

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

February 16, 2005 Hearing Room 357

8:30 A.M. Tapes 17 - 18

Corrected 10/12/05

MEMBERS PRESENT: **Rep. Rep. Bob Ackerman, Chair**

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

STAFF PRESENT: **Sam Sears, Counsel**

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2415 – Public Hearing and Work Session

HB 2416 - Public Hearing

HB 2373 - Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 17, A

006 Chair Ackerman Calls the meeting to order at 8:35 a.m. and opens a public hearing on HB 2415 and HB 2416.

HB 2415 AND HB 2416 – PUBLIC HEARING

017 Sam Sears Counsel. Explains HB 2415, which establishes rules governing the passage of property from an individual who suffers physical or financial abuse.

026 Rep. Mark Hass House District 27. Testifies and submits written testimony in support of HB 2415 (**EXHIBIT A**). Advises that HB 2415 is at the suggestion of elder abuse agencies and elder abuse attorneys. Cites statistics on financial abuse cases in Oregon.

057 Timothy Marble Attorney, Forest Grove, Oregon. Testifies and submits written testimony in support of HB 2415 (**EXHIBIT B**). Advises that the testimony is mislabeled in support of HB 2416. Details an elder abuse case in Washington County.

101 Marble Continues testimony. Urges passage of HB 2415.

108 Rep. Garrard Refers to HB 2416. Expresses concern that the term “emotionally disturbed” can be loosely interpreted.

138 Marble Responds that there have been discussions about which definition of “disabled population” to use. Gives background of a bill from the 2003 session on triple damages.

163 Rep. Garrard Reiterates that “emotionally disturbed senior” leaves a lot of room for interpretation.

174 Sears Understands persons with disabilities do not have to be seniors. States that ORS 124.005 indicates that an “emotionally disturbed” person must also be residing in a program administered by the Department of Human Services (DHS).

197 Chair Ackerman Asks if there are qualifications on the definition of “emotionally disturbed.”

199 Sears Responds, yes, for the particular definition Rep. Garrard is pointing out.

207	Sears	Explains further the ways a person can be qualified as a person with a disability.
218	Chair Ackerman	Asks Rep. Garrard if counsel's explanation clarifies his question.
223	Rep. Garrard	Requests assurance by Rep. Hass that he is okay with it.
227	Rep. Hass	Replies, yes. Explains that the real intent is to wrap another layer of protection around vulnerable people.
228	Rep. Garrard	States his concern is with interpretation to avoid conflict in a court proceeding.
229	Rep. Macpherson	Indicates that the key definition is for a disabled person who is eligible for supplemental security.
259	Chair Ackerman	Explains that Legislative Counsel reviews for conflicts all statutes incorporated by reference.
270	Jacqueline Zimmer	Oregon Association of Area Agencies on Aging and Disabilities. Points out that the definition of disability in HB 2416 is used to determine financial eligibility for services in the state system.
282	Zimmer	Advises that the ORS 410.040 definition of a disabled person is tied to financial assistance. Suggests referring to ORS 174.107 instead for the definition of disabled person.
300	Rep. Macpherson	Expresses concern with using physical impairment criteria.
315	Morgan Brodie	Seniors and People with Disabilities. Explains that people with physical disabilities often rely on caregivers to handle financial transactions for them, even though mental capacity is present.
332	Rep. Macpherson	Asks if concern would be addressed if the definition referenced impairing their ability to deal with financial activities of their life.
344	Brodie	Advises that adult protective services are for people who are vulnerable to exploitation or various kinds of abuse or neglect. Believes that HB 2416 should not be limited to people who are limited by mental capacity only.

372 Chair Ackerman Requests return of an amendment with a better definition of a qualified person.

TAPE 18, A

011 Jim Davis Oregon Association for Retired Citizens. Testifies and submits written testimony in support of HB 2415 (**EXHIBIT C**) and HB 2416 (**EXHIBIT D**).

048 Davis Continues testimony. Urges stronger penalties to protect vulnerable populations.

072 Zimmer Testifies in support of HB 2415 and HB 2416. Points out that cuts experienced by Seniors and Persons with Disabilities have resulted in more people being targeted for neglect, fraud and abuse.

085 Rick Bennett Associate State Director, AARP Oregon. Testifies in support of HB 2415 and HB 2416.

097 Chair Ackerman Closes the public hearing on HB 2415 and HB 2416 and opens a work session on HB 2415.

HB 2415 – WORK SESSION

102 Rep. Garrard **MOTION: Moves HB 2415 to the full committee with a DO PASS recommendation.**

108 **VOTE: 3-0-1**

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

110 Chair Ackerman **The motion CARRIES.**

REP. ACKERMAN will lead discussion in the full committee.

