

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

June 6, 1991 Hearing Room 357 1:00 p.m. Tapes 118 - 119

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

VISITING MEMBER: Sen. Eugene Timms Rep. Bill Markham

STAFF PRESENT: Greg Chaimov, Committee Counsel Jim Dole, Assistant Committee Counsel Jill Rader, Committee Assistant

MEASURES HEARD: SB 754-A (PPW) HB 3455 (PPW) SB 571 (PPW) SB 1203 (PPW) SB 307 (PPW) SB 1193-A (PPW) HB 2363 (WRK) HB 3265 (WRK) HB 2958 (WRK)

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TAPE 118, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial Administration at 1:15

PUBLIC HEARING AND WORK SESSION ON SB 754-A

WITNESSES: Sen. Gene Timms, District 30 Vic Pike, Citizen Rep. Bill Markham, District 46

006 SEN. EUGENE TIMMS, District 30, Gives testimony supporting SB 754-A.

VIC PIKE, Citizen, Submits written testimony supporting SB 754-A EXHIBIT A.

034 GREG CHAIMOV, Committee Counsel, Gives overview of the SB 754-A2 amendments EXHIBIT B and SB 754-A3 amendments EXHIBIT C. Also, introduces a letter opposing SB 754 -A from James E. Blair EXHIBIT N.

050 REP. MARKHAM, District 46, Speaks to the SB 754-A3 amendments EXHIBIT C. -Refers to Glenbrook Nickel.

070 CHAIR BAUM: Establishes that Sen. Timms and Mr. Pike support the SB 754 -A3 amendments.

MOTION:Rep. Miller moves the adoption of the SB 754-A3 amendments.
Hearing no objection the motion is adopted.

079 CHAIR BAUM: Begins discussion for filling in the blank on page 2,
line 12 of the SB 754-A3 amendments. Is there information on why the
number was 8% in the original bill?

PIKE: It was put in by Legislative Counsel in consultation with some
land use people.

091 REP. EDMUNSON: For a small property with limited value, it wouldn't
take much to exceed 8%.

097 TIMMS: The 8% is an alternative to the secondary route of access.
20% would be a good figure.

108 BAUM: The percentage we put in the blank has to be measured against
the value of the property and the value of the access.

121 TIMMS: It makes sense to increase the 8%.

130 EDMUNSON: 20% is more suitable.

135 MOTION:Rep. Johnson moves 20% be inserted into the blank of the SB
754 -A3 amendment. Hearing no objection the motion is adopted.

MOTION:Rep. Miller moves SB 754-A as amended to the full committee, do
pass.

VOTE:The motion is adopted with 6 ayes. Rep. Brian and Rep. Bell are
excused.

PUBLIC HEARING AND WORK SESSION ON HB 3455

WITNESSES:Ross Shephard, Oregon Criminal Defense Lawyers Assoc. Dale
Penn, District Attorney's Assoc. Jim Edmonds, Oregon State Bar

168 ROSS SHEPHARD, Oregon Criminal Defense Lawyers Assoc., Suggests
amendment to HB 345 5.

181 DALE PENN, District Attorney's Assoc. No problem with the
amendments. Assumes a photocopy of a thermal paper fax would also be an
appropriate duplicate.

190 JIM EDMONDS, Oregon State Bar, Supports HB 3455 with the amendment.

203 MOTION:Rep. Mannix moves adoption of the proposed amendment. Hearing
no objection the motion is adopted.

MOTION:Rep. Mannix moves HB 3455 as amended to the full committee, do
pass.

VOTE:The motion is adopted with 6 ayes; Rep Brian and Rep Bell are
excused.

PUBLIC HEARING AND WORK SESSION ON SB 571

WITNESSES:Frank Brawner, Oregon Bankers Assoc. (OBA) Trudy Allen, OBA

224 JIM DOLE, Assistant Committee Counsel, Gives background on SB 571. Introduces EXHIBIT D, a letter decision from the Polk County proceedings.

240 TRUDY ALLEN, OBA, Submits written testimony supporting SB 571 EXHIBIT E.

258 REP CLARK: Asks a question about Ms. Allen's testimony EXHIBIT E regarding a discharge in bankruptcy not necessarily destroying a lien against the bankrupt debtors property.

