

Conference Committee on June 25, 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.

CONFERENCE COMMITTEE ON HB 2375

June 25, 1991Hearing Room E 9:00 a.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Cohen Sen. J Hill Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Edmunson Rep. Baum Rep. R Johnson

STAFF PRESENT: Greg Chaimov, Committee Administrator Evie Redler, Committee Assistant

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TAPE 1, SIDE A

CONFERENCE COMMITTEE ON HB 2375 WITNESSES: Kirk Holland, Professional Liability Fund Andy Moral, Business Law Section of Oregon State Bar James Spickerman, Oregon State Bar Scott Gallon, Oregon Medical Association

CHAIR EDMUNSON: Calls meeting to order at 9:15 a.m.

GREG CHAIMOV, Committee Counsel: Submits packet of information (EXHIBIT A). Describes what HB 2375 was amended to look like on the Senate side.

SEN. COHEN: Have a tough time taking away liability. Agree with Sen. Shoemaker's effort to reach a middle ground.

REP. BAUM: Understands Sen. Shoemaker's position.

SEN. SHOEMAKER: Using a four member law firm as an example. Under the Senate version each member would have insurance to cover themselves and the firm would have back up insurance to cover vicarious liability. -Want to cover firms to protect themselves and their shareholders.

CHAIR EDMUNSON: The firm would be purchasing insurance to cover all members of the firm.

76REP. BAUM: The house had a minority report. That is a possibility.

The firm would have to maintain half million dollars of general liability. Concerned with limiting this to attorneys and doctors.

CHAIR EDMUNSON: The difference seems to be the amount that we are considering. The House minority report put a cap on the amount at \$500,000. The Senate version based the number on the number of share holders.

SEN. SHOEMAKER: The size of the corporation would reflect in the liability. \$500,000 may be enough for a two person firm and not enough for a ten person firm.

REP. BAUM: The larger firms would already have insurance policies in excess of \$500,000.

SEN. SHOEMAKER: You cannot count on a ten person firm to have substantial liability.

REP. BAUM: Guarantee \$800,000 liability.

122 CHAIR EDMUNSON: If there is that much available in liability, would the assets of the firm be at risk?

REP. BAUM: Should be related to the claim, not the size of the firm.

SEN. SHOEMAKER: If we include "professionals can operate as a business corporation if authorized to do so by their regulatory board."

REP. BAUM: Suggests to lower \$300,000 down to \$100,000.

CHAIR EDMUNSON: If we say \$100,000 per shareholder. How about for everyone except attorneys and physicians. For them have \$300,000 for attorneys and \$500,000 for physicians.

SEN. SHOEMAKER: What about accountants?

200 REP. JOHNSON: They don't have as much exposure as doctors and lawyers.

KIRK HOLLAND, PROFESSIONAL LIABILITY FUND: A five member firm would need to carry 1.5 million coverage. The PLF coverage would only cover \$300,000.

SEN. SHOEMAKER: Hypothetically, in a five member firm it should be covered by 1.2 million. The person directly liable would not have the vicarious liability.

GREG CHAIMOV, Committee Counsel: How this would work in practice. If a claimant sued Rep. Baum and his firm, how would they get out of the case.

SEN. SHOEMAKER: If the PC had insurance sufficient to cover the other shareholders exposure, then the PC would take that case.

270 CHAIR EDMUNSON: Speaking of vicarious liability per shareholder. Physicians would have \$500,000, attorneys and accountants \$200,000, and all others \$100,000 per shareholder.

SEN. J HILL: Why would attorneys and accountants have so much more.

REP. BAUM: With attorney firms no one really knows what everyone else is doing. If there is a big claim this would protect us. -"Attorneys put their mistakes in jail, doctors bury theirs." -Should have basic minimums for the firms.

SEN. J HILL: Don't see a problem for the smaller firms. This bill came to be because of a large accounting firm going under due to a claim. When go to a large law firm I'm going on the reputation of the firm, not just one person. Therefore the whole firm should be held liable.

Tape 2, Side A

REP. BAUM: That sort of thing doesn't happen in a small firm.

CHAIR EDMUNSON: Is there objection to the proposal made earlier?

REP. BAUM: Would like a fixed figure.

REP. JOHNSON: Have had objections based on how large the firm is, have amounts per size of firm.

Recesses hearing at 10:00 am. Reconvenes at 3:18 pm.

Staff submits -B11 and -B12 amendments (EXHIBIT B). (EXHIBIT C) concept amendments to HB 2375.

MOTION: Rep. Johnson moves to adopt the elements of the minority report on the house side which would require that there is joint liability on the share holders and unless the corporation had a \$500,000 liability insurance policy in effect, regardless of the size of the firm.

SEN. SHOEMAKER: Not comfortable with the motion.

REP. JOHNSON: Concerned with big firms and small firms lumped together.

AMENDED MOTION: Rep. Johnson amends the motion to apply only to firms with 10 or more employees.

96AMENDED MOTION: Sen. Shoemaker amends the motion to read: for a firm of five or fewer to have no joint liability if the firm carried liability in the amount of doctors one million dollars, attorneys and accountants \$500,000, all others \$300,000. For those firms having more than five shareholders doctors \$400,000, attorneys and accountants \$200,000 and \$100,000 for all others.

