

Chairperson:
SEN. JAN WYERS
Vice-Chairperson:
SEN. ROBERT SMITH

Tape 256 A & B
257 A



Members:
SEN. WALT BROWN
SEN. EDWARD FADELEY
SEN. JIM GARDNER
SEN. KENNETH JERNSTEDT
SEN. TED KULONGOSKI

ff:
FELICIA M. GNIEWOSZ
KRISTENA A. LaMAR
Legal Counsel
HARRIET CIVIN
Chief Committee Assistant
GLENDA HARRIS
Committee Assistant

SENATE COMMITTEE ON JUSTICE

Room 347, State Capitol
SALEM, OREGON 97310
(503) 378-8833

JUNE 30, 1981

SENATE COMMITTEE MINUTES

8:30 A.M.

ROOM 350

MEMBERS PRESENT: Senator Walter Brown
Edward Fadeley (arr. 9:35 a.m. left 9:40 a.m.)
Jim Gardner
Kenneth Jernstedt
Robert Smith, Vice Chairperson (arr. 8:50 a.m.)
Jan Wyers, Chairperson

MEMBERS EXCUSED: Senator Ted Kulongoski

STAFF PRESENT: Felicia Gniewosz, Legal Counsel
Kristena LaMar, Legal Counsel
Kathy Eckland, Committee Assistant

WITNESSES AND BILLS:

Tape 256 A HOUSE BILL 2135 - Relating to agrucultural lien
015 Bob Brogoitti, State Representative District 58
039 Larry Rew, Attorney, Portland, General Counsel for the
Oregon Wheat Growers League
266 John Cuthbert, grain producer, LaGrande
321 Don Starr, grain producer, LaGrande
340 Earl Pryor, wheat producer, Eastern Oregon

HOUSE BILL 2768 - Relating to logger's lien
380 Bob Brogoitti, State Representative District 58
405 Joe French, Oregon Log Truckers Association

Tape 257-A HOUSE BILL 3089A - Relating to commercial lien
033 Frank Brawner, Oregon Bankers Association

HOUSE BILL 2479 - Relating to crime
103 Roger Martin, Oregon Catholic Conference
186 Carol Herzog, American Civil Liberties Union of Oregon

Tape 256-B 035 Gil Meyer
175 Bob Oliver, Assistant to Governor Atiyeh

METER READINGS GIVEN FOR INITIAL TESTIMONY OF EACH WITNESS. ADDITIONAL TESTIMONY
OFTEN FOLLOWS
MINUTES WERE RECORDED ON 60 MINUTE CASSETTE TAPES. METER READINGS INDICATE
MINUTES ON EACH SIDE.

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Vice-Chairperson:
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Tape 256-A

007 CHAIRPERSON WYERS called the subcommittee to order with a public hearing on House Bill 2135 at 8:45 a.m.

HOUSE BILL 2135 - Relating to agricultural lien

015 BOB BROGOITTI, State Representative District 58, testified in support of HB 2135. He explained the bill was started in the 1979 session because of a problem they were having with a co-op in Union County that was going into bankruptcy and it caused quite a problem in financing some of the farming operations. Under the existing law of the UCC you can file but it is hard to get the farmers to protect themselves when they don't really understand they can file to protect themselves. He said this bill does do the necessary part of protecting that farmer, that he will get his money for the product. He explained the bill had to be moved before July 1, 1981 because of a sunset clause.

039 LARRY REW, Attorney in Pendleton, General Counsel for the Oregon Wheat Growers League, testified in support of HB 2135. He explained the legislation had started out with a conference in 1978 after the failure of two co-ops. He told about the farmers selling their grain but they had not been paid for it. The reason was the acquiring purchaser did not have adequate funds to make payment for the grain on the date of sale. He said between the date of the sale and the transfer of the possession of the grain and the date the farmers got their money the co-op purchaser went broke. The co-op purchaser was financed in its operation by a bank and it had filed a general financing statement and claimed all of the funds. That was the funds that belonged to the farmers from the sale of the products.

066 SENATOR GARDNER asked where the grain was at that time. MR. REW said it had left the elevator and most of it was in Portland or the Far East at the time.

