

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 1203, WS SB 1054, WS SB 945, WS HB 2375, PH

SENATE COMMITTEE ON JUDICIARY

May 6, 1991Hearing Room C 1:00 p.m.Tapes 146 - 149

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

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

WITNESSES: Glen Rader, Oregon State Police Peter  
Nunnenkamp, Motor Vehicles Division Barbara Stoeffler, Mothers Against  
Drunk Driving David Factor, Oregon Criminal Justice Council Judge Kip  
Leonard, Lane County Circuit Court Craig Smith, Business Law Section,  
Oregon State Bar Tom Cooney, Oregon Medical Association Bob Wynhausen,  
Oregon Association of Certified Public Accountants Gary Burn, Attorney  
Henry Breithaupt, Stoel Rives Boley Jones & Gray Bob Mesher, Oregon  
Association of Certified Public Accountants

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TAPE 146, SIDE A

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

SB 1203, RELATING TO INTERPLEADER, WORK SESSION

007 CHAIR COHEN: Reviews intended purpose of bill.

023 SEN. SHOEMAKER: Moves SB 1203 to the floor with a "do pass" recommendation.

027 MOTION CARRIES UNANIMOUSLY, WITH SENATORS BROCKMAN, HAMBY, AND HILL EXCUSED.

SB 1054, PROVIDES THAT, FOR PURPOSE OF IMPLIED CONSENT LAW, ANY AMOUNT OF ALCOHOL IN BLOOD CONSTITUTES BEING UNDER INFLUENCE OF ALCOHOL FOR PERSONS UNDER 21, WORK SESSION

038 SEN. SHOEMAKER: Submits -1 amendments (Exhibit A). -Reviews intended purpose of bill and proposed amendments. -Moves to adopt the -1 amendments to SB 1084.

067 CHAIR COHEN: An adult in the same situation would be subject to a Class A misdemeanor?

070 SEN. SHOEMAKER: Yes. This amends that statute.

080 SEN. HAMBY: When was the 0.04 BAC for commercial drivers enacted?

082 SWENSON: The statute was amended in 1987 and 1989.

098 SEN. HAMBY: Would you accept a friendly amendment to impose zero tolerance on commercial vehicles? -Moves to amend the -1 amendments by changing "0.04" for commercial vehicles to "0.00".

104 SEN. SHOEMAKER: I am concerned whether that will raise a new and controversial issue.

109 SEN. BUNN: If we are willing to accept the 0.00 level for someone who is 20, then we should be willing to accept it for all. -If we have Minor in Possession statutes, those should affect the problem of minors drinking. Driving statutes should only concern issues of impairment.

120 SEN. SHOEMAKER: The issue here is not one of impairment; this makes driving laws consistent with the laws that say those under 21 shall not drink.

127 SEN. BUNN: If all we are doing with this bill is toughening our stance on possession, then let's work with MIP laws.

131 SWENSON: This bill does not affect DUUI laws. It only affects implied consent; it is a misdemeanor if driving with a license suspended for a DUUI offense.

157 SEN. SPRINGER: How will this bill work in practice? Will the minor be arrested?

175 SWENSON: The bill would amend implied consent to say that any BAC above 0.00 is under the influence if you are under 21.

180 SEN. SPRINGER: The minor is then treated as if under arrest for DUUI, because this is a violation of implied consent?

190 GLEN RADER, OREGON STATE POLICE: The bill would only change the age for zero tolerance in provisional licenses. -This bill has nothing to do with DUUI statutes. It only affects administrative suspension for refusal to take a breath test.

224 SEN. SPRINGER: How can you administrate this if there is no arrest? If you use implied consent, then you must have a reasonable belief. How do you prove that?

238 RADER: If a person refuses a breath test after an arrest, the officer fills out an implied consent form. Suspension follows that occurrence.

