

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 11, 2005 Hearing Room 357

8:30 A.M. Tapes 47 - 51

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Bill Garrard

Rep. Kelley Wirth

MEMBER EXCUSED: Rep. Linda Flores

GUEST MEMBERS: Rep. Wayne Krieger

Rep. Greg Macpherson

Rep. Kim Thatcher

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2743 – Public Hearing

HB 2749 – Public Hearing

HB 2745 – Public Hearing

HB 2747 – Public Hearing

HB 2746 – Public Hearing

HB 3211 – Public Hearing

HB 3207 – Public Hearing

HB 3336 – 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
TAPE 47, A		
003	Chair Ackerman	Calls the meeting to order at 8:38 a.m. Explains the April 11 and April 12 schedule of public hearings on proposed tort reform legislation.
018	Chair Ackerman	Opens a public hearing on HB 2743 and HB 2749.

HB 2743 AND HB 2749 – PUBLIC HEARING

021	Sen. Jason Atkinson	Senate District 2. Testifies in support of HB 2743 and HB 2749. Expresses appreciation to the committee and provides an overview. Believes this legislation is needed to provide reasonable reform to protect the people. States that HB 2743 and HB 2749 are connected to the recovery of our economy and our ability to do business and attract new business to this state.
056	Sam Sears	Counsel. Explains HB 2743 which provides that a civil action may not be brought against any individual or company by reason of sale or prescription of a drug or medical device that was approved by the federal Food and Drug Administration (FDA) as in compliance with the manufacturing and labeling regulations. Continues that HB 2743 provides immunity from civil liability to any individual or company by reason of use if the individual bringing the claim is suffering from a known and disclosed side effect of the drug. States that HB 2743 also provides immunity from civil liability to a pharmacist by reason of preparing or selling the drug or medical device if preparation or sale is done pursuant to a prescription issued by a physician or other health care provider.
070	Kevin Mannix	Project Manager, Oregon Litigation Fairness Project. Submits a written information packet which includes a commentary on tort reform need, glossary of legal terms, talking points and “white papers” (EXHIBIT A). Explains that the organization is dedicated to

improving the fairness of the civil litigation system. Testifies in support of HB 2743 which is one of several bills designed to modernize the tort system in the state in the context of drugs and medical devices that go through a complicated, time-consuming, careful and expensive process of review and certification by the FDA. Advises that they are trying to parallel trends in legislation in other states and update Oregon's product liability law.

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| 108 | Mannix | Discusses successes in prevention of illness and in recovery from illness as a result of the expansion of scientific capabilities to apply knowledge through medicine. |
| 120 | Mannix | Refers to EXHIBIT A distributed prior to the hearing. Discusses sovereign immunity and charitable immunity. |
| 129 | Mannix | Refers to HB 2749 which talks about nonprofit corporations. Advises that amendments have been proposed to limit to nonprofits that provide special community services. |
| 167 | Mannix | States that from 1912 to 1963 the Supreme Court allowed charitable immunity in Oregon. Believes that limited charitable immunity for special nonprofit organizations is a way to protect nonprofits that provide important services from extraordinary expenses in litigation and insurance. |
| 188 | Richard Lane | Oregon Trial Lawyers Association. Testifies in opposition to HB 2743, HB 2745, HB 2746, HB 2747, HB 2749, HB 3207, HB 3211 and HB 3336. Advises that this legislation will restrict access to justice, eliminate rights and remedies under existing law, and be more costly and more time-consuming to get cases resolved. Refers to the 2003 legislative hearings on similar bills, none of which were moved forward. |
| 218 | Lane | Believes that HB 2743 is a "free pass" for pharmaceutical companies, pharmacists, and anyone else involved in the selling or distribution of drugs. Refers to an April 1, 2005, <i>The New York Times</i> , newspaper article where the FDA criticizes the oversight of medical device makers (EXHIBIT B). |
| 235 | Lane | Continues with comments on HB 2749, which is an extension of the limited tort claim recovery. Reports that there are about 12,000 501 (c)(3) corporations presently operating in Oregon, based on information obtained from the Corporation Division, a number of which are medical providers, hospitals, and for-profit operations that should not have tort claim immunity. Indicates that he will review the |

amendments when available, but believes that extending limited sovereign immunity to non-government entities is the wrong way to protect Oregonians.