- 077 SENATOR GARDNER asked Mr. Rew what the Spokane Bankers Co-operative position was on the bill.
- 078 MR. REW said they were neutral on it and were not opposing the bill.
- 083 SENATOR GARDNER asked if the bill was designed to relieve the farmer of the obligation of filing the UCC statement, MR. PEW said yes, for a period of 90 days.
- 089 SENATOR GARDNER asked witness what he saw as a potential dislocation that this might cause within the grain trade as the daisy chains build up and asked him to explain.
- 092 MR. REW said none. He explained in the bill now there was language that was drafted in which the grain trade did have a concern that there was not a release of the lien so they could deal with it and sell it to the Far East and still possibly be responsible. That language is in the bill which would relieve the trade from any responsibility. He said the only thing they are responsible for is to make sure the money comes back from the direction in which it is supposed to go. The other reason is the banks have reviewed this carefully and have been supportive of the bill.
- 117 REPRESENTATIVE BROGOITTI said he was also a grain operator and had checked with the people they deal with in Portland and there were no problems. He said the problem Senator Gardner was having with the bill was one they had to clear and he thought it had been taken care of.
- 125 SENATOR GARDNER and witnesses discussed the lien at this point.
- 157 REPRESENTATIVE BROGOITTI said there were people present that were involved with the foreclosure in Union County that wanted to testify.
- 161 SENATOR WYERS pointed out a letter from Gary Cordy (EXHIBIT A) and asked witness to comment.
- 168 MR. REW explained there was a section in there which refers to ORS 79.307, subsection 1, which should be amended out and he felt that would resolve the question.
- 199 SENATOR WYERS asked Mr. Pew to sum up what the bill does.
- 201 MR. REW said the bill basically provided to a seller of agricultural products a lien for a period of 90 days after he sold his grain and transferred custody of that grain to the purchaser and that lien would be on the grain as long as it was in the first party purchasers hands and on the proceeds. After the first party purchaser sold the grain it would be held on the proceeds until he was paid or the 90 days elapsed. He said the lien attaches either on the date of sale or the date the custody was transferred from the farmer to the purchaser, which ever is later.

MR. REW explained there was first a 90 day period then it could be extended for a period of six months, upon filing with the Secretary of States office.

266 JOHN CUTHBERT, grain producer from LaGrande, testified in support of HB 2135. He said he was affected by the problem that occurred in Union County when the grain elevator went into bankruptcy proceeding and was present to show their support and the need for the bill.

321 DON STARR, grain producer, LaGrande, testified in support of HB 2135. He stated he also ran an elevator on a limited basis and it didn't cause him any problems but he was present in support of the people who couldn't be present today to testify.

340 EARL PRYOR, wheat producer, Eastern Oregon, testified in support of HB 2135. He brought up the point of the impact this causes on the community when the assets are frozen. He said LaGrande was almost paralyzed because there was no money for the farmers to pay their bills and the whole community suffered as a result of that.

368 SENATOR WYERS said they would set it for a work session and went on to the next bill.

HOUSE BILL 2768 - Relating to logger's lien

380 REPRESENTATIVE BOB BROGOITTI, District 58, testified in support of HB 2768. He explained in brief what the bill did and then introduced Joe French to testify.

405 JOE FRENCH, Oregon Log Truckers Association. He stated the intent of the bill was to correct a problem that arose in 1975, to allow the lien to attach to the proceeds of logs. He handed out a copy of the statute (EXHIBIT B) and explained the changes.

MR. FRENCH said 87.236 was the key because it discusses when the lien attaches to the proceeds, if prior to the filing you have given notice. In 87.236 they allow agricultural liens and fisherman liens to attach to the proceeds even though they have not given notice and all they were asking was to put in the law that the lien of transporting or assisting in manufacturing will attach to the proceeds.

Tape 257-A

030 SENATOR WYERS thanked witnesses and closed the hearing. He open the next hearing with House Bill 3089A.

HOUSE BILL 3089A - Relating to commercial law

033 FRANK BRAUNER, Oregon Bankers Association testified in support of HB 3089A. See written testimony (EXHIBIT C). He offered proposed amendments which were attached to his testimony and went over them.