243 SEN. SPRINGER: What if a stop was made for a reason other than DUUI?

252 RADER: We would have to prove impairment and arrest the person for DUII before we bring that person in for testing.

266 SEN. BUNN: It sounds like the bill's purpose is to make roads safer, not to keep minors from drinking.

269 RADER: Yes.

270 SEN. BUNN: Is someone who is 20 more impaired with a 0.03 BAC than someone who is 26 and has a 0.08 BAC?

273 RADER: I don't know.

275 SEN. BUNN: Is there any difficulty in prosecuting a 0.03 BAC, rather than 0.08?

282 RADER: 0.03 is hard to prosecute in any case.

287 SEN. BUNN: Why not lower the BAC limit for everyone?

289 RADER: The international scientific community agrees that a BAC of 0.08 means that the person is impaired. Many countries are lowering that to 0.05.

300 SEN. BUNN: If you are concerned about highway safety, then wouldn't this be good for adults, as well as minors?

304 RADER: I would have to agree.

307 SEN. SHOEMAKER: The bill is concerned both with highway safety and with minors drinking and driving. -We want to make it expensive for minors to drink and drive.

334 SEN. BUNN: I think it is a worse message to say that it is all right for adults but not for minors. The lower level ought to apply to everyone, not just to minors.

350 PETER NUNNENKAMP, MOTOR VEHICLES DIVISION: Clarifies history of 0.04 BAC for commercial drivers. The level is from the federal Motor Carrier Safety Act, passed by the Legislature in 1989.

363 SEN. HAMBY: In 1989, did the committee consider zero tolerance?

367 NUNNENKAMP: Federal regulators decided that a 0.04 BAC was enough for impairment.

374 SEN. HAMBY: Are there any states with zero tolerance for commercial vehicles?

375 NUNNENKAMP: I don't know.

377 SEN. SPRINGER: What about the insurance impact? It may be higher and may lead to more uninsured drivers in the highest risk groups.

393 NUNNENKAMP: We predict 290 new suspensions in the next biennium.

418 SEN. SHOEMAKER: Perhaps minors do not have the tolerance to alcohol that adults have developed.

427 CHAIR COHEN: I think they may not drive as well, but I don't know

whether we can say that about tolerance.

TAPE 147, SIDE A

013 SEN. SHOEMAKER: We can compromise by changing the level to 0.04 BAC for minors under 21.

015 SEN. BUNN: The witness has said that everyone is affected by alcohol at a 0.04 BAC. Why not make the level 0.04 for everyone, like it is for commercial drivers?

046 SEN. HILL: How many other states have zero tolerance for minors?

049 NUNNENKAMP: I don't think anyone has 0.00 all the way to 21.

062 BARBARA STOEFFLER, MOTHERS AGAINST DRUNK DRIVING: No states have zero tolerance to 21. -Reviews BAC tolerance for minors in other states.

084 CHAIR COHEN: It seems that we are discussing two options: either 0.04 for everyone, or 0.02 for minors, which fits into a graduated scheme with the 0.04 for commercial drivers and 0.08 for adults.

106 SEN. SHOEMAKER: I am concerned that lowering the level to 0.04 for everyone will make the bill very controversial and expensive. I think we should deal with minors first.

134 SEN. BUNN: Controversial bills aren't bad bills. A lower BAC threshold would make it easier for law enforcement and cut costs.

145 SEN. HILL: I would support 0.04.

167 SEN. SHOEMAKER: 0.04 between 18-21?

175 SEN. HILL: Yes.

179 SEN. BUNN: So we want a triple standard, instead of a double standard?

185 SEN. SPRINGER: What intoxalyzer do you use?

187 RADER: The 4011A. We are requesting new technology this year.

195 SEN. SPRINGER: How exact is the 4011A? What does the Academy teach about its accuracy?

199 RADER: It is accurate to 0.01 high, and 0.01 low, for certification of the instrument.

205 SEN. SHOEMAKER: Moves the previous question.

212 MOTION CARRIES, WITH SENATORS BROCKMAN, HAMBY, SHOEMAKER, HILL, AND COHEN VOTING AYE, AND SENATORS BUNN AND SPRINGER VOTING NAY.

213 SEN. SHOEMAKER: Moves SB 1054, as amended, to the floor with a "do pass" recommendation.

223 MOTION CARRIES, WITH SENATORS BROCKMAN, HAMBY, SHOEMAKER, HILL, AND COHEN VOTING AYE, AND SENATORS BUNN AND SPRINGER VOTING NAY.