- 257 Rep. Macpherson Indicates that he reads HB 2743 to mean that liability would be eliminated for the manufacturer of prescription drugs, as long as the side effects are disclosed to the FDA in the approval process. Asks what would happen to the flow of information of risks to prescribing physicians and patients, if the manufacturer has no obligation to disclose.
- 277 Mannix Believes it is important to make sure the flow of information goes beyond the FDA, to the medical providers and the consumers. States that is a legitimate issue that needs to be addressed in an amendment if HB 2743 is to move forward.
- 287 Chair Ackerman Asks if consideration has been given to the constitutionality of HB 2743 under Article I, Section 10 of the Oregon Constitution.
- 295 Mannix Responds that the whole question of access to the courts is a grey area. Goes on to explain that HB 2743 recognizes the advances of science, the advancement of the regulatory scheme and redefines negligence.
- 327 Lane States that the Supreme Court has made it clear that HB 2743 would not survive constitutional scrutiny. States that the right to sue a seller or manufacturer of a drug has existed since 1859, and HB 2743 will take that right and remedy away. Advises that HB 2743 repeals ORS 30.927 which is a punitive damage remedy against pharmaceutical companies.
- 349 Mannix Comments that the Oregon Supreme Court has ruled that exemplary or punitive damages are not part of the right to access the court.
- 354 Chair Ackerman Asks if nonprofit organizations are granted a form of sovereign immunity under HB 2749 and deemed public agencies, if that opens them up to public records scrutiny and open meeting laws.
- 363 Mannix Refers to the -1 amendments to HB 2749 just received (**EXHIBIT C**). Adds that they will need to address the issue of public bodies in a definition. Advises that there will be some activities of those organizations that should be subject to public scrutiny, if they want to receive this kind of protection. Comments that the issue of limited access or full access to records needs to be addressed.

TAPE 48, A

- 006 Lane Responds that he needs to review the -1 amendments, but thinks the public record and public meeting laws would apply.
- 013 Chair Ackerman Assumes that nonprofit corporations in the Tort Claims Act would be defended by the state of Oregon and that process might be administered by the Department of Administrative Services. Asks if the public agency wants this responsibility and what the cost may be to the nonprofits to take advantage of the Oregon Tort Claims Act for defense purposes.
- 019 Mannix Replies that he has not reviewed the -1 amendments but had asked that the Attorney General not represent them.
- 027 Chair Ackerman Asks who then would represent the nonprofits.
- 028 Mannix Replies, their own counsel.
- 029 Chair Ackerman Inquires how they would charge back their fees.
- 031 Mannix Answers that they would incur their legal defense costs on their own and have to pay them. Adds that they are being given protection of the Tort Claims Act but not the benefit of government administration or defense.
- 032 Chair Ackerman Continues that they would have private insurance but the limitations of the Tort Claims Act for damage awards.
- 033 Mannix Responds, that is correct.
- 034 Lane Asserts that the charitable corporations are placed in an awkward position.
- 045 Rep. Thatcher Asks if a pharmacist could be held liable under HB 2743 if a prescription is filled.
- 054 Lane

Replies that each set of facts would have to be examined separately. Continues that HB 2743 provides blanket immunity for the pharmacist, with a caveat that a negligence claim could be asserted if the prescription is filled improperly.

- 070 Rep. Thatcher Reads from HB 2743 and asks if a pharmacist should be added under the section describing civil action.
- 076 Lane Responds that his objection to HB 2743 is the extension to anyone the immunity that may come through the FDA process.
- 081 Rep. Macpherson Refers to HB 2749 and asks if there is any precedent or past experience with extending the Tort Claims Act limitations and opportunities that it creates for litigants outside of governmental organizations, such as a contractual organization that buys private insurance and hires its own counsel, but then operates in a Tort Claims Act environment.
- 090 Mannix Answers that many states have recognized sovereign immunity and charitable immunity, but there is no precedent of combining the two.
- 110 Rep. Garrard Asks Mr. Lane if his main objection to HB 2743 is based on FDA approval of products and the “holes” in the process. Requests an example.
- 115 Lane Responds that he cannot provide a specific example but can provide a witness with experience in litigation associated with FDA-approved pharmaceuticals. Believes there are a number of examples that could be shown that the FDA process is not working to protect consumers.
- 140 Rep. Thatcher Refers to HB 2743 language that explains a suit cannot be brought if the side effects were fully disclosed by the manufacturer to the FDA. Continues that it appears there would be no immunity if the side effects were not disclosed.
- 146 Lane Answers, that is exactly what he is talking about. Cites example of statistics being underreported or specific information not being given.
- 158 Mannix Points out that “fully” is in front of “disclosed” so the issue should be resolved.
- 168 Chair Ackerman Reminds everyone of the time constraints for hearing the bills on the agenda.