GREG CHAIMOV, Committee Counsel: Are the shareholders which are being counted licensed.

124 SEN. COHEN: What are the consequences of not passing this bill at all.

SEN. SHOEMAKER: Difference in registering the firm as a business corporation or a professional corporation.

157 CHAIR EDMUNSON: This is only if this is authorized by the licensing board.

Discussion on amendments from senate side.

CHAIR EDMUNSON: Do we agree on any limits on vicarious liability? Your proposal is to limit that by firm.

SEN. SHOEMAKER: This is proposed as a watered down version of the Senate amendments.

REP. JOHNSON: What we're offering is an option. We need to make the option desirable to the companies so they will use the insurance.

ANDY MORAL, BUSINESS LAW SECTION OF OREGON STATE BAR: Objective is to have some option to liability so that they choose to use it. Not sure that 500,00 is beyond that point.

JAMES SPICKERMAN, OREGON STATE BAR: Unfair to members of the bar who are in a firm of over 6 persons.

CHAIR EDMUNSON: Additional coverage could be claimed.

SPICKERMAN: Prefers Sen. Shoemaker's amendments.

CHAIR EDMUNSON: Do you know if such insurance is available?

HOLLAND: Yes, one million is commonly available.

CHAIR EDMUNSON: How many firms have more than 15 share holders?

HOLLAND: At least 7 or 8 firms have 40 or more lawyers currently.

SCOTT GALLON, OREGON MEDICAL ASSOCIATION: Seems that the issue was that there are many states who don't require vicarious liability. Making us a target for lawsuits. Concerned whether this sort of coverage is available.

TAPE 1, SIDE B

GALLON: Understands the committee's concern with this issue. Doesn't know if you can stack PC corporations. It would be a large step to buy into the minority report from the House side. Can't really use the approach of firm size, the issue is still the same. That would be a more complicated way of maintaining philosophy of the bill.

036 REP. JOHNSON: Stacking would become an issue. Increasing the insurance by the number of shareholders. -Drawing a line at five shareholders seems arbitrary, however it depends on the persons view. Looking at whether they believe that the whole firm is behind them or just one person.

GALLON: small firms can have very large substantial accounts.

REP. JOHNSON: Have a problem with Sen. Shoemaker's amendments. The amendment goes beyond being practical. Can accept all but the upper half of the motion.

099 SEN. SHOEMAKER: If we accepted that, it would be 180 degrees from what the Senate side had adopted.

CHAIR EDMUNSON: We need to agree on this or we won't do anything. Do you Rep. Johnson have a suggestion?

REP. JOHNSON: Please explain exactly what you mean by over five employees.

SEN. SHOEMAKER: For those firms over five shareholders, if they increased the insurance by \$400,000 for physicians, \$200,000 for lawyers and accountants, and \$100,000 for all others.

GREG CHAIMOV, Committee Counsel: What happens if a firm only acquires 3.5 million in insurance and they need 4 million.

125 SEN. SHOEMAKER: I would be uncomfortable giving liability to each share holder. Need to provide a limitation on liability.

REP. JOHNSON: If we follow your proposal but break it down to put doctors at \$200,000 and lower the others proportionally.

153 SEN. SHOEMAKER: Put the smaller amount for the small firms.

REP. JOHNSON: Removes motion.

170 MOTION: Rep. Johnson moves to amend section nine of HB 2375 B Engrossed so that professional corporations with five or fewer licensed share holders be exempt from joint civil liability if in the case of physicians they have one million dollars in liability insurance for the firm, \$500,000 for attorneys and accountants, and \$300,000 for everybody else. In the case of firms over five shareholders they need \$200,000 extra per doctor, \$100,000 per extra accountant or lawyer, and \$60,000 for any other shareholders.

SEN. J HILL: Objects to the motion.

CHAIR EDMUNSON: The motion fails.

MOTION: Rep. Johnson moves to delete section 9 in the B Engrossed bill.

VOTE: Hearing no objections, Chair Edmunson so moves, Rep. Baum is absent.

250 MOTION: Sen. Shoemaker moves to amend section 2a in lines 16-20, where ORS 580.35 is amended to read "except what is provided in sub 2 of this section this chapter does not affect the right of persons licensed to enter professional services in the state so doing in any other business form committing them by law rules or regulations and standard of professional conduct of their profession." Sub 2 "a person licensed to render professional services within the state will not render professional services as a business corporation, ORS 60 unless organization under ORS 60 is expressly authorized by the regulating board of the profession."

CHAIR EDMUNSON: Are you restoring the bracketed language and deleting the amendments?

SEN. SHOEMAKER: Yes. It looks like it's all there. Withdraws motion.

REP. JOHNSON: Under further review of the bill can't support the bill without section 9.

CHAIR EDMUNSON: This conference committee cannot come to a decision. Will appoint new conferees.

Adjourned at 4:00 pm.

Submitted By:

Reviewed By:

Evie Redler

Office Manager

Pat Zwick Committee Assistant

EXHIBIT LOG

A: HB 2375 - SMS, 2374-A Senate Amendments, House Minority Report 2375
Amendments - Staff - 3 pages. B: HB 2375-B11 Amendments - Staff - 2
pages. C: HB 2375 - Proposed Amendments - Staff - 1 page.