

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

March 21, 2005 Hearing Room 357

8:30 A.M. Tapes 32 - 33

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 2499 – Public Hearing and Work Session

HB 2873 – Public Hearing

HB 2221 – Work Session

HB 2370 – Work Session

HB 2634 – 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 32, A

003 Chair Ackerman Calls the meeting to order at 8:37 a.m. and opens a public hearing on HB 2499.

HB 2499 – PUBLIC HEARING

008 Rep. Mike Schaufler House District 48. Provides background on HB 2499. Cites a constituent's example.

033 Rep. Flores Asks when the requirement was put into child support statutes regarding grade point averages.

036 Rep. Schaufler Responds that he does not know the history.

038 Chair Ackerman States that the first requirement imposed for the child support obligation was for a child attending school from ages 18 to 21. Continues that the requirement for a student to maintain a C average came later.

049 Rep. Schaufler Clarifies that an 18-year-old living in the parent's home and not attending school could get a job; but if attending school and making a good faith effort, the parent should not be penalized.

059 Shaney Fuller Child Support Program, Department of Justice. Responds that the C grade average was put into statute in 1997 and applies to all students, including high school students.

071 Rep. Macpherson Inquires about the policy drivers of current statute.

079 Fuller Replies that in 1997 the Child Support Program introduced a bill to get rid of the "child attending school" statute. Advises that the legislature instead wanted more stringent requirements that have caused enforcement difficulties.

095 Rep. Garrard Asks how many adults lose child support because a student hasn't maintained a C average.

- 099 Fuller Does not know; however, explains that they found about 7,000 students 18-21 years of age who did not comply with the requirements and lost their support.
- 107 Chair Ackerman Closes the public hearing and opens a work session on HB 2499.

HB 2499 – WORK SESSION

- 110 Rep. Garrard **MOTION: Moves HB 2499 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

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

EXCUSED: 1 - Wirth

- 117 Chair Ackerman **The motion CARRIES.**
REP. GARRARD will lead discussion in the full committee.

- 120 Chair Ackerman Closes the work session on HB 2499 and opens a public hearing on HB 2873.

HB 2873 – PUBLIC HEARING

- 134 Lisa Trussell Associated Oregon Industries. Testifies in support of HB 2873. Requests consideration of concerns of small employers in addressing their obligations.
- 161 Ben Fetherston Attorney, Salem, Oregon. Testifies in support of HB 2873. Refers to the federal law which applies to fewer than 15 employees and believes Oregon should be the same. Continues that regulations interpret the six employee threshold to include part time and seasonal employees.
- 209 Paul Ostroff Attorney. Testifies in support of HB 2873. Provides legislative history of ORS 659A.100 et seq. and how the law is being interpreted by the Oregon Court of Appeals.
- 254 Ostroff Continues that adoption of the 15-person threshold makes sense. States that the cost of some Americans with Disabilities Act (ADA)

accommodations causes substantial financial impacts on small businesses.

- 288 Ostroff Points out that the Court of Appeals has interpreted the ADA term “disability” broader under state law causing greater impacts.
- 312 Ostroff Indicates that small modifications or accommodations are not a problem; however, restructuring job schedules and jobs can impose managerial problems. Cites an example.
- 353 Ostroff Concludes that the legislature has recognized in other analogous contexts, employee coverage thresholds higher than the present six in Oregon law; i.e., the Oregon Family Leave Act which applies to companies with at least 25 employees. Wants to conform statute to ADA requirements and apply the law in a way that makes sense.
- 317 Richard Meneghello Attorney, Portland, Oregon. Testifies in support of HB 2873. Offers information from the employers’ perspective. Comments that the Court of Appeals has recently handed down a decision that eliminated the fair interpretation of the ADA that was passed down in the interpretation of the Oregon statute.

TAPE 33, A

- 024 Meneghello Continues that the disability law requirements infringe on many other laws. Reports that “reasonable accommodation” is difficult to interpret by small employers and cites examples.
- 062 Meneghello Urges conformity to the federal ADA.
- 069 Rep. Garrard Asks for the maximum number of employees to be categorized as a small business in Oregon.
- 072 Trussell Responds that two percent of Oregon employers have more than 100 employees; 89 percent employ up to 50; and the balance are in the 50-100 category.
- 079 Rep. Flores Comments that Congress adopted the ADA in 1990 and Oregon enacted legislation in 1997 to move Oregon to the ADA model. Asks why Oregon did not use 15 employees at that time.

