

February 4, 1991                      Hearing Room 50 03:00 p.m.                      Tapes 9-10  
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,  
VICE-CHAIR SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB SHOEMAKER

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,  
COMMITTEE ASSISTANT WITNESSES: MARILYN COFFEL, DIRECTOR,  
INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR AND INDUSTRIES PAUL  
TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION, BUREAU OF LABOR AND  
INDUSTRIES SUE JORDAN, DEPUTY ADMINISTRATOR, CIVIL RIGHTS DIVISION,  
BUREAU OF LABOR AND INDUSTRIES

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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.

TAPE 9, SIDE A

001 CHAIR KERANS called the meeting to order at 3:06 p.m.

SB 34 - FINES FOR CHILD LABOR VIOLATIONS, PUBLIC HEARING

008 PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION, BUREAU OF  
LABOR AND INDUSTRIES MARILYN COFFEL, DIRECTOR, INTERGOVERNMENTAL  
RELATIONS, BUREAU OF LABOR AND INDUSTRIES (EXHIBIT A.) - Details Exhibit  
A. 091 CHAIR KERANS: Let's clarify for the record that we're talking  
about all those cases where the defense is taken that there's an  
exemption and you've got the authority to impose that fine, and you do  
so. You have never been overturned in that, is that correct? COFFEL:  
That's correct. Senate Committee on Labor February 4, 1991- Page 2

CHAIR KERANS: Where would I find either in statute or rules the  
agreement that the person is not doubly fined for the same instance when  
a violation is found.

TIFFANY: That's precisely the point. Prior to this amendment, the only  
assurance an employer had was in the language not regulated under the  
Fair Labor Standards Act and our interpretation of that. What we hope to  
do with this amendment is to clearly state that in two situations where  
you're regulated under the federal law: one, if the violation is both  
federal and state, and two, if the feds impose a civil penalty on you,  
you are exempt, and clearly so right here in this statute. We do have an  
interagency agreement with the U.S. Department of Labor in which we  
exchange information. This would be the legal thing an employer could  
point to.

CHAIR KERANS: I would look at the language contained in the new Sub 8,  
and say, wait a minute, your own language says you can't do that because  
the state statute says you can't because they did?

TIFFANY: That's right.

123 CHAIR KERANS: Can I get hammered twice?

TIFFANY: I don't believe you can get hammered twice.

CHAIR KERANS: They would act. You're simply saying in subsection 8, if they act, you won't.

TIFFANY: That's right. In fact, if they have acted, we can't.

COFFEL: We would like to have something codified that deals with policy that we do right now, and something goes beyond just an interagency agreement.

142 KINTIGH: I heard her say it would save money, but the fiscal impact said "no fiscal impact".

COFFEL: I believe we meant no adverse fiscal impact.

TAPE 9, SIDE A

SB 34 - FINES FOR CHILD LABOR VIOLATIONS, WORK SESSION

156 MOTION: SENATOR SHOEMAKER moves to adopt the amendments to SB 34 (Exhibits B & C), subject to review by Legislative Counsel. VOTE: Hearing no objection, the motion carries. MOTION: SENATOR SHOEMAKER moves SB 34 to the floor with a "do pass" recommendation. VOTE: Hearing no objections, motion carries. Senate Committee on Labor February 4, 1991 Page 3

TAPE 9, SIDE A

SB 38 - CONSTRUCTIVE DISCHARGE, PUBLIC HEARING 185 MARILYN COFFEL, DIRECTOR, INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR AND INDUSTRIES (EXHIBIT D) SUE JORDAN, DEPUTY ADMINISTRATION, CIVIL RIGHTS DIVISION, BUREAU OF LABOR AND INDUSTRIES - Details Exhibit D. SENATOR SHOEMAKER: What if the working conditions were no worse when the employee left than when he accepted the employment - would that still be a constructive discharge? COFFEL: I'm not sure that a person would know beforehand what the working conditions are in a place. JORDAN: That's right. There is nothing in the law even currently that says if you're in a discriminatory environment that you're prohibited from filing, or in this case, leaving. SENATOR SHOEMAKER: But you said that this isn't limited to discrimination cases. This applies across the board. JORDAN: No, it's limited to the 659 cases. SENATOR HILL: Is this based in common law? Is it based in specific federal statute? ANNETTE TALBOTT, COMMITTEE COUNSEL: Title VII. SENATOR HILL: Is it defined in Title VII? COFFEL: I don't know if it is defined specifically as constructive discharge. SENATOR HILL: But there is a definition that the federal courts do accept. That's one we previously had. So we are consistent with federal statutes. Now, along come these two court cases, and they say that no we can't have a definition in common with the federal statutory definition and judicially accepted definition, but rather we have to have a different definition. 250 COFFEL: That's correct. That's what we're afraid of. Because of these two other cases, that they've come in and taken this other standard. - Continues to detail Exhibit D.