264 ALLEN: The debtor is no longer personally liable once he's discharged of bankruptcy.

MOTION:Rep. Miller moves SB 571 to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 6 ayes; Rep. Brian and Rep. Bell are excused.

PUBLIC HEARING AND WORK SESSION ON SB 1203

WITNESSES:Frank Brawner, Oregon Banker's Assoc.

288 DOLE: Gives background on SB 1203 and Introduces EXHIBIT F, the Supreme Court case relating to the bill.

296 FRANK BRAWNER, Oregon Bankers Assoc., Submits written testimony EXHIBIT G supporting SB 1203.

313 REP. CLARK: Understands the problem; what does the bill do?

315 BRAWNER: States the purpose of the bill.

MOTION:Rep. Clark moves SB 1203 to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 5 ayes; Reps Brian, Mannix and Bell are excused.

PUBLIC HEARING AND WORK SESSION ON SB 307

WITNESSES:Dennis Mulvihill, Washington County

350 CHAIMOV: Gives background on SB 307

373 DENNIS MULVIHILL, Washington County, Explains why SB 307 is necessary to Washington County.

393 REP CLARK: Why is there state policy on this at all?

397 MULVIHILL: Isn't sure but the population threshold was aimed at Multnomah County in the 195 0's.

CLARK: What about repealing the statute?

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010 MULVIHILL: That would benefit us.

020 CHAIR BAUM: Discusses repealing ORS 241.20.

031 REP CLARK: Repealing the statute would make sense.

CHAIR BAUM: The Senate may not respond agreeably.

REP. CLARK: If the statute isn't necessary then it should be repealed. We could pass the bill with a sunset on the existing statute so it has to come before the next legislature.

CHAIR BAUM: Agrees

MOTION:Rep. Clark moves adoption of the amendment to SB 307. Hearing no objection the motion is adopted.

MOTION:Rep. Clark moves SB 307 as amended to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 5 ayes. Reps Brian, Mannix and Bell are excused.

PUBLIC HEARING AND WORK SESSION ON SB 1193-A

WITNESSES:Frank Brawner, Oregon Banker's Assoc.

090 BRAUNER: Gives testimony supporting SB 1193-A and submits written testimony EXHIBIT H.

MOTION:Rep. Johnson moves SB 1193-A to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 5 ayes. Reps Brian, Mannix and Bell are excused.

WORK SESSION ON HB 2363

WITNESSES:Bruce Rose, citizen

122 CHAIMOV: Gives background on HB 2363 and explains the proposed amendments EXHIBIT I.

137 BRUCE ROSE, citizen, What is the intent of the amendment EXHIBIT I? Submits written testimony supporting HB 2363 EXHIBIT J.

CHAIR BAUM: Explains the reasons of the amendments EXHIBIT I.

145 ROSE: The effect in other states where similar laws are in place has not resulted in an increased number of lawsuits.

157 REP CLARK: Do we run into a problem if we try and do the treble damages provision?

163 CHAIMOV: Not from a constitutional standpoint. The purpose was to draft this so the sales rep was receiving all that was due.

166 ROSE: Manufacturers have currently been willing to risk the sales rep pursuing legal remedies; all the manufacturer would be liable for is what was already owed in the first place.

171 REP. CLARK: Is there a way the manufacturer could be brought in under the unfair trade statutes?

174 CHAIMOV: No. Those only apply in consumer transactions. In the Unfair trade Practices act they allow attorney fees and in some cases you can get enhanced penalties including punitive damages.

183 REP. EDMUNSON: Triple damages are usually reserved for the worst cases. There isn't much guidance for the courts in this.

195 ROSE: The proposed amendment EXHIBIT I may not be sufficient to achieve its intentions.

197 REP CLARK: What about putting in a punitive damages provision upon showing of willful failure to comply?

206 CHAIR BAUM: That puts an additional burden on the plaintiff.

216 REP. CLARK: Relays how the court awards attorney fees.

224 REP EDMUNSON: How about commissions, plus interest and then treble for willful violations without the punitive factor.

