

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.

Measures Heard SB 41, PH SB 61, PH SB 337, PH SB 338, PH SB 339, PH SB 340, PH

SENATE COMMITTEE ON JUDICIARY

February 11, 1991 Hearing Room C 1:00 p.m. Tapes 26 - 27

MEMBERS PRESENT: Sen. Jim Hill, Chair Sen. Peter Brockman Sen. Jim Bunn Sen. Jeannette Hamby Sen. Bob Shoemaker Sen. Dick Springer

MEMBER EXCUSED: Sen. Joyce Cohen

STAFF PRESENT: Bill Taylor, Committee Counsel Kate Wrightson, Committee Assistant

WITNESSES: Marilyn Coffel, Bureau of Labor & Industries Dave Ohmart, Oregon Court Reporters Kathy Monaghan, Oregon Court Stenography Reporters Bob Labbe, Office of Medical Assistance Programs David Heynderickx, Legislative Counsel

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TAPE 26, SIDE A

002 CHAIR HILL: Calls hearing to order at 1:15 p.m.

BILL INTRODUCTION

003 CHAIR HILL: Requests counsel to begin bill introduction.

004 TAYLOR: Begins bill introduction. -LC 1503, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeitures. The act would only apply to property seized after July 24, 1989. -LC 1502, at the request of the Asset Forfeiture Oversight Advisory Committee, relating to forfeitures. Pertains to forfeitures concerning constructive notice of matters relating to such property when an in rem action is brought against a product or holder of a manufactured dwelling. -LC 1504, at the request of Asset Forfeiture Oversight

Advisory Committee, relating to forfeitures. Requires seizing of forfeiting agency and civil forfeiture proceeding to notify all persons known to have an interest in the property, by mail, of the agency's intent to release seized property. -LC 1942, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeitures. Requires agencies seizing properties for forfeiture to make decision within 15 days as to whether to seek forfeiture of the property. -LC 1500, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Clarifies provision that civil forfeiture proceedings specify the district attorney must act as forfeiture counsel in those proceedings. Allows prosecuting attorney or forfeiture counsel to participate in settlement negotiations. -LC 1499, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Requires cities and political subdivisions, other than the counties, that receive proceeds from civil forfeiture proceedings to use those proceeds for criminal justice services. -LC 1498, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Requires forfeiture counsel to report forfeitures to Asset Forfeiture Oversight Advisory Committee on forms supplied by Committee, as soon as reasonably possible after conclusion of civil forfeiture proceedings. -LC 1463, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Specifies that court may stay civil forfeiture proceedings upon motion of party, in good cause shown. -LC 1460, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Requires that claimant in civil forfeiture proceeding establish that claimant did not acquiesce in prohibited conduct as element of affirmative defense. -LC 1462, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Allows claimant in civil forfeiture proceeding to seek expedited hearing. Specifies content and method of service of petition for hearing. Requires hearing to be held within 15 days after service of petition, or at such time later as may be allowed by court. -LC 1458, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Reduces bond required of claimant in civil forfeiture proceedings from 10% of value of property in which claimant asserts interest, to 10% of interest claimed in property.

058 SEN. SHOEMAKER: Why isn't there an omnibus bill which combines these issues?

068 TAYLOR: No, because of the number and nature of the bills. An omnibus bill would be difficult to negotiate through the process, because of the different viewpoints represented.

081 SEN. BUNN: Supports creating omnibus bill.

087 CHAIR HILL: I'm sure the idea of combining these bills occurred to the Committee. -We can introduce them as committee bills, and then see if it would be possible to combine them.

097 TAYLOR: Continues bill introduction. -LC 1459-1, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Clarifies procedure in civil forfeiture proceedings. Specifies that person claiming interest in seized property must file the claim within (--) days after notice of forfeiture is given, if notice is given in manner other than publication. -LC 1463-1, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Modifies content of claim form in civil forfeiture proceedings. Requires that claim need only reflect name and address of claimant, and statement that claimant has interest in property. -LC 1457-1, at the

request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Modifies procedures in civil forfeiture proceedings to delete requirement that forfeiting agency publish notice of seizure but for closure when certain personal property of value less than \$1000 is seized. -LC 1454, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Excludes from definition of prohibited conduct violations of controlled substances, statutes that are neither felonies nor misdemeanors. -LC 1455, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Provides that cash and other certain properties seized for forfeiture, that is held in account in financial institutions, may remain in account. -LC 1453-1, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Permits seizure of property by police officer if officer has probable cause to believe property is forfeitable. -LC 1322, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Allows person transferring interest in real property by means of contract for transfer to respond by affidavit to complaint in forfeiture action. -LC 1456, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Requires forfeiting agency to seize and maintain seized property pending final disposition in civil forfeiture proceedings. -LC 1501, at the request of Asset Forfeiture Oversight Advisory Committee, relating to forfeiture. Deletes requirement that seizing agency in civil forfeiture proceedings serve notice of seizure for forfeiture on person who receives receipt at time of forfeiture if receipt contains certain information and is not substantially amended.

131 CHAIR HILL: Moves for introduction of bills mentioned by counsel to be introduced as committee bills. -Possibility of creating an omnibus bill should be investigated.

135 SEN. BUNN: Objects to introduction as independent bills, with subsequent combination, due to printing costs.

141 SEN. BROCKMAN: Agrees with Sen. Bunn's objection.

146 CHAIR HILL: Moves for introduction of bills as LC's. -Requests exploration of omnibus issue before bill printing. -Bills may be combined into either one, or a few, bills. -[QUOTE] "Hearing no objections, so ordered."