303 KINTIGH: What is the definition of employer? Does this have to originate with the employer himself? COFFEL: Certainly we do have a definition in 659 of employer, but if someone was working for the employer, it would be an agent of the employer and therefore acting in his stead, so the responsibility would basically fall to the employer.

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KINTIGH: Even if the employer does not approve of the actions?

COFFEL: He may not have approved. But when we get into those situations,  
we investigate to determine.

339 JORDAN: But there's a different standard of liability for  
co-workers. Generally under civil rights law there is a different  
standard if co-workers are doing the harassing or lead workers, not  
management, so they are held to a different standard and basically  
"should have known" standard for co-workers which is a different  
standard than the managers where they have direct control. KINTIGH: So  
it could come down to co-workers. JORDAN: Potentially, yes, if  
co-workers discriminate, and it was brought to the management's  
attention and they did nothing, then yes. CHAIR KERANS: What you are  
talking about is that the bill returns us to the status quo. COFFEL:  
That's correct. SENATOR SHOEMAKER: Would this affect unemployment  
compensation. It's limited to Chapter 659, and I take it that it would  
not. JORDAN: That's right. They have different rules which they follow.

368 CHAIR KERANS: You may file an unemployment claim based on a  
constructive discharge, and I don't know the statute to know how that is  
treated, it's treated on an individual case by case process. You can  
actually make a claim and have that claim denied or accepted, based on  
the elements of a constructive discharge. SENATOR HILL: That's in effect  
right now, is that correct? CHAIR KERANS: I believe so, we will have  
staff find that cite. It's not something that you get automatically.  
JORDAN: Absolutely not. Nor in civil rights law as it stands. SENATOR  
SHOEMAKER: Now the Bratcher case - you said that it was not limited to  
Chapter 659. COFFEL: The Bratcher case was only applicable to  
intentional tort law. What they did was take that standard and apply it  
to a statutory civil rights case. TALBOTT: The Bratcher case was a  
wrongful discharge case. So they transferred the tort test that they had  
established to cases under Chapter 659. SENATOR SHOEMAKER: The Bratcher  
case would then continue to be the law for constructive discharge under  
unemployment compensation?

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TALBOTT: No, under the common law tort of wrongful discharge.

TAPE 9, SIDE A SB - 38 - CONSTRUCTIVE DISCHARGE, WORK SESSION

468 MOTION: SENATOR HILL moved SB 38 to the floor with a "do pass"  
recommendation.

VOTE: Hearing no objection, the motion carries.

TAPE 10, SIDE A INTRODUCTION OF COMMITTEE BILLS. PUBLIC HEARING

035 TALBOTT (EXHIBIT E) - Details Exhibit E. 044 MOTION: CHAIR  
KERANS moved in block to introduce the LC bills as outlined in Exhibit  
E. VOTE: Hearing no objection, the motion carries. 057 Meeting  
adjourned at 3:37 p.m.

Submitted by:      Reviewed by: Roberta White      Annette Talbott  
Assistant          Committee Counsel

EXHIBIT LOG:

A - Testimony on SB 34 - Marilyn Coffel - 15 pages B - Hand-engrossed  
version of SB 34 - Staff - 1 page C - Amendments ot SB 34 - Staff- 1  
page D - Testimony on SB 38 - Marilyn Coffel - 8 pages E - Memo to  
Introduce LC Bills - Staff- 1 page F - Staff Measure Summaries - Staff -  
2 pages

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