HOUSE BILL 2479 - Relating to crime

- 103 ROGER MARTIN, Oregon Catholic Conference, testified in support of HB 2479. He stated the Oregon Catholic Conference was an organization made up of the two Catholic diocese of Oregon, the Portland diocese and the Baker diocese. He said the bill was studied at length and the Catholic Church was not feeling the brunt of discrimination but it was obvious that many racial minorities are and they felt very strongly that they need whatever protection can be provided under law by the Oregon Legislature.
- 171 SENATOR GARDNER asked Mr. Martin if he had seen the ACLU amendments. MR. MARTIN said he had not.
- 186 CAROL HERZOG, American Civil Liberties Union of Oregon, testified in opposition to HB 2479. She wanted to make clear that the ACLU did not in any way support racism and that they were committed to promoting constitutional rights of all citizens and civil rights of all citizens and she did not want their opposition to the bill to be confused in any way with that.
- MS. HERZOG passed out an article (EXHIBIT D) from British Columbia and said they had passed a similiar law to the one the committee was considering.
- MS. HERZOG referred to the proposed amendments from the ACLU (EXHIBIT E) and stated they had several objections to the bill as it was passed by the House. The main objections were to the overbreath and to its vagueness. She then went over the proposed amendments.
- 248 SENATOR BROWN asked about the four sections referred to in line 4 of the bill.
- 250 MS. HERZOG said 163.160 was assult four, 163.190 was menacing, 164.345 was criminal mischief and the last 166.065 was harassment. She said the fourth section, 166.065, to which she referred has been held unconstitutional by the Oregon Supreme Court.
- 290 SENATOR WYERS asked about section 2 and said it was pretty broad. MS. HERZOG said she realized it was. They were not sure it was possible to write this type of a law and they had tried to write one they thought was better than the House bill.
- 300 SENATOR GARDNER and MS. HERZOG discussed the bill at this point.
- 345 SENATOR BROWN asked about the Governor proposing the bill. MS. HERZOG said he had proposed a bill which was entirely different than the bill before them. She explained the final product was a mixture of several different groups put together.
- 354 COUNSEL GNIEWOSZ explained the original reprint of HB 2479 did say sponsored by the Committee on Judiciary at the request of Governor Atiyeh.

- 380 MS. HERZOG said the Governors bill was totally changed and they would rather see the laws on the books enforced rather than to try to write legislation of this type.
- 432 SENATOR BROWN asked about conspiracy. MS. HERZOG explained their concern was they did not have to have the crime of intimidation, all they have to have is the conspiracy and gave an example. She said you don't have to commit the act.
- DISCUSSION followed on conspiracy.
- 462 COUNSEL GNIEWOSZ said there was a constitutional issue which may have come up based on the Shumway case, which was the death penalty case and that was penalties might not be proportionate to the offense and it might cause a problem that the conspiracy was different.
- Tape 256-B
035 GIL MEYER, testified in opposition to HB 2479. He felt the bill was discriminating to races. (EXHIBIT F)
- 175 BOB OLIVER, Assistant to Governor Atiyeh. He said it was introduced at the request of the Governor and reflected serious concerns on his part that there seemed to be a growing number of cases of racial harassment in Oregon. At the time it was introduced the Governor indicated he was not committed to any one particular verbiage in the bill and was indicated to the committee at the time. He said the amendments the committee had basically reflected the work of the attorney general's office and they were acceptable by the Governor.
- MR. OLIVER commented on the ACLU amendments. He said in their view, regarding the conspiracy issue, there would have to be more than just talk about the need, in the eyes of the beholder, to do something or other with respect to persons of another race or religion. He said there would have to be some overt act toward commission of one of the four crimes.
- 210 SENATOR WYERS asked if sections 1 and 3, with the addition of the limit as to parental liability, be a half a loaf. MR. OLIVER said they would prefer to have three quarters.
- 229 SENATOR GARDNER asked Mr. Oliver what he thought if the ACLU's revised version of the bill.
- 230 MR. OLIVER said he had seen a version earlier and was not sure it added much to what exists under federal law now. He said it was the Governors view that not only did they need to have a way to deal with these things but also to attract the attention of people that abuse of people and their property will not be tolerated.
- 240 SENATOR GARDNER asked why the Governor objected to the term sexual orientation to the bill.
- 241 MR. OLIVIER said there were numerous statutes in Oregon right now that addressed discrimination on all kinds of different things based on race, color, religion and national origin. They have not yet addressed

the question of sexual orientation. He said in the Governors view the issue of addressing that sort of discrimination should be done in a separate vehicle rather than this particular one bill.

247 SENATOR BROWN asked about the federal anti civil rights conspiracy statute.

251 MR. OLIVER said it would give additional relief and that was why they had it, so the issues could be dealt with at the local level.

263 CHAIRPERSON WYERS thanked witnesses and adjourned the meeting at 10:01 a.m.

Respectfully submitted,

Kathy Eckland, Committee Assistant

EXHIBIT SUMMARY:

- A - Amendments, Gary Cordy, HB 2135
- B - Joe French, HB 2135
- C - Frank Brawner, testimony, HB 3089
- D - Carol Herzog, HB 2479
- E - Carol Herzog, Amendments, ACLU, HB 2479
- F - Gil Meyer, HB 2479
- G - Witness registration sheet, AHB 2135
- H - Witness registration sheet, HB 2768
- I - Witness registration sheet, HB 3089A
- J - Witness registration sheet, AHB 2479