161 TAYLOR: Continues bill introduction. -LC 2720, at the request of the City of Portland, relating to firearms. Provides person that commits crimes of unlawful use of weapon if person discharges firearm from vehicle within city with population of over 15,000. Exempts certain lawful activities. Punishable by a maximum of five years imprisonment, \$100,000 fine, or both.

168 CHAIR HILL: Notes that bill introduction by committee does not indicate support.

170 TAYLOR: Continues bill introduction. -LC 2022, at the request of the Recording Industry Association of America, relating to crime. Creates crime of unlawful sound recording in first, second, and third degrees. Creates crime of unlawful recording of live performance in first, second, and third degrees. Creates crime of unlawful labeling of recording in first, second, and third degrees. Creates crime of unlawful labeling of videotape recording in first, second, and third degrees. Punishes first degree crimes by maximum five years imprisonment,

\$100,000 fine, or both. Punishes second degree crimes by maximum two years imprisonment, \$100,000 or both. Punishes third degree crimes by maximum one year imprisonment, \$25,000 fine, or both. Provides for forfeiture of recording, unlawful records, or labels. -LC 2722, at the request of the City of Portland, relating to crime. Includes bone fractures within the definition of serious physical injury for the purposes of assault and related offenses.

186 CHAIR HILL: Moves for introduction of bills mentioned by counsel, to be introduced as committee bills.

188 SEN. BUNN: Does the record show that bills are introduced without objection?

191 CHAIR HILL: The motion is purely for introduction, with no indication of support or no support.

194 SEN. BUNN: Does the record show that the motion passed unanimously, or does it show that the bills were introduced by the committee without objection?

196 CHAIR HILL: It would show that the bills were introduced without objection, because we do not vote.

197 SEN. BUNN: Thank you.

198 CHAIR HILL: Calls for objections to the introduction. -[QUOTE] "Hearing no objection, so ordered."

SB 41 - COURT REPORTERS, PUBLIC HEARING

209 MARILYN COFFEL, BUREAU OF LABOR AND INDUSTRIES: Testifies in favor of SB 41. Submits and summarizes written testimony (Exhibit A).

254 SEN. BUNN: Why don't you double the fee, and assess it biennially? Wouldn't it be more economical to administer?

259 COFFEL: Yes. We have submitted amendments which would allow us to renew biennially (Exhibit B).

270 DAVID OHMART, OREGON COURT REPORTERS ASSOCIATION: Testifies in favor of SB 41. -Favors biennial assessment of dues. A certain number of continuing education points are required to renew, and biennial renewal would allow reporters time to complete that requirement. -Approximately 300 court reporters in Oregon; 240 are currently certified.

284 KATHY MONAGHAN, OREGON COURT STENOGRAPHY REPORTERS: Testifies in favor of SB 41. -Testing and continuing education are performed by volunteer court reporters.

SB 61 - PRIVILEGED DATA, PUBLIC HEARING

303 BOB LABBE, OFFICE OF MEDICAL ASSISTANCE PROGRAMS, DEPARTMENT OF HUMAN RESOURCES: Testifies in favor of SB 61. Submits and summarizes written testimony (Exhibit C).

SB 337 - WRONGFUL DEATH, PUBLIC HEARING

357 TAYLOR: Reviews intended purpose of bill.

404 DAVE HEYNDERICKX, LEGISLATIVE COUNSEL: Sen. Springer was on the Law Improvement Committee, and may know the committee's intent better than I. -In process of annotation and case review, we may see things which need to be changed: thus, bills like this.

SB 338 - ATTORNEY FEES IN CONTRACT DISPUTES, PUBLIC HEARING

427 TAYLOR: Reviews intended purpose of bill.

TAPE 27, SIDE A

013 HEYNDERICKX: ORS 20.096 is written so that it appears that there is no "on appeal". -Must read case law to see that fees aren't adequate. -Constitutes a trap, at this point.

SB 339 - CONTRACT ATTORNEY FEES, PUBLIC HEARING

020 TAYLOR: Reviews intended purpose of bill.

035 SEN. BUNN: Would this bill affect a situation where contractual rights to attorney's fees are one-sided? If a person signs a contract that grants fees to one side, and not the other, would this bill guarantee fees to both sides?

039 HEYNDERICKX: ORS 20.096 provides reciprocity in those cases. Even if a contract specifies that only the plaintiff will be awarded attorneys' fees, under this statute the winner would receive fees, regardless of whether the plaintiff was the winner. -An attorney may, however, lose the total fee, due to the language of ORS 20.096.

SB 340 - ATTORNEY FEES IN TORT ACTIONS, PUBLIC HEARING

053 TAYLOR: Reviews intended purpose of bill.

072 HEYNDERICKX: Appellate decision dealt with damaged property. -That may be all that the case stands for. -Should the statute be extended to any contract where injury to person or property occurs? -Law Improvement Committee decided to limit it to tort actions.

081 CHAIR HILL: Requests counsel to note SB 340's limitations.

084 SEN. SHOEMAKER: Why was there no combination of these bills, especially of SB 338 and SB 339?

096 HEYNDERICKX: These bills were not combined because that's the way the issues came up on case analysis, and we were directed to prepare drafts as these issues arose.

101 SEN. BUNN: We could amend them into one before we sent them on.

103 CHAIR HILL: Requests counsel to note proposed amendment.

107 CHAIR HILL: Adjourns hearing at 2:50 p.m.

Submitted by: Reviewed by:

Kate Wrightson Bill Taylor Assistant Counsel

EXHIBIT LOG:

A - Testimony on SB 41 - Marilyn Coffel - 3 pages  
B - Amendments to SB 41 - Marilyn Coffel - 1 page  
C - Testimony on SB 61 - Bob Labbe - 1 page