

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**March 14, 2005 Hearing Room 357**

**8:30 A.M. Tapes 28 - 29**

**(Corrected 4-6-05)**

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

**Rep. Linda Flores**

**Rep. Bill Garrard**

**Rep. Kelley Wirth**

**GUEST MEMBERS: Rep. Wayne Krieger**

**Rep. Greg Macpherson**

**STAFF PRESENT: Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 2285 – Public Hearing**

**HB 2675 – Public Hearing**

**HB 2676 – Public Hearing and Work Session**

**HB 2599 – Public Hearing and Work Session**

**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**

**TAPE 28, A**

004              Chair Ackerman              Calls the meeting to order at 8:44 a.m. and opens a public hearing on HB 2285.

**HB 2285 – PUBLIC HEARING**

011              Sam Sears                      Counsel. Explains that the -1 amendment to HB 2285 requires health professional regulatory boards, upon request from a licensee who has received a notice of intent to impose disciplinary action, to disclose all information obtained by the board in its investigation of the disciplinary actions; and provides an exception for information that is privileged or confidential under other laws (**EXHIBIT A**).

019              Chair Ackerman              Asks that testimony be focused on the amendment and other types of discovery the licensee should receive as part of the administrative law process when a license is going to be revoked or suspended, and what people are comfortable with in pretrial or pre-hearing disclosures.

024              Lorey Freeman              Chair, Administrative Law Section, Oregon State Bar. Testifies and submits written testimony in support of HB 2285 (**EXHIBIT B**). Refers to an Attorney General opinion, which interpreted the confidentiality provisions of ORS chapter 676, making it difficult for a licensee to obtain information. Explains the intent of the amendment (**EXHIBIT A**).

074              Chair Ackerman              Asks the next testifier (Layne Barlow) if he has the -1 amendment, which is basically a “gut and stuff” of the original HB 2285.

087              Layne Barlow                      Oregon Men’s Association. Responds that he was not aware of the first public hearing on HB 2285 and just received the amendment. Indicates that the amendment does not address the part of HB 2285 that is of concern. Testifies and submits written testimony in opposition to HB 2285 (**EXHIBIT C**). Raises concerns about child support hearings and the conduct of administrative law judges who are not conforming to existing statutes, particularly in providing the Attorney General (AG) model rules for discovery. Refers to suggested amendments in **EXHIBIT C**.

118              Chair Ackerman

		Explains that the amendment applies only to licensee proceedings involving medical health professionals. Doesn't believe that there is application to child support hearings.
121	Barlow	Disagrees because HB 2285 reforms the Administrative Procedures Act.
123	Chair Ackerman	Inquires what, at a minimum, should be discoverable to a party in an administrative law hearing.
126	Barlow	Refers to the last page of <b>EXHIBIT C</b> . Wants to mandate that the hearing notice include an explanation of and a copy of the AG model rules for contested case proceedings.
135	Rep. Garrard	Asks if he supports or opposes HB 2285.
140	Barlow	Responds that his association supports HB 2285 as it pertains to changes to the Administrative Procedures Act.
144	Rep. Macpherson	Asks Ms. Freeman how the proposed language in the -1 amendment applies to medical records and the confidentiality obligation under the federal Health Insurance Portability and Accountability Act (HIPAA) statute.
155	Freeman	Replies that "privileged and confidential" was inserted to make clear that they are not trying to reopen HIPAA and other confidentiality provisions, but to address only the AG opinion on this part of ORS chapter 676.
167	Rep. Macpherson	Inquires if the identity of the complaining patient would be available to the licensee, and if so, would the nature of the complaint as well.
174	Freeman	Answers that if relying on the complainant at the hearing, it would be discoverable; and if not, steps could be taken to not disclose the privileged or confidential information. Explains the protective order procedure.
186	Chair Ackerman	Believes that "privileged and confidential" need to be more clearly defined. Asks if "privileged and confidential" language were removed and information restricted to witness lists, exhibits and exculpatory evidence, would that accomplish what is wanted.