234 REP JOHNSON: Suggests changes between lines 23 and 24 on page 1 to the hand engrossed amendments EXHIBIT I

243 REP. BELL: How could it be anything but willful if they chose not to pay?

REP EDMUNSON: There are times when a company neglects to pay a bill unintentionally.

253 ROSE: Would receiving letters seeking commissions due, and still not paying be considered a willful violation?

256 REP EDMUNSON: That would be evidence of an intentional withholding. Ignoring those letters would be a question for the judge and jury.

265 REP BELL: A willful violation will be hard to prove.

270 REP. JOHNSON: Refers to his amendment to the amendment EXHIBIT I and suggests further changes.

287 ROSE: Clarifies the new changes.

290 REP. JOHNSON: Clarifies that the intent is treble damages.

297 ROSE: Refers to the change made to lines 8 and 9 of page 1 in the amendments to HB 2363, EXHIBIT I.

311 EDMUNSON: This amendment broadens the scope of the bill.

315 ROSE: The intent of the original HB 2363 was to limit it to out of state manufacturers.

324 CHAIR BAUM: What laws other than general breach of contract laws do we have that covers instate manufacturers?

333 ROSE: Can't site specific laws. On the surface favors broadening the bill through the change in lines 8 and 9 in EXHIBIT I, but is wary.

BAUM: We can't do something we feel is unconstitutional.

MOTION:Chair Baum moves adoption of the amendments to HB 2363 as further amended. Hearing no objection they are adopted.

366 REP JOHNSON: Before we move the bill, would like to know if anyone has a firm idea if the clause on line 8 and 9 of HB 2363 is unconstitutional.

372 CHAIMOV: We haven't come up with a definitive answer.

379 REP EDMUNSON: Thinks it is the case in Oregon

387 REP JOHNSON: My support of the bill lessens if a huge burden is being heaped on Oregon employers.

395 CHAIR BAUM: The question is, would instate manufacturers be allowed to stiff people?

399 REP JOHNSON: The point of this bill is to get to out of state manufacturers.

CHAIR BAUM: The purpose of the bill is to make it economically feasible to collect on the commissions due.

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008 MOTION:Rep. Johnson moves the restoration of the language in lines 8-9 on page 1 of HB 2363.

VOTE:In a roll call vote the motion failed with Reps Johnson, Miller and Bell voting aye and Reps Clark, Edmunson and Baum voting nay. Reps Brian and Mannix are excused.

022 ROSE: What is the reason behind deleting Section 8 of HB 2363?

MOTION:Rep Edmunson moves to restore Section 8 to HB 2363.

037 REP. BELL: If we have a sales rep who signs a contract, why when things go wrong do we declare the contract null & void.

043 REP. EDMUNSON: Because these sales reps don't have a bargaining point. There isn't equity.

048 REP. CLARK: Explains the reality of the contract.

052 CHAIR BAUM: The big companies control the market.

055 REP BELL: It seems like it would be fraud if it is signed knowing if anything goes wrong it's null and void.

CHAIR BAUM: Explains how this bill would help the sales rep.

062 REP BELL: What happens if another state has a law counteracting this bill?

073 CHAIMOV: Explains what would happen if Section 8 is left in HB 2363.

VOTE:In a roll call vote the motion is adopted with 5 ayes. Rep Miller votes nay and Reps Brian and Mannix are excused.

MOTION:Rep Edmunson moves HB 2363 to the full committee as amended, do

pass.

VOTE:In a roll call vote Reps Clark, Edmunson, Bell and Baum vote aye;
Reps

Johnson and Miller vote nay. Chair Baum changes his vote to nay to bring the bill back before the committee for immediate reconsideration. Reps Brian and Mannix are excused.

111 REP CLARK: What about moving the deletion of Section 8?

REP BELL: Has problems with the treble damages.

133 MOTION:Rep Edmunson moves the restoration of lines 8 and 9 on page 1 of HB 2363.

147 REP BELL: Discusses with Baum, treble damages.

156 MOTION:Rep Clark moves to amend Rep. Edmunson's motion.

171 CHAIMOV: Brings Rep. Mannix up to date. -Section 8 has been restored -The motion now is to restore lines 8 and 9 on page 1 of HB 2363 and to eliminate treble damages and instead have accrued commissions and interests and punitive damages.