224 SEN. BUNN: [QUOTE] "I give notice of my intent to prepare a minority report."

225 SEN. SPRINGER: Will join Sen. Bunn in his minority report.

SB 945, RELATING TO MISDEMEANOR SENTENCING GUIDELINES, WORK SESSION

251 DAVID FACTOR, OREGON CRIMINAL JUSTICE COUNCIL: Submits and reviews written testimony and proposed amendments (Exhibits B & C).

408 SEN. SHOEMAKER: Is there anything in the bill that requires an administrative due process hearing?

416 FACTOR: That is in section 9.

429 SEN. SHOEMAKER: Can the Sentencing Guidelines Board change the rules to make the hearing optional, if they so choose?

432 FACTOR: That requires affirmative action by the Legislature.

TAPE 146, SIDE B

007 JUDGE KIP LEONARD, LANE COUNTY CIRCUIT COURT: The question is really whether a hearing is held in every situation, or whether a hearing is available to a defendant who wishes one.

013 SEN. SHOEMAKER: Does the law state that a hearing will be provided, if requested?

017 LEONARD: I cannot imagine a situation where a judge would deny a hearing if one had been requested.

050 FACTOR: It works much like an arraignment hearing. The person is advised of his or her rights. -Continues to review testimony.

102 LEONARD: These are important policy changes.

127 SEN. HILL: Why is this a statutory change?

134 LEONARD: Putting it in statute will ensure uniformity across Oregon.

200 FACTOR: Reviews proposed technical amendments.

285 LEONARD: Reviews intended purpose of technical amendments.

TAPE 147, SIDE B

002 LEONARD: Continues to review proposed amendments.

HB 2375, REVISES PROFESSIONAL CORPORATION LAW, PUBLIC HEARING AND POSSIBLE WORK SESSION

256 CRAIG SMITH, BUSINESS LAW SECTION, OREGON STATE BAR: Submits and summarizes written testimony (Exhibit D).

TAPE 148, SIDE A

002 SMITH: Continues testimony.

103 TOM COONEY, OREGON MEDICAL ASSOCIATION: Testifies concerning vicarious liability of shareholders.

176 BOB WYNHAUSEN, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS:  
Testifies concerning joint and several liability.

225 GARY BURN, ATTORNEY: Testifies in opposition to bill.

414 HENRY BREITHAUPT, STOEL RIVES BOLEY JONES & GREY: Submits and  
summarizes written testimony (Exhibit E).

TAPE 149, SIDE A

002 BREITHAUPT: Continues testimony.

027 BOB MESHER, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS:  
Testifies about his experiences at Laventhal & Horwath.

100 CHAIR COHEN: Adjourns hearing at 3:38 p.m.

Reviewed by: Reviewed by:

Bill Taylor Ingrid Swenson Counsel Counsel

Submitted by:

Kate Wrightson Assistant

EXHIBIT LOG:

A	-	Amendments to SB 1054 - Sen. Bob Shoemaker - 2 pages
B	-	Testimony on SB 945 - David Factor - 3 pages
C	-	Amendments to SB 945 - David Factor - 1 page
D	-	Testimony on HB 2375 - Craig Smith - 18 pages
E	-	Testimony on HB 2375 - Henry Breithaupt - 4 pages

Senate Committee on Judiciary May 6, 1991 - Page

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

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Measures Heard SB 546, WS SB 722, WS SB 1148, WS SB 50, PH & WS

SENATE COMMITTEE ON JUDICIARY

May 6, 1991Hearing Room C 7:00 p.m.Tapes 150 - 151

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair  
Sen. Peter Brockman Sen. Jeannette Hamby Sen. Bob Shoemaker Sen. Dick  
Springer

MEMBER EXCUSED: Sen. Jim Bunn

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

WITNESSES: Sen. Peg Jolin Jeff Heatherington, Delta  
Tau Delta Fraternity Diane Brissenden, Assistant Attorney General Norm  
Reed, Mental Health Division

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TAPE 150, SIDE A

002 CHAIR COHEN: Calls hearing to order at 7:14 p.m.

SB 546, REQUIRES GROUP HEALTH INSURANCE POLICIES TO CONTAIN PROVISIONS REGARDING NOTICES OF POLICY TERMINATION, WORK SESSION

003 SEN. PEG JOLIN: Reviews intended purpose of bill.

019 SWENSON: Submits and reviews -A3 amendments (Exhibit A).

023 SEN. SHOEMAKER: Moves to adopt the -A3 amendments to SB 546.

025 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATORS BUNN AND SPRINGER WERE EXCUSED.