111 Chair Ackerman Closes the work session on HB 2415 and opens a public hearing on HB 2373.

HB 2373 – PUBLIC HEARING

- 121 Sam Sears Counsel. Explains HB 2373 eliminates civil liability of sellers and manufacturers of firearms or ammunition for damages resulting from unlawful use of firearms and sets out specific exceptions to the limitation of civil liability.
- 129 Chair Ackerman Announces that HB 2373 may be unconstitutional. Plans to proceed with the hearing on the merits of the bill only and not discuss the constitutionality issue.
- 135 Rep. Chuck Burley House District 54. Refers to written testimony submitted by Robert Nosler in support of HB 2373 (**EXHIBIT F**). Testifies in support of HB 2373. Urges committee support.
- 173 Sen. Ben Westlund Senate District 27. Explains that HB 2373 is intended to preclude frivolous and unnecessary litigation over legally manufactured and sold products. Urges due consideration.
- 199 Sen. Frank Morse Senate District 8. Cites economic issues. Explains that product liability coverage in traditional markets is not available.
- 239 Sen. Morse Continues testimony citing personal experience with shooting sports and hunting.
- 284 Sen. Morse States that the shooting sports industry is under attack. Urges consideration of HB 2373.
- 297 Rep. Garrard Refers to an e-mail he received asking about phrase “or should have known” and asks why it is included.
- 313 Sen. Westlund Responds that it is the statutory standard that centered around an initiative passed closing a loophole in gun show laws for sellers having to be licensed to do the background check.
- 332 Rep. Macpherson Asks if it is the intent of HB 2373 to eliminate any liability that could arise, no matter what level of care was taken by a manufacturer or retailer in the safeguarding of the weapon or ammunition storage.
- 384 Rep. Burley Suggests that the second and third exceptions in HB 2373 address that issue.

- 404 Rep. Macpherson Indicates that the key phrase is “willful violations.”
- 416 Sen. Westlund Responds that HB 2373 would still leave open liability to a seller or manufacturer if negligent in storage, display, security or protection prior to a sale.

TAPE 17, B

- 006 Chair Ackerman Comments that language “knew or should have known” is a negligent standard. Asks if there is a scenario by which a firearm could get into the hands of someone not a purchaser, and the seller be liable for those circumstances.
- 022 Rep. Macpherson Understands HB 2373 in its current form does not provide protection to extend to acts of negligence.
- 043 Sen. Roger Beyer Senate District 9. Advises that he is cosponsor of an identical bill in the Senate.
- 065 Sen. Beyer Continues testimony. Expresses concerns with inability to obtain insurance.
- 100 Wayne York Custom gun manufacturer and retired Oregon State Police officer. Talks about the number of custom gun manufacturers in this state.
- 132 Sen. Beyer Comments that he is not aware of any laws regulating display of firearms.
- 150 Rod Harder Oregon Consultant, National Rifle Association. Testifies and submits written testimony in support of HB 2373 (**EXHIBIT E**). Refers to national legislation. Encourages committee support.
- 182 Harder Responds to Rep. Garrard’s concern about “should have known.” Responds to Rep. Macpherson’s comments, that there is nothing in HB 2373 on reckless endangerment.
- 202 Kevin Starrett Oregon Firearms Federation. Testifies in support of HB 2373. Comments on concerns about regulations involving display of firearms.
- 215 Jerod Broadfoot

Oregon Gun Owners. Testifies in support of HB 2373. Urges committee support.

- 235 Rep. Wirth Asks if this will split gun/antigun laws and if there are any antigun proposals.
- 258 Harder Replies that this is not viewed as a gun bill; it was brought forward as a civil liability bill.
- 273 Starrett Answers no.

The following prepared testimony is submitted for the record without public testimony:

- Danielle Knight Submits written testimony in support of HB 2416 (**EXHIBIT G**).
- Rep. Mark Hass Submits written testimony in support of HB 2416 (**EXHIBIT H**).
- 277 Chair Ackerman Closes the public hearing on HB 2373 and adjourns the meeting at 9:50 a.m.

EXHIBIT SUMMARY

- A. **HB 2415, written testimony, Rep. Mark Hass, 1 p**
- B. **HB 2415, written testimony, Timothy Marble, 7 pp**
- C. **HB 2415, written testimony, Jim Davis, 1 p**
- D. **HB 2416, written testimony, Jim Davis, 1 p**
- E. **HB 2373, written testimony, Rod Harder, 1 p**
- F. **HB 2373, written testimony, Robert Nosler, 2 pp**

The following prepared testimony is submitted for the record without public testimony:

- G. **HB 2416, written testimony, Danielle Knight, 1 p**
- H. **HB 2416, written testimony, Rep. Mark Hass, 1 p**