206	Freeman	Believes from her point of view, yes; however, the Department of Justice (DOJ) may still have some concerns.
213	Chair Ackerman	Suggests that if the information was requested, it would provide the basis for a fair hearing but would exclude other complainants who would not be participating in the hearing.
232	Philip Schradle	Special Counsel to the Attorney General. Advises that they worked with the administrative law section to narrow the scope of HB 2285 and that DOJ is neutral at this point.
247	Rep. Macpherson	Asks if the identity of the complaining patient and the nature of the complaint are available under the privileged and confidential exclusion language in the -1 amendment.
254	Schradle	Understands that HIPAA does not apply to boards and commissions in these kinds of disciplinary proceedings. Indicates that the part of the language about confidentiality under other law would cover attorney-client privilege, which was their concern.
270	Schradle	Addresses the Chair's suggestions about witness lists, exhibits and exculpatory evidence as a possible compromise resolution. Advises that witness lists and exhibits are available under current law, but the exculpatory information would be a new addition.
283	Chair Ackerman	Expresses confusion that since witness lists and exhibits are already available that there is concern with the amendment
288	Schradle	Believes that access to the rest of the information in the investigative file is wanted to determine if helpful or harmful; and agencies are concerned about disclosure of information received in a confidential manner.
293	Chair Ackerman	Comments that information received from someone on the witness list is no longer confidential.
296	Schradle	Responds, that is correct.
298	Chair Ackerman	

Seeks clarification that what still is under protection is information on people making complaints who would not be participating in the hearing.

- 300 Schradle Answers, that is correct.
- 302 Chair Ackerman Asks if it is his opinion that the language in the amendment could incorporate those people in the discovery process.
- 304 Schradle Understands that is how HB 2285 would read and work.
- 308 Kathleen Haley Executive Director, Oregon Board of Medical Examiners. Testifies and submits written testimony in opposition to HB 2285 (**EXHIBIT D**). Reads into the record the names of the health care regulatory boards that oppose HB 2285 (**EXHIBIT E**).
- 362 Haley Explains the board's layers of due process available to licensees is not adversarial as the board wants to determine the truth to protect Oregon's citizens.

#### **TAPE 29, A**

- 015 Haley Continues with the explanation of the board's process. Details the types of information that would be accessible, including the complainant's name and internal investigative report.
- 028 Haley Describes their hiring process which includes signing a confidentiality statement. Expresses concern that licensees and their attorneys do not have that level of confidentiality.
- 044 Haley Continues by describing the difficulty that vulnerable patients and medical staff have with making complaints.
- 059 Haley Concludes with a concern about fiscal impact. Believes that decisions regarding professional practice are best left to the health regulatory boards.
- 074 Lori Makinen Director, Veterinary Medical Examining Board. Testifies and submits written testimony by Jonathan Betts in opposition to HB 2285 (**EXHIBIT F**). Cites examples of retaliatory behavior by a few veterinarians resulting from complaints.

093	Patrick Braatz	Executive Director, Oregon Board of Dentistry. Testifies and submits written testimony in opposition to HB 2285 ( <b>EXHIBIT G</b> ). Points out that providing all the information in the file to the licensee will hamper further investigations and will require detailed review to determine what can or cannot be released.
110	Rep. Macpherson	Asks Ms. Haley the point in their process the file would be turned over.
114	Haley	Understands it would be once the licensee has asked for a hearing.
120	Rep. Macpherson	Seeks clarification that under the current procedure, the file is available once there is a request for hearing.
123	Haley	Answers, no; that is the change this would make. Advises that as a matter of practice all the exhibits to be relied on prior to hearing are turned over by their attorney. Points out there is no reciprocal sharing; they do not have access to the licensee's information.
131	Rep. Macpherson	Summarizes that the -1 amendment would require complete disclosure of file material not currently turned over, including information the investigator or board decides not to rely on in proceeding with the case.
138	Haley	Answers, that is absolutely correct.
140	Chair Ackerman	Seeks clarification that it could exclude exculpatory evidence that would not be brought out in the proceeding by the licensing board but might be beneficial to a licensee.
142	Haley	Advises that their counsel has shared that type of information with licensees going to hearing.
147	Chair Ackerman	Asks if there is a procedure for disclosure of exculpatory evidence.
149	Haley	Is not aware of a formal procedure, but their counsel has done that as a matter of practice.
155	Chair Ackerman	Closes the public hearing on HB 2285 and announces there will be no work session.

