

Conference Committee on January 19, 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 2445

June 19, 1991Hearing Room 357 9:00 a.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Cohen Sen. Hamby Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Clark, Chair Rep. Edmunson Rep. Parks

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

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TAPE 1, SIDE A

003 CHAIR CLARK: Opens Conference Committee on HB 2445 at 9:10 a.m.

HB 2445 - WORK SESSION

007 HOLLY ROBINSON: Summarizes HB 2445. Refer to Staff Measure Summary on HB 2445. EXHIBIT A -On page 1 line 7, the Senate changed "order" to "motion." -On lines 9 through 14 of printed HB 2445. Subsection 2 deals with the issue of the determination that the factors that are identified in that statute are the same ones that are used when reinstating spousal support. -Subsection 3, allows the parties to obtain attorneys fees if they prevail or if the party is found to be acting in bad faith.

030 SEN. COHEN: The only real concern is with Subsection 3.

040 REP. PARKS: The real issue concerns Subsection 2. What is the time period that the judge is supposed to use? Will it be the situation of the parties at the time of the divorce, at the time of the modification, or at the time of the reinstatement? -It should be from the time of the reinstatement.

072 ROBINSON: Understands that the factors that are listed in the statute would be applied presently.

083 SEN. COHEN: Happy to address the time sequence.

095 MOTION, REP. EDMUNSON: Moves on lines 9 and 10 of page 1 to insert "the court shall consider such factors in ORS 107.105(1)(d) which are relevant to the condition of the parties at the time the motion is filed."

107 REP. PARKS: Declares a potential conflict of interest because this will impact his law practice. -In all these situations, the asset situation is going to change. There is going to be a time of lapse. Are the assets available to the payor considered those assets at the time of the divorce or also his ability to pay since the divorce.

144 SEN. COHEN: Understands that the bill does have some time limits on it. If the judge says that spousal support is for ten years and is terminated, early support still continues up to the ten years.

148 REP. PARKS: That is no problem except that a judge can extend the spousal support during the term of the spousal support.

150 SEN. SHOEMAKER: Understands that the normal rules are that a judge can extend spousal support.

153 REP. PARKS: Yes. Wants to make sure what the bill says. Do the assets that the payor acquires during the term of the spousal support become available for consideration of extension of spousal support?

159 REP. EDMUNSON: What is the relevance of those assets that are acquired after the divorce to the spousal support? Understands that the purpose of spousal support is to keep the spouse's standard of living substantially equivalent to what was enjoyed during the marriage, not what she would have enjoyed had the marriage continued.

175 SEN. SHOEMAKER: If you don't have a termination situation and a spouse comes to extend the support or increase the support do you look at the situation of the parties at the time that motion is filed?

178 REP. PARKS: Yes.

180 SEN. SHOEMAKER: You look at the situation of both parties at time the motion is filed. Shouldn't we stay with that same standard here?

186 REP. PARKS: If you do that the payor is in perpetual limbo.

197 SEN. SHOEMAKER: Understands that what the Committee is saying is if the spousal support is terminated a spouse could come back in and reinstate it as if the support were not terminated. If that is so then it follows that the factors that should apply to the reinstatement order would be the same that would apply if there had not been a termination.

226 REP. PARKS: There is no clear line in these decrees between spousal support and award of property.

230 REP. EDMUNSON: Should there ever be an increase in spousal support and payment after the decree is entered.

239 REP. PARKS: There is going to be large gaps of time. People's financial circumstances are going to change and probably dramatically. Is the payor's increased circumstance going to be considered in formulating what is proper support?

250 CHAIR CLARK: Only if the payor's financial condition was the basis

for the termination.

261 SEN. SHOEMAKER: It also happens when a payee's situation changes.

275 CHAIR CLARK: If the basis for the termination had something to do with her financial condition and it ceased to exist then the support goes back to the way it was.

284 REP. PARKS: What happens when the basis of the termination is the payee's situation and that situation has deteriorated and five years later the payee is back in court to establish that? Is the evaluation of how much the payee receives based upon the payor's present ability? If yes, that means that all assets accumulated since the time of divorce are subject to redistribution for spousal support.

305 ROBINSON: If the payee came in for a modification at that same time would that not still be true?

307 REP. PARKS: No, because in that situation you can only establish more support based upon need, not upon a greater ability to pay.

310 SEN. SHOEMAKER: Suggests stating in HB 2445 that the standard to be applied will be the same as if it was a modification that was being sought rather than a reinstatement.

317 REP. PARKS: If that is done, the concern is then the assets that are acquired after the marriage are subject to being redistributed by the court.

335 KATE BROWN, WOMEN'S RIGHTS COALITION: In making a determination regarding spousal support the court looks at income, not assets. One exception to that is where people have income producing assets. The income derived from those assets are considered. -The other issue is a "substantial change in circumstances question. What happens if there is a change in one's financial picture? That is different that the threshold issue whether or not the reason for the termination has ceased to exist. The inquiry into the reason that the termination has ceased to exist is much narrower than the substantial change in circumstances question.

366 REP. PARKS: Agrees.

374 CHAIR CLARK: Suggests it would solve Rep. Parks problem if the Committee amended the provision that allows for termination of spousal support and state clearly that when the judge terminates spousal support the judge shall specifically state the basis for the determination so that when there is a motion to reinstate there is a record to go back on

387 REP. PARKS: You have to give them some sort of rule.

402 CHAIR CLARK: Was the payor's inability to pay at the time of the termination order has ceased to exist.

TAPE 2, SIDE A

007 SEN. SHOEMAKER: Reinstatement suggests that you go back to the way that it was. Modification is that there is a change in the original agreement. Is there any reason why you could not couple a motion for reinstatement with a motion for modification?