086	Ostroff	Responds that it was six under the previous statute and was not adjusted. States that the Oregon courts are not following the ADA model as they broadly expand the meaning of the Oregon statute, which creates an even greater impact on small employers.
103	Meneghello	Reports on the history of ADA interpretations in the 1990s. Believes that Oregon statute was intended to mirror the federal ADA and the employee limit was overlooked.
141	Rep. Macpherson	Asks what proportion of the entire Oregon work force would be removed from protection as a result of making this change.
151	Trussell	Responds that even though figures are available on the number of employers in the different categories, the number of employees is not. Advises that the largest part of the work force is in the 100+ range. Offers to try to get those statistics.
163	Chair Ackerman	Interjects that other witnesses may have that information. Asks if there are any other administrative regulations that define six or more employees that we should consider.
172	Fetherston	Replies that “employer” is defined in OAR 839-006-0115 which extends the scope of counting employees to part time and seasonal as well as full time employees.
182	Chair Ackerman	Inquires when the count would be applicable as there would be fluctuation in the work force.
186	Fetherston	Answers that he did not see that in the regulation.
194	Meneghello	Responds that he advises employers to defer to the federal statute that uses a 20 work week provision.
204	Chair Ackerman	Requests consultation with the labor commissioner to amend the regulations that might satisfy concerns.
208	Trussell	Agrees to work with the Bureau of Labor and Industries (BOLI).
223	J. L. Wilson	National Federation of Independent Business. Testifies in support of HB 2873. Advises that the definition of a small business in Oregon is

50 or fewer employees; about 59 percent employ fewer than five; 77 percent fewer than 10; 89 percent fewer than 20. Responds to Rep. Macpherson's question about the percentage of the work force that would be exempted under the proposal. Indicates that 10-11 percent of the work force falls into the 6-15 employee range.

- 242 Wilson Continues that his organization seeks consistent application of federal and state laws and urges favorable consideration of HB 2873.
- 261 Rep. Wirth Seeks clarification of percentages.
- 264 Wilson Replies that the statistics are from the Employment Department and are the employers who file with them. Restates statistics.
- 280 Denise Spielman Oregon Disabilities Commission. Testifies and submits written testimony in opposition to HB 2873 (**EXHIBIT A**). Advises that the ADA is a civil rights law. Refers to state by state information on minimum number of employees to "trigger" nondiscrimination requirements in **EXHIBIT A**. Advises that the ADA states that if it is an undue hardship to provide an accommodation, the employer does not have to provide it.
- 322 Spielman Points out that employers can obtain tax credits for providing reasonable accommodations. Cites other sources of funding that are available to help offset reasonable costs of accommodations, most of which cost less than \$500.
- 367 Annette Talbott Deputy Labor Commissioner, BOLI. Testifies and submits written testimony by Dan Gardner in opposition to HB 2873 (**EXHIBIT B**). Submits a printed document defining disabilities (**EXHIBIT C**). Responds to Rep. Macpherson's question, that about 155,000 employees would no longer receive civil rights protection based on their disability.
- 410 Talbott Believes it was a clear intention to maintain the six-employee threshold and not an oversight. Cites BOLI research shows that fewer than 40 complaints are received per year under current law, so compliance is high. Indicates that free advice is available for employers with questions.

TAPE 32, B

- 017 Talbott Offers to work on a compromise.

025	Lynnae Ruttledge	Policy and Program Manager, Office of Vocational Rehabilitation Services, Department of Human Services. Testifies and submits written testimony by Ramona Foley in opposition to HB 2873 (EXHIBIT D) . Expresses concern for the number of people who will be impacted. Advises that employer and employee statistics are available from the Employment Department and offers to obtain the information requested. Offers to work on addressing the issues employers have while protecting the civil rights of people with disabilities.
062	Rep. Garrard	Asks Ms. Ruttledge if the national average cost of \$500 to provide accommodations comes close for Oregon.
068	Ruttledge	Answers, yes; most often costs are extremely low.
074	Rep. Flores	Requests clarification from Ms. Talbott and Ms. Ruttledge about their statistics.
085	Talbott	Explains that the information could be from different quarters. Distributes printed pie charts prepared by BOLI showing the sizes and percentages of employers (EXHIBIT E) . Offers to get figures for six through 14 employees.
097	Rep. Macpherson	Asks Ms. Talbott if she agrees with previous witnesses that Oregon has applied its disability statute more expansively than the federal ADA has been applied.
101	Talbott	Offers to obtain that information from the agency's technical assistance staff. Advises that there is a provision in law that requires the court to provide to the extent possible an interpretation equivalent to ADA law.
115	Talbott	Refers to EXHIBIT C that defines "disabilities" which was provided to their technical assistance staff. Adds that the threshold in statute for injured worker discrimination is also at six or more employees, so changing one without the other would create administrative concerns for BOLI.
131	Chair Ackerman	Asks Ms. Talbott how many of the 40 complaints received per year were meritorious.
136	Talbott	Replies that she was unable to do a detailed review, but believes less than six.