168 Chair Ackerman Opens a public hearing on HB 2675.

**HB 2675 – PUBLIC HEARING**

173 Sam Sears Counsel. Explains HB 2675 which requires the sheriff who is responsible for giving notice of a chattel foreclosure sale to have the notice printed in the newspaper from the city where the chattel is located or where the sheriff took possession.

181 Tom Gallagher Oregon Newspaper Publishers Association. Testifies that they are generally in support of HB 2675. States that there is language in other parts of the Public Records Law that recommends using newspapers in the area with the best circulation.

195 Rep. Terry Beyer House District 12. Agrees with Mr. Gallagher that notice should be published in the paper nearest to the property involved. Indicates that she is open to suggestions.

229 Rep. Flores Asks if she is going to prepare an amendment.

232 Rep. Beyer Answers, yes.

239 Al Elkins Oregon Tow Truck Association. States that they deal with liens for automobiles. Seeks clarification that the “trigger” for the process is a certified copy of a court order.

250 Chair Ackerman Answers, yes.

254 Rep. Garrard Asks for a definition of “chattel.”

256 Sears Responds, personal property.

263 Chair Ackerman Closes the public hearing on HB 2675 and opens a public hearing on HB 2676, which increases the amount certain witnesses are entitled to receive for each day’s attendance and for mileage reimbursement.

**HB 2676 – PUBLIC HEARING**

270 Rep. Terry Beyer House District 12. Discusses increasing the mileage rate.

298	Walt Beglau	Oregon District Attorneys Association. Testifies in opposition to HB 2676. Advises there would be a deep fiscal impact on district attorney budgets. States that state contributions to counties for witness fees have been eliminated. Cites actual figures in Marion County, which are representative of all counties in Oregon, and projected figures under the proposed fee structure.
335	Beglau	Continues that the association believes that any increase should be restored by the state's contribution to witnesses and travel expenses.
362	Rep. Garrard	Asks if that is the only objection.
364	Beglau	Responds, yes; that is the main concern.
367	Rep. Macpherson	Inquires about the current mileage reimbursement rate and what would it be after the change.
386	Beglau	Explains the current fee structure in criminal proceedings is \$5 per day per witness and 8 cents per mile for transportation; and the proposed fees are \$30 per witness per day and 25 cents per mile.
393	Rep. Macpherson	Asks for the rationale for different mileage reimbursements for criminal and civil proceedings.
398	Beglau	Does not think there is a good one. Believes any witness required to appear in state court should be paid fairly regardless of type of proceeding.
405	Rep. Macpherson	Comments that 8 cents per mile does not cover the cost of gasoline.
423	Beglau	Doesn't believe there is a good explanation and the problem is with budgets. Feels this is a state responsibility.

## **TAPE 28, B**

005	Chair Ackerman	States that HB 2676 has a subsequent referral to Ways and Means.
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- 009 Christy Monson League of Oregon Cities. Comments that cities have the same budget concerns as those raised by Mr. Beglau.
- 015 Rep. Flores Asks if the Chair plans to take HB 2676 to work session to pass to the full committee before referral to Ways and Means.
- 017 Chair Ackerman Responds, yes.
- 019 Chair Ackerman Closes the public hearing and opens a work session on HB 2676.

