON: Will counsel confirm that intentional misconduct is expressly excluded from the Oregon Tort Claims Act? 152 REP. MANNIX: The intentional misconduct comes because of the language earlier that says, "acting within the scope of their employment or duties." Intentional misconduct is outside the scope of employment or duties. 172 REP. BELL: Discusses insurance coverage and costs for individuals at the senior centers.

179 CHAIR BAUM: Refers to HB 3432, Page 1, Section 1 concerning the liability of a nonprofit corporation. 184 REP. MANNIX: Withdraws motion. 188 CHAIR BAUM: Discusses intentional, willful misconduct and gross negligence.

195 REP. CLARK: Then this would mirror as accurately as possible the Tort Claims Action. 212 CHAIR BAUM: Right, with the limit that it has to be within the scope of their employment.

227 REP. MANNIX: Refers to Rep. Clark's amendment that exempted the application of willful misconduct or gross negligence from the coverage.

245 REP. CLARK: The purpose of punitive damages is deterrence. Don't understand why private entities should not be subject to punitive damages. 264 CHAIR BAUM: The issue is whether senior centers should be put in the same category that government has enjoyed. 280 REP. MANNIX: The question with punitive damages is who is being punished and why? The

idea is to punish someone for misconduct. Discusses gross negligence and liability for damages.

324 CHAIR BAUM: Right now the bill has punitive damages in it.

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339 REP. BELL: If punitive damages were left out of HB 3432, would the attorney go outside the bill to sue for gross negligence?

346 REP. MANNIX: Depends on whether the person has insurance to cover that kind of act. 365 REP. BELL: If no punitive damages were

involved, would that lower their premium? 372 CHAIR BAUM: They'd have to pay the punitive damages themselves because insurance polices won't cover punitive damages. 377 REP. MANNIX: Might be able to insure

against punitive damages to the extent they may be applied to gross negligence. Can't insure against intentional conduct but maybe with gross negligence. 387 CHAIR BAUM: The punitive has to get their

attention because they know they're paying for it, normally, out of their own pocket. 403 MOTION, REP. MILLER: Moves HB 3432 as amended to the Full Committee with a "do pass" recommendation.

TAPE 84, SIDE B

004 DOLE: Restates the amendment which is to remove from application of this act cases which involve gross negligence and willful misconduct and that the punitive damages exclusion which appears on Page 1, line 15, will remain.

008 REP. EDMUNSON: Reviews understanding of the amendment.

025 VOTE:6-1

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

Motion passes, Rep. Waldon to carry.

030 REP. CLARK: Reserves right to change vote.

HB 3199 - WORK SESSION

040 DOLE: Summarkes HB 3199. 056 REP. MANNIX (EXHIBIT C): Discusses the approach to HB 3199 and submits the dash 1 amendments (EXHIBIT C). Refers to HB 3199, Page 1, Subsection (e), line 20 concerning private child-caring agencies. 091 REP. BELL: Would that amended version exclude facilities like the Garten Foundation in Salem?

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098 REP. MANNIX: Refers to HB 3199. - 125 MOTION, REP. MANNIX: Moves the dash 1 amendments to HB 3199 ~HIBIT C). 142 REP. CLARK: Why would HB 3199 take the approach of defining these entities as public bodies rather than simply puking in a cap I like HB 3432)? 153 REP. MANNIX: There's a wide range of activities for senior services centers. But the rationale for these groups HB 3199) is they are operating under

a government contract. .178 REP. CLARK: Refers to HB 3199, Subsection (e). . 198 There being no objection to the dash 1 amendments, they are so adopted.

204 REP. BELL: Should municipal types of government be included in HB 3199 if they're funded 50 percent by the state or the city?

210 SANDRA MILIUS, OREGON COMMUNITY MENTAL HEALTH: The money may come through the county but it is appropriated by the state. In some cases, these organizations may be operating with money from the county. Federal money comes through the state for the most part. 232 TIM CRAWL, OREGON REHABILITATION ASSOCIATION: We get very little municipal money. The money from the federal government is basicly handled by the state.

