

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

March 9, 2005 Hearing Room 357

8:30 A.M. Tapes 26 - 27

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

Rep. Bill Garrard

Rep. Kelley Wirth

MEMBER EXCUSED: **Rep. Linda Flores**

GUEST MEMBERS: **Rep. Wayne Krieger**

Rep. Greg Macpherson

STAFF PRESENT: **Sam Sears, Counsel**

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2591 – Public Hearing

HB 2634 – Public Hearing

HB 2730 – Public Hearing

HCR 7 – 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 26, A

004	Chair Ackerman	Calls the meeting to order at 8:35 a.m. and opens a public hearing on HB 2591.
-----	----------------	--

HB 2591 – PUBLIC HEARING

009	Sam Sears	Counsel. Explains that HB 2591 prohibits individuals from bringing law suits based on food-related conditions against companies involved in selling, marketing or advertising food; provides exceptions for violations of certain statutes; and sets out pleading requirements for such law suits.
013	Chair Ackerman	Announces that amendments are being proposed so there will be no work session on HB 2591.
015	Bill Perry	Oregon Restaurant Association. Testifies and submits written testimony in support of HB 2591 (Exhibit a). Advises that SB 988 was also introduced by the Association. Refers to Sections 1(3) and 3 (3) of HB 2591. States that they will participate in preparing amendments in cooperation with Oregon Trial Lawyers Association (OTLA).
041	Chair Ackerman	Asks about the status of federal legislation and if it would preempt state control over these types of claims.
045	Perry	Advises that was dealt with in the last Congress and doesn't think it has been acted on in this Congress. Indicates he doesn't think the federal legislation will prevent the states from taking different actions.
053	Alan Tresidder	OTLA. Testifies and submits written testimony in opposition to HB 2591 (EXHIBIT B). Has objections to HB 2591 as written but is working with the ORA on amendments.
067	Chair Ackerman	Closes the public hearing on HB 2591 and opens a public hearing on HB 2634.

HB 2634 – PUBLIC HEARING

070	Sam Sears	Counsel. Explains HB 2634 which establishes pleading requirements for actions against real estate licensees.
073	Jana Jarvis	Oregon Association of Realtors (OAR). Testifies and submits written testimony in support of HB 2634 (EXHIBIT C).
089	Chair Ackerman	Comments on the language in Line 7, Page 1 of HB 2634 which appears to apply to claims against real estate licensees arising from “the provision of services.” Believes that the quoted language has no legal meaning and HB 2634 should be amended to limit to claims of professional malpractice against real estate licensees.
097	Matt Farmer	General Counsel, OAR. Testifies in support of HB 2634, which is modeled after SB 611 (2003 legislative session). Explains that HB 2634 requires lawyers to certify that they have talked to an expert who is willing to testify on the real estate professional’s conduct, which is a standard comparable to 2003 SB 611.
130	Farmer	Shares the Chair’s concern about the language in Line 7, Page 1 of HB 2634. Suggests that a better term might be “professional malpractice,” which is defined in case law, or “professional real estate activity” as defined in ORS 696.010.
139	Chair Ackerman	Expresses concern that “professional real estate activity” might include breach of contract claims.
143	Farmer	Indicates that may have been the concern that led Legislative Counsel to draft it the way they did.
149	Chair Ackerman	Reiterates that there will be no work session on HB 2634.
152	Kathryn Brooke	General Counsel, Re/Max Equity Group Inc. States that Re/Max is not attempting to avoid liability or discourage consumers from bringing legitimate claims.
174	Brooke	Cites examples of kinds of claims filed against Re/Max, 80 percent of which are frivolous.
210	Brooke	Testifies in support of HB 2634, as it requires claimants and lawyers to investigate and substantiate their claims before filing.

227	Lee Dunn	Prudential Northwest Properties. Testifies in support of HB 2634. Advises that liability costs relating to claims have increased dramatically. Cites the average costs of settlement and arbitration.
264	Rep. Macpherson	Comments that HB 2634 refers to claims against real estate licensees. Asks how the individual broker is licensed and that relationship to the brokerage level.
275	Farmer	Responds that in the past the company, the broker and each agent were all individually licensed. Explains that now individuals only are licensed. States that suits would likely name the company but would be based on the malpractice of an individual.
295	Brooke	Adds that agents affiliate with brokerages by contract so any claim against a licensee is a claim against the insurant.
303	Rep. Macpherson	Requests clarification that an agency could invoke the requirement for expert information.
318	Dunn	Answers that each company has a registered principal broker who has supervisory responsibility and accountability for all activities of the company, including actions of individual licensees.
332	Farmer	Clarifies that the company is brought in because the individual licensee is acting on the company's behalf. Expresses need to make sure the object of HB 2634 is professional malpractice alone.
354	Chair Ackerman	Closes the public hearing on HB 2634 and opens a public hearing on HB 2730.

HB 2730 – PUBLIC HEARING

362	Sam Sears	Counsel. Explains that HB 2730 provides civil immunity for radio or television broadcasters who participate in the Amber Plan.
370	Rep. Bill Garrard	House District 56. Testifies in support of HB 2730 and introduces members of Oregon Association of Broadcasters (OAB).