VOTE:Hearing no objection the motion is adopted.

235 CHAIMOV: Reiterates the new changes.

MOTION:Rep Edmunson moves HB 2363 as amended to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 6 ayes. Rep Miller votes nay;Rep Brian is excused.

WORK SESSION ON HB 3265

WITNESSES:Joe Gilliam, National Federation of Independent Businesses (NFIB) Linda Mathewson, Department of Revenue

255 CHAIMOV: Explains HB 3265, introduces and explains the HB 3265-1 amendments requested by Rep. Clark EXHIBIT K. Also introduces a copy of the report of the commission on Administrative Hearings and a letter from Walter Gelhorn EXHIBIT L.

MOTION:Rep Clark moves adoption of the HB 3265-1 amendments.

275 REP CLARK: Expresses concern with the 'appearance' of impartiality.

300 REP MANNIX: Concurs with Rep. Clark in his amendment.

335 REP. BELL: Thought that earlier it was established that a hearings officer wasn't to be called a judge. Suggests clarifying the intent of their titles.

360 CLARK: Accepts Rep Bells amendment to put in Independent Administrative Hearing Officers on lines 6 and line 11 of the HB 3265-1 amendments EXHIBIT K.

367 JOE GILLIAM, NFIB, Our intent is to get at the civil penalties

process. Small businesses can't always afford to go to court.

TAPE 119, SIDE B

005 LINDA MATHEWSON, Department of Revenue, Addresses tax penalties.

011 REP. CLARK: Your concerns don't apply to HB 3265 with the amendments.

MOTION:Rep. Edmunson moves (again) adoption of the HB 3265-1 amendments. Hearing no objection they are adopted.

MOTION:Rep.Clark moves HB 3265 as amended to the full committee, do pass.

VOTE:In a roll call vote the motion is adopted with 6 ayes; Reps Brian and Miller are excused.

WORK SESSION ON HB 2958

030 CHAIMOV: Gives overview of HB 2958 and Introduces a memo from Legislative Counsel, EXHIBIT M.

045 REP EDMUNSON: This would put private daycare centers at a distinct disadvantage. This bill is bad policy.

059 REP. BELL: The key word is policy. We need employee daycare centers and HB 2958 would give businesses an incentive to open on site daycare centers. It is a policy statement to encourage this.

070 REP MANNIX: Doesn't support HB 2958.

REP JOHNSON: Supports HB 2958.

073 REP CLARK: Comments on HB 2958; contracting a private daycare.

081 REP. MANNIX: There is a social need for daycare centers but other things need to be addressed first before this bill is.

092 REP. JOHNSON: HB 2958 isn't going to necessarily encourage employers to set up daycare when they can contract out.

101 REP CLARK: True; explains reasons an employer might contract an outside child care provider.

112 REP BELL: If outside providers are brought in the added cost will fall on the employees. Parents involvement in an on site daycare could be a tradeoff for parents on accepting some of the liability.

CHAIR BAUM ADJOURNS THE MEETING AT 2:50 PM

EXHIBIT LOG

A -Testimony on SB 754 - Vic Pike - 2 pages B -Amendments to SB 754 - Staff - 3 pages C -Amendments to SB 754 - Staff - 5 pages D -Testimony on SB 571 - Staff - 1 page E -Testimony on SB 571 - Brawner/Allen - 5 pages F -Testimony on SB 1203 - Staff - 4 pages G -Testimony on SB 1203 - Brawner - 4 pages H -Testimony on SB 1193-A - Brawner - 4 pages I -Amendments to HB 2363 - Staff - 2 pages J -Testimony on HB 2363 - Rose

- 12 pages K -Amendments to HB 3265 - Rep. Clark - 1 page L -Testimony
on HB 3265 - Staff - 39 pages M -Testimony on HB 2958 - Staff - 5 pages
N -Testimony on SB 754 - Staff - 2 pages

Submitted by:

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