- 183 Jim Gardner Pharmaceutical Research and Manufacturers of America. Testifies and submits written testimony in support of HB 2743 (**EXHIBIT D**). Concurs with the need for amendments to address the post-approval setting. Reports on the 1987 legislation that enacted the counterpart to this kind of government standards defense in the context of punitive damages.
- 218 Tom Burns Glaxo Smith Kline. Testifies and submits written testimony in support of HB 2743 (**EXHIBIT E**). Indicates that their company was the manufacturer of half of the Fen-Phen products. Explains that there were two individual drugs with two different prescriptions but they had to defend themselves because the drug was used off label and inappropriately.
- 238 Mike Crew Oregon Medical Association. Testifies in support of HB 2743. Believes amendments are needed to address the issue of subsequent knowledge and disclosure to the public. Discusses a situation where a physician relies on the FDA process and prescribes for the purpose intended.
- 281 Nancy Cochran Resident, Benton County. Testifies in opposition to HB 2743. Cites personal experience with the diet drug Redux, which was on the market only about a year as it caused severe lung and heart damage. Reports that the drug company knew the dangers of the drug but downplayed them and marketed it anyway.
- 325 Cochran States that as a result of taking Redux, she has heart damage and primary pulmonary hypertension, a rare disease that is progressive and fatal. Describes the disease for which there is no cure.
- 352 Cochran Continues by describing the affects on her quality of life and explains the future treatments needed.
- 409 Cochran Concludes that under HB 2743 drug companies are not accountable and there would be no recourse.
- 426 Ellyn Sternfield Medicaid Fraud Control Unit, Department of Justice (DOJ). Testifies in opposition to HB 2743. States that the Medicaid Fraud Control Unit has been a leader in national pharmaceutical litigation.

TAPE 47, B

- 016 Sternfield

Describes the types of allegations pursued. Cites an example of a company's failure to report a \$100,000 payment to a health maintenance organization (HMO) to maintain Lipitor as the HMOs preferred drug, cost Medicaid programs \$4.5 million in underpaid Medicaid rebates. Provides another example of pharmaceutical companies that provide "free samples" to Oregon providers and give them the documentation to allow them to improperly bill those free samples to the Oregon Medicaid program.

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| 034 | Sternfield | Concludes that these types of cases would be prohibited under HB 2743. Addresses concerns raised by Rep. Macpherson and Rep. Thatcher. Explains the exceptions in HB 2743 and their effects on litigation. |
| 061 | Cheryl Pellegrini | Financial Fraud Consumer Protection Litigation Unit, DOJ. Testifies and submits written testimony in opposition to HB 2743 (EXHIBIT F). Believes HB 2743 as drafted is too broad and is based on the inaccurate assumption that meeting the requirements of the FDA drug approval process inoculates the public against unlawful conduct by prescription drug manufacturers. Continues that HB 2743 would prevent the Attorney General from bringing actions under state consumer protection laws against drug manufacturing companies for failure to disclose information from studies conducted after a drug is approved. |
| 087 | Pellegrini | Cites cases against manufacturers where the consequence has cost consumers millions of dollars because they have not had access to accurate information to make an informed choice whether to purchase a brand name drug or a generic drug. |
| 097 | Pellegrini | Continues with information on drug manufacturers submitting false information to obtain patents to prevent generics from entering the market and becoming available to consumers. Concludes that all the cases cited would have been precluded under HB 2743. |
| 110 | Maribeth Healey | Executive Director, Oregonians for Health Security. Testifies and submits written testimony in opposition to HB 2743 (EXHIBIT G). Explains the organization's interest in obtaining increased access to quality, affordable and secure health care. Raises concerns about the lack of accountability in the health care industry. Continues that HB 2743 provides immunity to pharmaceutical companies when patients are harmed. Discusses FDA-approved drugs that were taken off the shelves due to adverse affects. |