011 KAREN BERKOWITZ, OREGON LEGAL SERVICES: Implicit in this is a modification, because the original amount will not automatically be reinstated. The courts would look at the needs of the obligee and the ability of the obligor to pay.

020 SEN. SHOEMAKER: Couldn't the woman file a motion for reinstatement and a motion for modification? Suggests reinstatement means that the original amount and conditions set out in the original order is reinstated. If there is a desire to modify then the moving party can move for modification. This is a workable standard. -First one has to show that the basis for the termination has changed. IF one can show that then there is a reinstatement of the order. -Second, the judge has the ability if there is a motion for modification to apply the modification standards. 087 REP. EDMUNSON: Suggests deletion of Subsection 2.

100 BERKOWITZ: Suggests allowing for one step motion.

106 ROBINSON: You can always consolidate the proceedings.

108 SEN. SHOEMAKER: Agrees for deletion of Subsection 2.

113 BROWN: The reason that we did not put the factors in the original bill was that that was implicit in the bill that at the time of the reinstatement the factors that the court would consider were those statutory factors just as in any modification proceeding.

119 CHAIR CLARK: When the judge makes a termination order he must state the basis for the termination. A person goes back in to prove that the basis for the termination ceases to exist. The same order is reactivated. At any time any person can file a motion for modification as if the termination had never happened.

129 REP. PARKS: Based upon the situation the court finds when the motion is filed.

136 MOTION, REP. EDMUNSON: Withdraws earlier motion and moves to delete Subsection 2, Section 1.

140 SEN. SHOEMAKER: Is there a need to state that the reinstatement motion is without prejudice to the right of either party to file a motion of modification? Understands no.

146 VOTE: No objections. Motion passes.

147 MOTION, CHAIR CLARK: Conceptual amendment. "At the time the judge makes a termination order the judge shall state on the record the basis of the termination and it shall be part of the order."

159 REP. PARKS: What about prior terminations?

162 VOTE: No objections. Motion passes.

164 ROBINSON: Suggests Committee consider having this become effective to support orders entered after a certain date.

175 CHAIR CLARK: What is the general rule if the Committee does not state anything about applicability?

178 REP. EDMUNSON: Applies to any action brought after that date.

184 CHAIR CLARK: It might create a difficulty if the basis for the determination were not clear.

186 REP. EDMUNSON: The judge will have to make that determination.

188 REP. PARKS: Understands that if the divorce was entered into in 1980 and terminated in 1985 with a permanent award then that person has a right to come back and seek reinstatement.

194 SEN. SHOEMAKER: Understands that this would operate on all support orders.

198 CHAIR CLARK: Speaks to attorneys fees in Subsection 3.

210 REP. PARKS: Speaks to bad faith issue.

224 CHAIR CLARK: It would be nearly impossible to prove bad faith.

231 MOTION, CHAIR CLARK: Moves deletion of sentence 2 in Subsection 3.

236 VOTE: No objections. Motion passes.

240 MOTION, REP. PARKS: Should take out attorneys fees provision.

254 REP. EDMUNSON: What authority does the court have to award attorneys fees in dissolution cases including matters dealing with support orders generally?

270 BERKOWITZ: Believes that in the dissolution statute itself there is an attorneys fee provision for the dissolution itself. The federal rule is that you can get attorneys fees.

274 REP. PARKS: What is the basis? It's need isn't it?

275 BERKOWITZ: The basis is need, to give the disadvantaged party access to the courts.

277 REP. EDMUNSON: If we were to delete the entire section the courts would still retain authority in appropriate cases where there was need demonstrated.

280 BERKOWITZ: Would be concerned about it.

283 SEN. SHOEMAKER: Suggests that staff come up with what the state of the law concerning attorneys fees and their applicability to the area of family law.

295 CHAIR CLARK: This was a big issue on the Floor.

297 REP. EDMUNSON: Important to note that the direction of the discussion is whether this is necessary language, not whether its omission would preclude anything within the court's inherent jurisdiction right now.

309 CHAIR CLARK: Recesses Committee at 10:04 a.m.

310 CHAIR CLARK: Reconvenes Committee at 1:25 p.m.

314 MOTION, REP. EDMUNSON: Moves deletion of Subsection 3.

332 KATE BROWN: Urges deletion of Subsection 3.

341 VOTE: No objections. Motion passes.

355 SEN. SHOEMAKER: Moves HB 2445 back to respective chambers with a "do pass" recommendation.

362 VOTE: 4 - 0 Motion passes. Sen Hamby and Rep. Edmunson

AYE: Edmunson, Hamby, Shoemaker, Clark NO: 0 EXCUSED: Cohen, Parks

367 CHAIR CLARK: Adjourns Conference Committee at 1:28 p.m.

Submitted by:

Reviewed by:

J. Kennedy Steve, Assistant

Pat Zwick, Office Manager

EXHIBITS LOG:

AWritten Material on HB 2445 - Holly Robinson - 1 page
BWritten Material on HB 2445 - Holly Robinson - 1 page
CTestimony on HB 2445 - Warren C. Deras - 3 pages