- 143 Chair Ackerman Inquires if the process of making a determination of reasonable cause “triggers” a negotiation process with the employer.
- 146 Talbott Answers, yes; they try to settle disputes without going through the administrative law process.
- 150 Chair Ackerman Requests a summarization of determination of employment levels at six or more under current regulations.
- 154 Talbot Responds that the regulation in question for the state disability law is OAR 839-006-0205 that defines an employer as one who employs six or more persons, which would include part time and seasonal employees.
- 165 Chair Ackerman Announces there will not be a work session on HB 2873. Requests the parties to resolve the seasonal/part time situation. Asks for copies of court opinions that interpret the ADA more broadly at the state level.
- 184 Chair Ackerman Closes the public hearing on HB 2873 and opens a work session on HB 2221.

HB 2221 – WORK SESSION

- 186 Sam Sears Counsel. Explains that HB 2221 establishes a Child Abuse Multidisciplinary Intervention Program in the Department of Justice. Refers to the -1 amendments (**EXHIBIT F**) which modify the provision that allows multidisciplinary child abuse teams to receive certain information.
- 203 Rep. Flores **MOTION: Moves to ADOPT HB 2221-1 amendments dated 3/15/05.**
- VOTE: 3-0-1**
- EXCUSED: 1 - Wirth**
- 207 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 210 Rep. Flores

MOTION: Moves HB 2221 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 3-0-1

ABSENT: 1-Wirth

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

- 221 Chair Ackerman The motion CARRIES.
REP. FLORES will lead discussion in the full committee.
- 222 Chair Ackerman Closes the work session on HB 2221 and opens a work session on HB 2370.

HB 2370 – WORK SESSION

- 230 Sam Sears Counsel. Explains HB 2370 which requires the State Medical Examiner to issue a death certificate upon receiving information that a person is missing and presumed dead. Advises that -1 amendments were issued (**EXHIBIT G**). Describes the -2 amendments (**EXHIBIT H**) which extend the timeline for the medical examiner to issue the death certificate from 30 to 45 days and defines the information on which the medical examiner may rely.
- 246 Chair Ackerman Asks if the -2 amendments are the compromise between the agency involved and the participants in the public hearing.
- 248 Sears Answers, that is correct.
- 249 Rep. Flores **MOTION: Moves to ADOPT HB 2370-2 amendments dated 3/18/05.**
VOTE: 4-0-0
- 266 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 271 Rep. Flores

MOTION: Moves HB 2370 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 4-0-0

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

282 Chair Ackerman The motion CARRIES.

REP. KRIEGER will lead discussion in the full committee.

284 Chair Ackerman Closes the work session on HB 2370 and opens a work session on HB 2634.

HB 2634 – WORK SESSION

290 Sam Sears Counsel. Explains HB 2634 which establishes pleading requirements for actions against real estate licensees. Reports that the -1 amendments (**EXHIBIT I**) correct some technical language regarding what actions were brought against real estate licensees.

297 Chair Ackerman **MOTION: Moves to ADOPT HB 2634-1 amendments dated 3/14/05.**

VOTE: 4-0-0

299 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

301 Chair Ackerman **MOTION: Moves HB 2634 to the full committee with a DO PASS AS AMENDED recommendation.**

VOTE: 4-0-0

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

308 Chair Ackerman The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

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

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| | Margaret Theisen | Chair, Developmental Disabilities Coalition. Submits written testimony in opposition to HB 2873 (EXHIBIT J). |
| | F. William Olson | Advocacy Chair, Brain Injury Association of Oregon, Inc. Submits written testimony in opposition to HB 2873 (EXHIBIT K). |
| 312 | Chair Ackerman | Closes the work session on HB 2634 and adjourns the meeting at 9:53 a.m. |

EXHIBIT SUMMARY

- A. HB 2873, written testimony, Denise Spielman, 6 pp
- B. HB 2873, written testimony by Dan Gardner, Annette Talbott, 2 pp
- C. HB 2873, printed document, Annette Talbott, 3 pp
- D. HB 2873, written testimony by Ramona Foley, Lynnae Rutledge, 2 pp
- E. HB 2873, printed pie charts, Annette Talbott, 2 pp
- F. HB 2221, -1 amendments, staff, 3 pp
- G. HB 2370. -1 amendments, staff, 1 p
- H. HB 2370. -2 amendments, staff, 1 p
- I. HB 2634, -1 amendments, staff, 1 p

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

- J. HB 2873, written testimony, Margaret Theisen, 1 p
- K. HB 2873, written testimony, F. William Olson, 1 p