144	Rep. Garrard	Remarks that the testimony presented has been about the pharmaceutical companies. Asks for comments about the part of HB 2743 dealing with local pharmacists who fill the prescriptions.
150	Sternfield	Responds that she is not sure about the scope of the statute. Refers to a situation of multiple prescriptions by different doctors for one patient. Doesn't see a definition of civil action. Raises a concern about the limited exception in Section 2 of HB 2743. States that HB 2743 will limit the ability to pursue a civil case.
186	Rep. Garrard	Asks Ms. Pellegrini how many law suits the state files against pharmaceutical companies annually.
190	Pellegrini	Answers, probably three or four per year for the past three years.
197	Sternfield	Responds that if one combines their two units, the number is closer to seven or eight. Indicates there are currently more than 12 cases under investigation in her unit.
201	Pellegrini	Adds that her unit has four pending now. Informs that attorney general offices nationwide have had increasing concerns about deceptive marketing practices that have prevented physicians and consumers from having accurate information.
222	Rep. Thatcher	Asks, of the two categories of suits pursued, which type is most prevalent.
236	Pellegrini	Responds, both equally. Explains that the two units work together, as pharmaceutical companies have engaged in an array of unlawful activities designed to prop up their profit.
254	Sternfield	Explains the types of cases surrounding payment of drug pricing.

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

288	Chair Ackerman	Amber Michaelson Portland, Oregon. Submits written testimony in support of HB 2743 (EXHIBIT L) .
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Closes the public hearing on HB 2743. Continues the public hearing on HB 2749, which defines certain nonprofit corporations as public bodies for purposes of application of the Oregon Tort Claims Act.

301 Kimberly Allain St. Vincent de Paul Society. Testifies in support of HB 2749. Describes the volunteer work performed and other types of assistance provided throughout Oregon. States that the organization operates from a donation base. Advises that the availability of liability insurance for nonprofits is limited as insurance companies find volunteers a difficult risk factor. Continues that the organization is no longer able to accept certain baby furniture because of the liability associated with those items.

TAPE 48, B

007 Michelle Townsend Resident, Hermiston, Oregon. Testifies in opposition to HB 2749. Cites the circumstances surrounding the death of her husband following an appendectomy. Believes hospitals and other institutions should not escape accountability when patients are harmed.

032 Townsend Cites statistics from Oregon's safety commission on the number of Oregonians who died in hospitals and medical settings due to medical mistakes. Points out that HB 2749 does not apply only to nonprofit hospitals but broadly to nonprofits in general.

051 Carla Phillips Resident, Albany, Oregon. Testifies in opposition to HB 2749. Cites circumstances surrounding her open heart surgery and subsequent stroke.

082 Bruce Bishop Oregon Association of Hospitals and Health Systems. Testifies and submits written testimony in support of HB 2749 (**EXHIBIT H**). Reports that nonprofit organizations are increasingly carrying out governmental responsibilities to protect the public's health, safety and welfare. Believes that HB 2749 will balance the liability exposure that nonprofits are entitled to. States that Mr. Mannix's proposed amendments regarding a monetary threshold on what constitutes charity care are not warranted.

102 Bishop Responds to Mr. Lane's testimony. Refers to Rep. Macpherson's question about specific examples of nonprofit organizations having tort claims limits. Refers to the definition of "public body" in ORS 30.260 and an example of tort claims extensions to nonprofit organizations.

