

House Committee on Judiciary Subcommittee on Crime & Corrections June 27, 1991 - Page

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 SUBCOMMITTEE ON CRIME AND CORRECTIONS

June 27, 1991 Hearing Room 357 1:00 p.m. Tapes 134 - 135

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Del Parks Rep. Ron Sunseri

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

MEASURES HEARD: HB 2410 - PH/WS HB 3590 - WS SB 638 - WS SB 637 - WS

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TAPE 134, SIDE A

004 CHAIR MILLER: Opens Subcommittee on Criminal Law and Corrections at 3:00 p.m.

HB 2401 - PUBLIC HEARING Witnesses: Rep. Pickard

013 REP. PICKARD: Reviews provisions of HB 2401.

Testifies in support of HB 2401.

033 CHAIR MILLER: Does HB 2401 ban use of other tobacco products?

035 REP. PICKARD: Other tobacco products would be allowed. Only lighted smoking objects are banned.

057 TOM O'CONNOR: Supports banning smoking in the Capitol.

HB 2401 - WORK SESSION

062 MOTION: REP. BAUMAN: Moves HB 2401 to the Full Judiciary Committee with a do pass recommendation.

084 REP. MASON: Will support the bill.

092 CHAIR MILLER: Does the bill ban smoking within the building only?

097 REP. PICKARD: Could smoke only in designated areas outside the building. Proposes that they would be at the North and South ends of the building on the first floor. We would not want people smoking at the main front and back entrances to the Capitol.

120 VOTE: On a roll call vote, motion passes unanimously. All members are present.

HB 3590 - WORK SESSION

130 GREG CHAIMOV: Summarizes provisions of HB 3590.

160 JOHN POWELL: Presents fact sheets and newspaper articles giving statistics about vending machines and teen smoking (EXHIBIT A).

292 REP. BRIAN: Summarizes provisions of HB 3590-2 (EXHIBIT B) and HB 359 0-3 (EXHIBIT C) amendments.

TAPE 135, SIDE A

030 CHAIR MILLER: The difference in approaches revolves around the dispensing of the product by machine.

The adoption of the HB 3590-4 (EXHIBIT D) amendments would suggest that if you had a vending machine on your premises, we would treat that as if the retailer sold directly.

Advocates the simplicity of that approach in that we can allow the retailer to make the decision as to whether or not to have the machine on their premises.

Will support any decision the subcommittee makes.

063 MOTION, REP. BRIAN: Moves adoption of the HB 3590-3 amendments (EXHIBIT C).

065 CHAIMOV: The 3590-3 amendments on Page 3, line 10 do not specify the amount of the fine for a violation. Is it your intention to have it be the standard "up to \$250"?

074 REP. BRIAN: Section 6 was intended to take care of that.

075 CHAIMOV: Section 6 deals with the civil penalty assessed under the health laws for distributing free tobacco products as part of a marketing scheme, but is not part of the criminal laws. We could put that language in line 10.

078 REP. BRIAN: Yes, if that would clarify it. My intent is that sale to a minor would be a violation, and that the fine be not less than \$100, nor exceed \$500.

082 CHAIMOV: Would it still achieve your purpose to take Section 3, page 1, lines 13 through 16, out of the amendments and put the word "distribute" on page 2, line 17?

095 REP. BRIAN: Yes. My intent is to bring about a violation for distribution without consideration.

099 CHAIR MILLER: Supports Sections 3, 4, 5, and 6 of the -3 amendments.

103 REP. BRIAN: Appreciates the sincerity of the thought that went into -4 amendments. Had initially thought that would work as well. Feels there were still problems and feels -3 amendments are cleaner and more enforceable.

118 CHAIR MILLER: If the -3 amendments are adopted, the -4 amendments would not necessarily be inconsistent.

124 REP. BAUMAN: Interested that the -3 and -4 amendments are as internally consistent as they are and that the dispute is clearly identified as being just Section 2.

170 VOTE: No objections. Motion passes. All members are present.

174 MOTION: REP. BAUMAN: Moves to adopt the 3590-4 amendments (EXHIBIT D) in place of Section 2 of 3590-3 amendments.

185 REP. BRIAN: Objects to the motion.

195 REP. BAUMAN: Explains her understanding of the motion.

199 REP. BRIAN: Agrees with explanation. That is a big difference because when you own a retail outlet you are responsible for the sale, but you have to hand each package or carton to the individual and have the opportunity for eye contact and to ask for identification.

Vending machine attendants will not have that opportunity.

204 CHAIR MILLER: Might be inconvenient to supervise vending machines and retailer may opt to over-the-counter-sales.

209 VOTE: On a roll call vote, motion fails.

230 MOTION: REP. BRIAN: Moves adoption of 3590-3 amendments (EXHIBIT C) as further amended by Counsel's suggestion.

345 VOTE: On a roll call vote, amendment is adopted. All members are present.

238 MOTION: REP. BRIAN: Moves adoption of 3590-2 amendments (EXHIBIT B).

240 VOTE: On a roll call vote, amendments are adopted. All members are present.

246 MOTION: REP. BRIAN: Moves HB 3590 as amended to the full Judiciary Committee with a do pass recommendation.

250 VOTE: On a roll call vote, motion passes. All members are present.

Rep. Miller will carry the bill.

256 CHAIR MILLER: Recesses Subcommittee on Crime and Corrections at 3:45 p.m.

257 CHAIR MILLER: Reconvenes Subcommittee on Crime and Corrections at

8:15 p.m.

