

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 SB 222

June 22, 1991Hearing Room E 8:00 a.m. CC Tape 1

SENATE MEMBERS PRESENT: Sen. Shoemaker, Chair Sen. Hamby Sen. J Hill

HOUSE MEMBERS PRESENT: Rep. Clark Rep. Mannix Rep. Sunseri

MEMBER EXCUSED: None

STAFF PRESENT: Bill Taylor, Counsel Jacqueline Talbot, Assistant

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TAPE CC1, SIDE A

002 CHAIR SHOEMAKER: Chair calls meeting to order at 8:10 AM.

005 CHAIR SHOEMAKER: Committee will focus upon house amendments. There are no problem with the original bill. Within the amendments are issues relating to making permanent and partial disability awards reachable by garnishment in support enforcement proceedings. Issues are: 1) whether the awards should be reachable for child support, 2) whether they should be reachable for spousal support when parties have children, 3) whether private right of action be used as well as administrative proceedings to obtain garnishment, and 4) whether to put a limitation on amount of awards. We have requested amendments from DOJ. -- We have received from John Ellis, DOJ support enforcement division, a memorandum and amendments to section 3. (Exhibit A). The committee will focus upon the second of the two variations provides by the DOJ.

029 (The chair recesses at 8:16 until 8:18)

037 REP. SUNSERI: Would the private right of action include temporary award of...?

038 CHAIR SHOEMAKER: Yes. I believe current law limits even temporary awards to administrative proceedings. You are correct in that this bill would change existing law. Let me make a suggestion as to where to start. The Senate and I are comfortable allowing disability awards to be reached for child support, but not for spousal support. I think the 25% award limit is appropriate. Present statute states that not less than 25% can be reached, this bill would make it strictly 25%. We need to be clear about what we are doing. I feel we need testimony on private right of action. SED is comfortable with it, but I thought

additional testimony from the Bar regarding the rights of the obligor as to time loss or disability awards would be useful.

062 REP. CLARK: Is it fair to say the Senate was setting a balance as to spousal support? We are willing to reach disability payments for child support but not for spousal support ?

064 CHAIR SHOEMAKER: I think you are right.

065 REP. MANNIX: If there is no testimony I would like to speak to the issue of private right of action. Particularly with permanent partial disability awards, private right of action is important. When using the Support Enforcement Div. or District Attorneys as an enforcement mechanism on time loss usually the obligees are already in the public support system and public agencies are already seeking to reach awards. Time loss is a continuing payment. Permanent partial disability awards are usually a lump sum payment. A very large award can be paid out over a few months time. A permanent partial disability award can be as high as \$32,000.

077 CHAIR SHOEMAKER: A payment of \$8,000 dollars?

078 REP. MANNIX: A substantial amount of money can be paid out and it is necessary to act quickly because the award must be paid within thirty days.

080 REP. CLARK: If it was a \$32,000 award it would be paid over a few months, but up to \$8000 could be paid right away. Someone in the private sector may not have enough notice of the award to reach it before it is paid out. Insurance Companies are prompt as they are subject to a penalty for failure to pay promptly. They have a 98% efficiency factor. A private attorney may stumble when approaching the to DA or SED or the DA or SED may move too slowly. Once money has been paid out it is not recoverable.

093 CHAIR SHOEMAKER: As to time loss, which is paid periodically, how does private right of action apply?

096 REP. CLARK: It should be available as long as it does not encumber the process. In reality the vast majority of enforcement by the government will be for time loss. Private right of action for time loss will not harm the individual with an attorney and I see some efficiency with adding it. I do a lot of workers compensation work. When benefits are available, a worker will have an attorney.

108 CHAIR SHOEMAKER: Receives consensus on private right of action for permanent and partial disability and time loss.

114 REP. MANNIX: A reasonable concern has been raised on spousal support. Time loss and permanent partial disability are substitutes for wage earning capacity. I thought of reaching spouse support as well as child support, however I recognize a difference between the two as to concept and application. When an award is determined it is based upon family support. We recognize that most families today have two parents working, 52%. We expect both parents to be contributing. I am more concerned with child support because it is designed to assist those without wage earning capacity. It could be argued that many spouses do not have that capacity, but it is not as strong an argument.

133 CHAIR SHOEMAKER: There is discomfort within the Senate on reaching

spousal support.

136 REP. SUNSERI: I agree with Rep. Mannix's concern. While we are able to state that a wife should be working if separated or divorced, we have neglected the older woman who has been awarded spousal support and lacks wage earning capacity due to age. We have a large number of such people in our state. The support is particularly important in the early part of the divorce when schooling or retraining is a factor. She may have equity portion in a home, but equity is not easily liquidated.

148 CHAIR SHOEMAKER: She is in difficulties. An opposite issue is that we are speaking of disability awards where people can not work, or can at a limited level. It would be cutting into an award made as something has gone wrong in their life.

153 REP. CLARK: We are addressing assisting an injured worker to reenter the workforce. That person is probably as disabled as the spouse in terms of earning capacity.

158 CHAIR SHOEMAKER: I would want to have full hearing on that issue in the Senate Labor committee. WE do not have that opportunity.

162 REP. MANNIX: I am willing to accept the amendments as long as the child support is taken care of.

163 REP. CLARK: There is often a bitterness factor involved in an award of spousal support from disability. Some bitterness often remains from a divorce. It is different to take from a disabled person for children than to give it to a former spouse.

175 CHAIR SHOEMAKER: We have a consensus on spousal and child support, but we must address the 25% limitation on the award.

180 REP. MANNIX: The DOJ amendments recognize time loss when not medically stationary is paid monthly and indicated a 25% or total monthly award. With permanent partial disability, a lump sum, they have put 25% cap. That is fair.

187 CHAIR SHOEMAKER: Asks and receives a consensus.

188 CHAIR SHOEMAKER: Moves that the House recede from its June 10 amendments and that the committee further amend by adopting the DOJ amendments to sect 3.

216 MOTION PASSES UNANIMOUSLY

222 CHAIR SHOEMAKER: Chair adjourns hearing at 8:29 AM.

Submitted by:

Reviewed by:

Jacqueline Talbot
Counsel

Bill Taylor Assistant

EXHIBIT LOG:

A - Memorandum and Amendments by John Ellis, DOJ Support Enforcement
Division - 4 pages