132	Mannix	Advises that HB 2749 is broad, and narrowing amendments were requested to stay away from health care and focus on community services designed to specifically provide social services and support services for the poor and dispossessed. States that Ms. Townsend's and Ms. Phillips' testimony refer to the original HB 2749 but do not apply to the -1 amendments (EXHIBIT C).
165	Rep. Garrard	Asks Mr. Bishop how many hospitals there are in Oregon.
166	Bishop	Answers, approximately 60.
167	Rep. Garrard	Inquires how many of the 60 are nonprofit.
168	Bishop	Replies that about one-half are governmental, three are for-profit and the rest are nonprofit.
174	Chair Ackerman	Asks if one of the tests for instrumentality of an agency in performing state functions is the state's paying 50 percent of the funding.
180	Bishop	Responds, that is a reasonable test. Goes on that many hospitals could qualify as instrumentalities, depending on where the thresholds are set.
188	Chair Ackerman	States that the -1 amendments (EXHIBIT C) require nonprofit corporations spend at least 40 percent of revenue on food banks, soup kitchens, etc. but no instrumentality test is required. Asks if the instrumentality test is necessary to provide immunity to nonprofit organizations.
194	Mannix	Answers that 40 percent is an initial "bargaining chip." Believes that if an organization has been spending at least 40 percent over at least the last three years providing community services, it may be preferable to change that. Advises that the idea is to make sure an organization is truly serving the poor with their expenditures and not supporting other causes.
203	Bishop	Indicates that he does not read the -1 amendments so narrowly and believes hospitals would qualify as providers of special community services.
214	Rep. Macpherson	Asks if any hospitals that fit the community service requirement would qualify under the prohibition of having an employee who earns more than \$200,000 in wages and benefits, given that many hospitals

have staff positions in special areas of practice who would have incomes above that level.

- 221 Bishop Believes there are hospitals that would have employees who might be disqualified under that provision.
- 224 Mannix Explains that the intention of the amendment was to exclude hospitals and health care providers.
- 229 Rep. Wirth Asks for an example of a nonprofit that would qualify under the -1 amendments by providing rent, utility and transportation assistance.
- 235 Mannix Responds that there are a number of nonprofit corporations that help with rent by direct subsidy or affordable housing. Continues that some social service organizations provide ride service for medical appointments.
- 247 Rep. Wirth Requests the names of a couple of organizations that provide these services.
- 250 Mannix Replies that St. Vincent de Paul in the Eugene area has several for-profit operations and many nonprofit operations, including affordable housing and transportation programs.
- 265 Rep. Wirth Asks if St. Vincent de Paul was the primary contractor that did the work for Jobs Plus.
- 268 Mannix Answers, not sure. Advises that other organizations intended to be covered are those typically eligible for United Way assistance.
- 275 Chair Ackerman Closes the public hearing on HB 2749 and opens a public hearing on HB 2745 and HB 2747.

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HB 2745 AND HB 2747 – PUBLIC HEARING

- 284 Sam Sears Counsel. Explains HB 2745 which imposes pleading requirements for professional liability claims, and requires that a claim be accompanied by a certification by the claimant's attorney that states that the attorney has consulted with a person who holds the same license, registration or certificate as the defendant and who is

qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to the professional liability. Describes HB 2747 which requires that a court award reasonable attorney fees to the prevailing party if the court finds that a frivolous claim, defense or ground for appeal or review was asserted against that party, and provides that a claim defense or ground for appeal or review is frivolous if it is not supported by substantial evidence or if it is asserted without a reasonable prospect of prevailing.

- 310 Kevin Mannix Project Manager, Oregon Litigation Fairness Project. (See information packet **EXHIBIT A**.) Explains HB 2745. Advises that ORS 31.300, adopted in the 2003 legislative session, included certain pleading requirements for actions against construction design professionals. Explains that HB 2745 establishes a standard of care for all Oregon-licensed professionals, which includes certain preliminary requirements to be met to bring suit.
- 344 Mannix States that HB 2747 attempts to go a step further regarding frivolous claims or defenses. Reads the 1995 statutory language which was an improvement but has not demonstrated great substance. Continues that HB 2747 uses a “substantial evidence” standard that is well established in administrative law.
- 390 Richard Lane Oregon Trial Lawyers Association. Testifies in opposition to HB 2745 and HB 2747. Advises that the scope of HB 2745 applies to any profession regulated or certified by the state, which is a long list. Points out that ORS 31.300(5) specifically excludes the requirement for a certificate against innocent bystanders or people who don’t have the same access to the information as a licensed professional architect or engineer.

TAPE 49, A

- 008 Lane Continues that there has been no mention of Oregon Rules of Civil Procedure (ORCP) 17, which is a document an attorney signs certifying the soundness, good faith and lack of frivolousness associated with a claim. Advises that HB 2747 overrules that case law.
- 031 Rep. Garrard Asks why an attorney would take a case knowing he/she was going to lose.
- 034 Lane Answers, they wouldn’t; however, some litigation has led to advancement of protection for consumers for business entities and

although lost at the trial court level, prevailed at the court of appeals or supreme court.