SB 638 - WORK SESSION

266 HOLLY ROBINSON: Summarizes provisions of SB 638.

277 MOTION: REP. BAUM: Moves adoption of SB 638-10 amendments (EXHIBIT E).

280 VOTE: Without objection, amendment is adopted.

281 MOTION: REP. BAUM: Moves to delete Sections 1 and 2 of SB 638.

290 REP. JOHNSON: Does not want a roll call vote, but objects to the motion.

295 VOTE: Without further objection, Chair Miller declares the amendment adopted.

310 MOTION: REP. BAUM: Moves to amend line 24 of the 638-A10 amendments to insert the language "at or in the direction of any person, building, structure, or vehicle within the range of the weapon" after the words "growth boundaries".

330 VOTE: Without objection amendment is adopted.

334 MOTION: REP. BAUM: Moves SB 638, as amended, to the full Judiciary Committee with a do pass recommendation

VOTE: On a roll call vote, motion passes. Rep. Bauman is excused.

344 CHAIR MILLER: Rep. Baum will be asked to carry the bill in the full committee.

Closes work session on SB 638.

Opens work session on SB 637.

SB 637 - WORK SESSION Witnesses:Ralph Vaughan, Recording Industry of America

338 CHAIMOV: Reviews committee action the last time the bill was before the committee. The SB 637-A6 amendment which the committee adopted in concept is before you and ready for adoption.

343 MOTION, REP. BRIAN: Moves adoption of the SB 637-A6 amendment (EXHIBIT F).

347 VOTE: Without objection, motion passes.

358 REP. JOHNSON: Believes it would be cleaner and accomplish the same purpose if we made the disclosure one which only those who are planning to use some pre-recorded music would need to make so that ordinary people who want to go and play without pre-recorded music do not have to worry about making sure they publish a disclosure ahead of time.

Without that, I can't support the bill.

381 REP. MASON: Is it a felony to record a live musical performance?

390 RALPH VAUGHAN, RECORDING ASSOCIATES OF AMERICA: Yes. Submits and paraphrases (EXHIBIT G).

TAPE 134, SIDE B

004 REP. MASON: Gives scenario.

012 VAUGHAN: In Section 5, page 3, there is a provision that the performer has the authority to grant permission to the recording of his live performance. The vast majority of performers do not want to have their performances recorded.

The proposed statute offers the opportunity for the performer and/or the record company to allow that.

The Patent and Trade Committee of the State Bar recommended that the offense be a Class C felony.

Speaks of bootleg recordings.

Committee members and Mr. Vaughan discuss illegal recording, law enforcement decisions, and severity of penalty for illegal recording.

040 MOTION, REP. MASON: Moves that on page 2, line 35 of SB 637, the Class B misdemeanor be reduced to a violation and that on page 3, lines 24 and 39, for the unlawful recording of the live performance, the violation be reduced to a Class B misdemeanor.

066 REP. BAUMAN: Thinks the distinction should be between a recording and the recording for commercial purposes. Selling would be evidence of recording for commercial purposes.

076 CHAIMOV: Under the A-Engrossed version of the bill if you tape something you are not supposed to it is a Class B misdemeanor. If you do it for commercial purposes it is a Class C felony.

Committee members and Mr. Vaughan discuss severity of penalties.

117 REP. MASON: Restates motion.

120 REP. BRIAN: Will object to the motion.

130 VOTE: On a roll call vote, motion fails with Reps. Baum, Bauman, Brian, Parks, Sunseri, Miller voting No. Reps. Johnson and Mason vote Aye.

150 MOTION: REP. JOHNSON: Moves to amend the SB 637-A6 amendments on line 3, by adding the words "recorded or otherwise reproduced" before the word "music". Put a period after the word "reproduced" on line 5. Delete remainder of line 5 and line 6.

164 REP. BRIAN: The intent is that if it is not intended that there be any recorded or reproduced music involved in the performance, there is nothing to disclose. But if there is recording used in the performance, that must be disclosed.

174 REP. JOHNSON: The SB 637-A6 amendments proposed by Rep. Brian would have required everyone who is doing musical performances for a fee to give a disclosure beforehand that says whether or not they are going to use pre-recorded music.

184 VOTE: Without objection, motion passes.

186 CHAIMOV: The Senate Judiciary Committee has pointed out that there is an additional required amendment on page 3, line 39. The phrase "recording of a live performance" should be replaced with "labeling of a sound recording".

193 MOTION: REP. BRIAN: Moves amendment stated by Chaimov.

194 VOTE: Without objection, amendment is adopted.

196 MOTION: REP. BRIAN: Moves SB 637 as amended to the full Judiciary Committee with a do pass recommendation.

215 VOTE: On a roll call vote, motion passes. Rep. Mason votes No.

220 CHAIR MILLER: Rep. Brian will carry the bill.

Closes work session on SB 637.

Adjourns Criminal Law Subcommittee.

Transcribed by,

Pat Zwick

EXHIBIT LOG:

A:HB 3590 Testimony - John Powell - 7 pages B:HB 3590-2 Amendment - Rep. Brian - 1 page C:HB 3590-3 Amendment - Rep. Brian - 3 pages D:HB 3590-4 Amendment - Rep. Miller - 2 pages E:SB 638-A10 Amendment - Staff - 4 pages F:SB 637-A6 Amendment - Staff - 1 page G:SB 637 Testimony - Ralph Vaughan - 3 pages