TAPE 27, A

003	Dave Fiskum	OAB. Testifies in support of HB 2730. Thanks Rep. Garrard for having HB 2730 drafted at their request. Offers to assist with the amendments that are being considered.
018	Chair Ackerman	Requests testifiers to address whether there is an Oregon Constitution Article I, Section 10 infirmity in HB 2730, since it grants absolute immunity.
024	Fiskum	Responds they are prepared to answer that question.
030	Bill Johnstone	President and CEO, OAB. Testifies and submits written testimony in support of HB 2730 (EXHIBIT D). Explains the Amber Alert process. Advises that all Amber Alert victims in Oregon have been successfully recovered.
043	Johnstone	Continues with explanation of the need for HB 2730. Comments that ten states have enacted similar legislation in an attempt to protect broadcasters.
064	J. Dominic Monahan	Counsel, OAB. Responds to the Chair's question about whether providing immunity to broadcasters violates Article I, Section 10. Believes it does not as the active participant in issuing an Amber Alert is the Oregon State Police (OSP) or Office of Emergency Management (OEM), and broadcasters serve as a passive conduit. Explains that in the event of some sort of misidentification, the aggrieved party would remain entitled to sue the state agency under the Tort Claims Act.
082	Fiskum	Advises that Mike Dewey, representing the cable TV association, requests that the HB 2730 definition of "broadcast" include "cable" and they support that.
089	Rep. Macpherson	Asks Mr. Monahan to clarify the constitutional issue raised by the Chair, and if guidance can be obtained from another source.
103	Monahan	Believes that broadcasters issuing an Amber Alert are intended to be agents of a state agency. Offers to locate the court case that ruled agents of a state agency can be exempted from liability.

113	Sears	Asks if an action for negligence against a broadcaster who is not an agent for the state would be a constitutional issue.
121	Monahan	Responds that broadcasters have no involvement in the composition of the message aired. Continues that if a broadcaster or cable system intervenes prior to an OSP message being aired and has a role in creating a message that leads to defamation or injury to an aggrieved party, HB 2634 would not provide immunity.
138	Johnstone	Explains that when OSP or OEM decides to activate an Amber Alert, it is broadcast over the state emergency alert system and repeated on a regular basis.
163	Chair Ackerman	Comments that it seems the risk of litigation is minimal. Asks for instances when broadcasters were sued successfully.
167	Johnstone	Knows of no litigation.
172	Rep. Garrard	Comments that broadcasters need to be covered if there is something wrong with the message.
182	Rep. Wirth	Asks how a broadcaster's act or omission would cause a problem if there is a mistake in the message. Inquires if there is more concern about being held liable if a victim is not found, or if something in the Amber Alert negatively affects a third party.
194	Monahan	Responds that alleged claims could arise from both. Cites hypothetical situations that could occur resulting in a wrongful arrest.
221`	Monahan	Responds to earlier question about anecdotal evidence of need for this kind of protection. Cites an actual situation in another state where there was misinformation in the Amber Alert message.
237	Rep. Wirth	Comments that to be liable for something, one has to be responsible. Refers to Mr. Monahan's hypothetical examples and asks for an example of an act or omission by a broadcaster.
274	Alan Tresidder	Oregon Trial Lawyers Association. Reads into the record a proposed additional section to narrow the blanket of immunity. Refers to Line 14 of HB 2730 and asks that language making the act retroactive be deleted.

302	Rep. Wirth	Refers to Mr. Monahan's testimony and asks for examples of acts or omissions by a broadcaster.
308	Tresidder	Responds with misidentification of a victim.
320	Rep. Wirth	Comments that would not be an act or omission by the broadcaster.
322	Tresidder	Replies, correct.
330	Rep. Macpherson	Requests clarification of the constitutional question of removing remedies and how that stands under the Oregon Supreme Court's position on the remedies clause.
335	Tresidder	Advises that the court recently suggested that an injured party's right to a jury trial is inviolate. Believes that extends to immunity.
367	Chair Ackerman	Asks if the proposed new language would eliminate negligent claims against broadcasters.
372	Tresidder	Does not want to grant immunity for reckless, intentional or malicious acts.
375	Chair Ackerman	Asks if an amendment will be offered to that effect.
376	Tresidder	Responds, yes.
383	Fiskum	Interjects that they have no difficulty with the suggested changes.
393	Chair Ackerman	Advises that he will review the amendments when available and consult with counsel, if necessary, on the constitutional issue.
398	Chair Ackerman	Closes the public hearing on HB 2730 and opens a public hearing on HCR 7.

HCR 7 – PUBLIC HEARING

402	Sam Sears	Counsel. Explains HCR 7 which declares May 2 to 8, 2005, as Jury Appreciation Week in Oregon.
-----	-----------	---

409	Rep. Brad Avakian	House District 34. Introduces Katie Lane, drafter of the resolution.
420	Katie Lane	Clarifies that she is testifying as a private citizen and not on behalf of any association.

TAPE 26, B

003	Lane	Discusses the importance of juries.
027	Lane	Believes that jurors need to be recognized for their contributions. Urges support of HCR 7.
044	Chair Ackerman	Closes the public hearing and opens a work session on HCR 7.

HCR 7 – WORK SESSION

052	Rep. Garrard	MOTION: Moves HCR 7 to the full committee with a DO PASS recommendation.
-----	--------------	---

VOTE: 3-0-1

EXCUSED: 1 - Flores

057	Chair Ackerman	Hearing no objection, declares the motion CARRIED. REP. ACKERMAN will lead discussion in the full committee.
-----	----------------	---

060	Chair Ackerman	Announces he will recommend Rep. Avakian be the carrier to the floor.
-----	----------------	---

061	Chair Ackerman	Closes the work session on HCR 7 and adjourns the meeting at 9:35 a.m.
-----	----------------	--

EXHIBIT SUMMARY

- A. HB 2591, written testimony, Bill Perry, 2 pp
- B. HB 2591, written testimony, Alan Tresidder, 1 p
- C. HB 2634, written testimony, Jana Jarvis, 2 pp
- D. HB 2730, written testimony, Bill Johnstone, 2 pp