235 MOTION, REP. MANNIX: Moves HB 3199 as amended to Full Committee with a "do pass" recommendation. 245 VOTE: S-O

AYE: Clarlc, Johnson, Mannix, Bell, Baum NO: None EXCUSED: Brian, Edmunson, Miller

Motion passes, Rep. Johnson to carry.

SB 401 - PUBLIC HEARING

262 DOLE (EXHIBIT G): Summarizes SB 401 which adopts the Uniform Foreign-Money Claims Act. Refers to EXHIBIT G which includes a list of votes on the bill in the Senate and some comments.

278 JEROME BARTON, INTERNATIONAL LAW COMMITTEE, OREGON STATE BAR (EXHIBIT D): Supports SB 401. Five states have adopted the 1989 Uniform Foreign-Money Claims Act. Explains SB 401 and exhibit information.

351 JOHN SALISB URY, UNIFORM STATE LAWS COMMITTEE, OREGON STATE BAR House Committee on Judiciarg April 29, 1991 Page 8

(EXHIBIT E:): Supports SB 401. Seven states have enacted the Act since the law was promulgated in 1989. Believe the law will provide uniformity among the states in this area and certainty for contracting parties. Refers to EXHIBIT E.

376 BARTON: This Act is very technical but it is understood well by the business and banking worlds. SB 401 - WORK SESSION

389 MOTION, CHAIR MILLER: Moves SB 401 to the Full Committee with a "do pass" recommendation.

420 VOTE: 6 0 AYE: Clark, Edmunson, Johnson, Miller, Bell, Baum NO: None EXCUSED: Brian, Mannix

Motion passes, Rep. to carry.

TAPE 85, SIDE B

SB 405 - WORK SESSION

015 DOLE: Summarizes SB 405. . 018 CARL MEYERS, OREGON STATE BAR: Introduces Tom Stilley, Oregon State Bar.

029 TOM STILLEY, DEBTOR-CREDITOR SECTION, OREGON STATE BAR (EXHIBIT F,: Explains SB 405 which proposes to repeal ORS 86.095(3). Reads written testimony (EXHIBIT F). 087 REP. JOHNSON: This bill just deletes paragraph 3?

092 STILLEY: Yes.

105 REP. JOHNSON: (Tape inaudible.)

111 REP. JOHNSON: Discusses what is already in most forms concerning renegotiation.

118 MEYERS: This benefits the junior lien holder. SB 405 - WORK SESSION

128 MOTION, REP. MILLER: Moves SB 405 to the Full Committee with a "do pass" recommendation.

153 VOTE: 5-0

There minutes contain materialr which paraphrase and/or summarize al  
tements nude during this aession. Only text enclosed in quotation marlcs  
report a speaker's exact words. For complete content6 of the  
proceedingr, please refer to the tapes. . House Committee on Judiciar~  
April 29, 1991- Page 9 AYE: Edmunson, Johnson, Miller, Bell, Baum NO:  
None EXCUSED: Brian, Clark, Mannix

Motion passes, Rep. Johnson to carry.

169 CHAIR BAUM: Closes Subcommittee on Civil Law and Judicial  
Administration 2:40 p.m.

Submitted by,  
Harrell Transcriber

Reviewed by, Holly Blanchard  
Office Manager

David

EXHIBIT LOG:

A - Written testimony, Joyce Dillinger, Mid-Columbia Senior Center, HB  
343 2, 1 page B - Written testimony, Russell Smith, Mid-Columbia Senior  
Center, HB 3432, 1 page C - Proposed Amendments, HB 3199-1, Rep. Kevin  
Mannix, 1 page D - Written testimony, SB 401, Jerome Barton, Oreogn  
State Bar, 5 pages E - Written testimony, SB 401, John SalisB ury,  
Oregon State Bar, 8 pages F - Written testimony, SB 405, Tom Stilley,  
Oregon State Bar, 1 page G - Staff Measure Summary and attachments, SB  
401, Committee Counsel, 5 pages

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