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| 042 | Mannix | Responds to Rep. Garrard, that the intent may be to negotiate for a settlement before going to trial. |
| 061 | Rep. Wirth | Inquires if most people would agree on the same definition of what is reasonable prospect of prevailing. |
| 063 | Mannix | Replies that the definition of reasonable prospect of prevailing may require an amendment. Continues that there is now no objectively reasonable basis for asserting. Suggests perhaps the phrase should be changed to “no objectively reasonable prospect of prevailing.” |
| 075 | Rep. Macpherson | Explains that the 2003 legislation affecting certain design professionals was in response to information that it was a complex setting in which to be litigating, as multiple parties and design professionals were likely to be included in the net of co-defendants. Expresses concern about extending to all licensed professionals which appears to be any occupational trade licensee. |
| 089 | Mannix | Responds that if the committee finds that the idea of expanding the design professional concept is practical, limiting definitions can be included. |
| 102 | Rep. Wirth | Asks if similar limits have been placed on a person’s right to appeal. |
| 104 | Mannix | Answers that current standards for appeals and trials will apply. |
| 110 | Chair Ackerman | Cites a hypothetical case and asks about award of attorney’s fees. |
| 114 | Mannix | Replies that he believes reasonable prospect of prevailing includes reasonable prospect of existing law. |
| 121 | Lane | Answers that HB 2747 would subject one to attorney’s fees and prevailing party costs. |
| 134 | Chair Ackerman | Comments that there appears to be no agreement. |
| 136 | Bryan Johnston | Former State Representative, Salem, Oregon. Testifies in opposition to HB 2745 and HB 2747. Provides information on the effort to bring |

dispute resolution as a field of inquiry into the legal profession. Continues that HB 2745 extends to all professions the requirement that one receive permission from another professional to sue the second professional and creates an additional hurdle to be cleared.

- 159 Johnston Continues that HB 2747 stops the progress of law. Cites a case from the “shopkeeper’s rule.”
- 192 Mike Crew Oregon Medical Association. Testifies in support of HB 2745. Points out that it is impossible to prevail in a medical malpractice claim without an expert. Reports that the cost of defense is a major expense to insurance companies.
- 217 Rep. Wirth Asks if in instances where there are only a few highly specialized licensed medical professionals, the exact same type would be required to testify.
- 228 Crew Responds that although there are recognized subspecialties, HB 2745 is not broken down that way and only requires a licensed medical practitioner. Reports on cases being filed without having the necessary experts in place before filing.
- 258 Rep. Wirth Inquires if HB 2745 would preclude a midwife from qualifying as a licensed professional regarding a claim against a doctor’s delivery of a child.
- 264 Crew Answers, that would not be allowed as he understands HB 2745.
- 274 Darrell Fuller Oregon Small Business Coalition. Testifies in support of HB 2747. Expresses concern about the atmosphere in which businesses live, where a suit is threatened, placing them in a position to determine the least cost option to them.
- 325 Fuller Continues that laws need to be strengthened to prevent frivolous law suits.
- 345 Johnston Adds that this discussion has been held many times. HB 2745 and HB 2747 don’t solve the problems as pointed out by Mr. Fuller.

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

Tom Burns

GlaxoSmithKline. Submits written testimony in support of HB 2745 **(EXHIBIT M)**.

Bruce Bishop Oregon Association of Hospitals and Health Systems. Submits written testimony in support of HB 2745 **(EXHIBIT O)**.

Tom Burns GlaxoSmithKline. Submits written testimony in support of HB 2747 **(EXHIBIT N)**.

Bruce Bishop Oregon Association of Hospitals and Health Systems. Submits written testimony in support of HB 2747 **(EXHIBIT Q)**.

357 Chair Ackerman Closes the public hearing on HB 2745 and HB 2747.

358 Chair Ackerman Recesses the meeting at 11:10 a.m.

360 Chair Ackerman Reconvenes the meeting at 3:10 p.m. and opens a public hearing on HB 2746 and HB 3211.

HB 2746 AND HB 3211 – PUBLIC HEARING

369 Sam Sears Counsel. Describes HB 2746 and HB 3211 which limit contingent fees that are permitted in negligence claims, reach the same purpose but in different ways. Continues that HB 2746 limits the percent an attorney can recover in a contingent fee agreement and HB 3211 limits the amount as calculated based on an hourly rate in the contingent fee agreement.