026 SEN. SHOEMAKER: Moves SB 546, as amended, to the floor with a "do pass"

recommendation.

030 MOTION CARRIES UNANIMOUSLY, WITH SENATORS BUNN AND SPRINGER EXCUSED.

SB 722, MODIFIES STATUTE OF LIMITATIONS FOR CERTAIN CAUSES OF ACTION  
ARISING OUT OF IMPROVEMENTS TO REAL PROPERTY, WORK SESSION

044 TAYLOR: Submits -3 amendments and hand-engrossed version of bill  
(Exhibits B & C). -Reviews intended purpose of bill and of proposed  
amendments.

089 SEN. SHOEMAKER: Abandonment relates to the statute of repose; the  
statute of limitations relates to discovery of the problem.

101 SEN. SHOEMAKER: Moves to adopt the -A3 amendments to SB 722.

115 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATORS BUNN AND  
SPRINGER WERE EXCUSED.

116 SEN. SHOEMAKER: Moves SB 722, as amended, to the floor with a "do  
pass"

recommendation.

121 MOTION CARRIES UNANIMOUSLY, WITH SENATORS BUNN AND SPRINGER EXCUSED.

SB 1148, CREATES CIVIL CAUSE OF ACTION FOR VICTIM OF HAZING AND PARENTS  
OR LEGAL GUARDIAN OF VICTIM, WORK SESSION

126 TAYLOR: Submits -1 and -2 amendments, and amendments prepared by  
Sen. Dukes, and hand- engrossed versions of each (Exhibits D, E, F, H,  
I, & J). -Reviews intended purpose of bill and of proposed amendments.

209 JEFF HEATHERINGTON, DELTA TAU DELTA FRATERNITY: Reviews intended  
purposes of -2 amendments. -We want to delete sections 1 and 2.

270 CHAIR COHEN: Do we want to create a new civil cause of action?

272 SEN. SHOEMAKER: It might cause more problems. There is already a  
sufficient cause of action in the bill as written.

288 TAYLOR: Reviews amendments proposed by Sen. Dukes.

323 CHAIR COHEN: Moves to amend the amendments proposed by Sen. Dukes  
by deleting only the words "long term" on line (j), and to adopt the  
resulting amendments.

334 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATORS BUNN AND  
SPRINGER WERE EXCUSED.

338 HEATHERINGTON: Reviews -2 amendments.

362 SEN. SHOEMAKER: I would prefer to stay with the original language,  
since some hazing activities are also performed by athletic teams.

380 HEATHERINGTON: Intermural events should be added, as well. -Current  
law exempts athletic teams.

407 SEN. SHOEMAKER: I'm not sure that makes sense.

421 CHAIR COHEN: School-sanctioned events include intermural athletics.

424 TAYLOR: As opposed to pickup games.

431 HEATHERINGTON: Yes. You will want that as legislative intent.

TAPE 151, SIDE A

008 HEATHERINGTON: We also want to substitute "criminal" for "judicial" on line 21. -In a civil proceeding, the person who allows him or herself to be hazed should be held responsible. In a criminal proceeding, it is different.

023 SEN. BROCKMAN: If you go along with the hazing, then do you give up your right to a civil suit?

025 HEATHERINGTON: If you go along with it, your acquiescence can be brought up in court.

064 SEN. HILL: Is the issue one of degree? There is always a great deal of pressure to go along with the activity, in these situations.

071 HEATHERINGTON: In a criminal case, the degree does not matter. In a civil case, it might.

083 SEN. BROCKMAN: What about students who feel constrained to participate, due to familial involvement in a particular group?