### **HB 2676 – WORK SESSION**

- 021 Rep. Macpherson Comments that the 8 cents per mile rate is very low and requires anyone subpoenaed to testify to subsidize the system.
- 030 Rep. Flores MOTION: Moves HB 2676 to the full committee with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.**

**VOTE: 4-0-0**

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

- 037 Chair Ackerman The motion CARRIES.**

**REP. FLORES will lead discussion in the full committee.**

- 041 Chair Ackerman Closes the work session on HB 2676 and opens a public hearing on HB 2599.

### **HB 2599 – PUBLIC HEARING**

- 043 Sam Sears Counsel. Explains HB 2599 exempts from public disclosure personally identifiable information about customers who receive water, sewer or storm drain service from a public body and provides certain exceptions.
- 047 Chair Ackerman Refers to the -1 amendment previously distributed (**EXHIBIT H**) and distributes the -2 amendments (**EXHIBIT I**).

- 069 Genoa Ingram Special Districts Association. Testifies and submits written testimony in support of HB 2599 (**EXHIBIT J**). Cites language in ORS 192.502 that sets a precedent for this type of preemption for people's utility districts.
- 099 Tom Gallagher Oregon Newspaper Publishers Association. Supports the -2 amendments and has no objections to adding the -1 amendment; however, the full committee should consider the proper location of the -1 amendment in HB 2599.
- 117 Mark Landauer Office of Government Relations, City of Portland. Testifies and submits testimony in support of HB 2599 (**EXHIBIT K**). Agrees that the -1 amendment will not fit if the -2 amendments are moved forward.
- 126 Chair Ackerman Asks if he is suggesting the committee go through both the -1 and -2 amendments.
- 128 Gallagher Suggests adding the -2 amendments now, but the -1 amendment needs to be redrafted to fit into HB 2599 as amended.
- 135 Chair Ackerman Closes the public hearing and opens a work session on HB 2599.

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**HB 2599 – WORK SESSION**

- 139 Rep. Garrard **MOTION: Moves to ADOPT HB 2599-2 amendments dated 3/7/05.**

**VOTE: 4-0-0**

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

- 144 Chair Ackerman **The motion CARRIES.**

- 146 Rep. Garrard **MOTION: Moves HB 2599 to the full committee with a BE ADOPTED AS AMENDED recommendation.**

**VOTE: 4-0-0**

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

**156 Chair Ackerman The motion CARRIES.**

**REP. GARRARD will lead discussion in the full committee.**

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

David Koach Executive Director, Mortuary and Cemetery Board. Submits written testimony on HB 2285 (**EXHIBIT L**).

Paul Snider Association of Oregon Counties. Submits written testimony in opposition to HB 2676 (**EXHIBIT M**).

David Koach Executive Director, Mortuary and Cemetery Board. Submits written testimony on HB 2285 (**EXHIBIT N**). Received April 1, 2005.

**158 Chair Ackerman Closes the work session on HB 2599 and adjourns the meeting at 9:50 a.m.**

### **EXHIBIT SUMMARY**

- A. HB 2285, -1 amendments, staff, 3 pp**
- B. HB 2285, written testimony, Lorey Freeman, 1 p**
- C. HB 2285, written testimony, Layne Barlow, 4 pp**
- D. HB 2285, written testimony, Kathleen Haley, 3 pp**
- E. HB 2285, written testimony, Kathleen Haley, 1 p**
- F. HB 2285, written testimony by Jonathan Betts, Lori Makinen, 2 pp**
- G. HB 2285, written testimony, Patrick Braatz, 1 p**
- H. HB 2599, -1 amendments, staff, 1 p**
  - I. HB 2599, -2 amendments, staff, 1 p**
- J. HB 2599, written testimony, Genoa Ingram, 1 p**
- K. HB 2599, written testimony, Mark Landauer, 1 p**

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

- L. **HB 2285, written testimony, David Koach, 2 pp**
- M. **HB 2676, written testimony, Paul Snider, 1 p**
- N. **HB 2285, written testimony, David Koach, 1 p**