102 SEN. SHOEMAKER: That might resemble duress, and it might not stand up as a defense.

109 SEN. BROCKMAN: Would the student be under duress from other fraternity members, or from his family?

111 CHAIR COHEN: You could probably allege either one.

117 SEN. HAMBY: I would not be comfortable with replacing "judicial" with "criminal."

120 SEN. BROCKMAN: I agree.

123 SEN. HILL: I would object as well.

148 SEN. SPRINGER: I would support the proposed amendment.

159 CHAIR COHEN: Moves to amend the bill by changing "Class A misdemeanor" to "Class C misdemeanor".

161 SEN. SHOEMAKER: What is the difference in penalty?

162 SWENSON: A year in custody for a Class A misdemeanor, and 30 days in custody for a Class C misdemeanor.

164 CHAIR COHEN: A Class C is plenty.

165 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SEN. BUNN WAS EXCUSED.

180 SEN. SHOEMAKER: Moves to delete sections 1 and 2 of the bill.

183 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SEN. BUNN WAS EXCUSED.

185 SEN. SHOEMAKER: Moves to amend line 21 on page 2 by changing "judicial" to "criminal."

193 MOTION FAILS, WITH SENATORS BROCKMAN, HAMBY, AND HILL VOTING NAY, SENATORS SHOEMAKER, SPRINGER, AND COHEN VOTING AYE, AND SENATOR BUNN EXCUSED.

195 SEN. SHOEMAKER: Moves SB 1148, as amended, to the floor with a "do pass" recommendation.

202 MOTION CARRIES, WITH SENATORS HAMBY, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING AYE, SENATOR BROCKMAN VOTING NAY, AND SENATOR BUNN EXCUSED.

204 CHAIR COHEN: We still need to change the "relating to" clause.

207 SEN. HILL: Moves to reconsider committee vote on SB 1148.

209 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BUNN WAS EXCUSED.

210 CHAIR COHEN: Moves to adopt line 1 of the -1 amendments.

213 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BUNN WAS EXCUSED.

223 SEN. SHOEMAKER: Moves SB 1148, as amended, to the floor with a "do pass" recommendation.

228 MOTION CARRIES, WITH SENATORS HAMBY, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING AYE, SENATOR BROCKMAN VOTING NAY, AND SENATOR BUNN EXCUSED.

SB 50, RELATING TO AUTHORITY OF THE COURT REGARDING PLACEMENT OF CHILD IN HOSPITAL OR OTHER FACILITY WHEN CHILD NEEDS PHYSICAL OR MENTAL EXAMINATION, PUBLIC HEARING & WORK SESSION

265 DIANE BRISSENDEN, ASSISTANT ATTORNEY GENERAL: Reviews intended purpose and history of bill. -The bill summary is incorrect. The bill does not restrict the court's authority.

422 NORM REED, MENTAL HEALTH DIVISION: Reviews intended purpose of bill.

TAPE 150, SIDE B

002 REED: Continues testimony.

051 SEN. HILL: Is this bill designed to make things better for the child, or for you?

054 BRISSENDEN: It will improve the situation for both the child and for us.

075 SWENSON: The bill provides for consultation of other affected agencies, by the Mental Health Division. What happens when the court does not agree with the decisions of other agencies?

084 BRISSENDEN: The Juvenile Department would not have an opinion, if the other agencies were working together for the child's best interests.

124 SEN. HILL: Moves SB 50 to the floor with a "do pass" recommendation.

148 MOTION CARRIES UNANIMOUSLY, WITH SENATOR BUNN EXCUSED.

152 CHAIR COHEN: Adjourns hearing at 8:21 p.m.

Reviewed by:      Reviewed by:

Bill Taylor      Ingrid Swenson Counsel      Counsel Submitted by:

Kate Wrightson Assistant

EXHIBIT LOG:

A	-	Amendments to SB 546 - Staff - 2 pages	B-	Amendments to	
SB 722 - Staff - 1 pages	C	-	Hand-engrossed version of SB 722 -		
Staff - 2 pages	D	-	Amendments to SB 1148 - Staff - 1 pages		
E	-	Amendments to SB 1148 - Staff - 2 pages	F	-	Amendments
to SB 1148 - Staff - 1 pages	G	-	Hand-engrossed version of SB 1148		
- Staff - 2 pages	H	-	Hand-engrossed version of SB 1148 - Staff -		
2 pages	I	-	Hand-engrossed version of SB 1148 - Staff - 2 pages		