384 Kevin Mannix Project Manager, Oregon Litigation Fairness Project. Testifies in support of HB 2746 and HB 3211, which are consumer protection measures. (See information packet **Exhibit A**.) Continues that there are no specific standards in terms of either the percentage of recovery to be allowed or the dollars per hour an attorney can earn as a contingent fee.

TAPE 50, A

017 Mannix Continues that in contingent fee situations, lawyers can lose cases and not recover anything. Advises that the workers compensation system has a plan that works very well, which is a maximum fee of 25 percent.

043	Mannix	States that HB 2746 and HB 3211 open discussion on whether or not the state of Oregon should have a regulatory scheme in place that is precise about protecting consumers against what may be extraordinary awards of attorney fees.
060	Richard Lane	Oregon Trial Lawyers Association. Testifies in opposition to HB 2746 and HB 3211. Describes the Oregon State Bar's stand on excessive fees.
082	Rep. Macpherson	Asks Mr. Mannix if there will be any testimony from plaintiffs complaining that fees are too high.
086	Mannix	Answers, no. Contends that sometimes an objective outside party is needed to set controls.
100	Rep. Wirth	Inquires who is being harmed by the current law.
104	Mannix	Replies, the consumer who has a legitimate case, succeeds and pays a disproportionate share of the recovery to the attorney.
113	Rep. Wirth	Requests an estimate of the number of cases per year that would be considered unreasonable.
115	Mannix	Responds, doesn't have that information.
123	Chair Ackerman	Asks why HB 2746 and HB 3211 are focused on personal injury lawyers.
128	Mannix	Answers that people are least capable of making a dispassionate judgment on a reasonable attorney fee in cases of a tragedy.
144	Scott Gallant	Oregon Medical Association. Testifies in support of HB 2746 to limit contingency fees. States that most injured parties receive 50 percent or less of a judgment in these sorts of cases.
183	Darrell Fuller	President, Oregon Small Business Coalition. Testifies in support of HB 2746. Comments that there is state regulation of fees in most businesses.
212	Fuller	Continues with discussion of attorney fees. Advises that low income people who cannot afford a retainer must obtain services through a

contingent fee agreement and are not in a position to negotiate.

Compares proposed legislation surrounding pay day loans and the large, short-term loan interest rates to establishing reasonable fees for attorney services.

- 239 Rep. Wirth Comments that this looks more like a salary than a fee. Asks if there is any salary limit for a corporate chief executive officer (CEO) based on whether the company is profitable.
- 245 Fuller Responds that he is not aware of any. Believes that there may be federal regulation on a CEO's salary at some point when it no longer is deductible as a business expense. Continues that shareholders set those salaries.
- 264 Rep. Macpherson Shares information from a constituent on pay day and car title loans and how the family was affected. Asks if there is anyone from the consumer community or their close relation entering into a contingency fee arrangement pressing for this change.
- 280 Fuller Replies that he doesn't have that information as he represents small businesses, and their interest is to keep the cost of litigation down. Is concerned that proposed legislation has a potential of reducing an atmosphere that allows attorneys to force businesses into out-of-court settlements on issues where the business believes it could ultimately prevail and the attractiveness of filing contingency fee cases.
- 308 Rep. Macpherson Comments that Mr. Fuller accurately described his perspective.
- 311 Fuller States that he did not intend to present himself as a consumer representative.
- 328 Russ Walker Citizens for Sound Economy. Testifies in support of HB 2746 and HB 3211. States that the current environment is self-regulating and he supports tighter state regulations on wages.
- 362 Walker Responds to Rep. Macpherson that consumer polls overwhelmingly support capping contingency fees.
- 370 Walker Replies to Rep. Wirth that the legal profession operates outside the market place and is a self-regulating monopoly. Continues that a CEO has to answer to a board, share holders and the consumer. Reports that attorney fees have increased about 1400 percent since 1965.

397 Walker Continues that their concern is not just for the consumer but that the person harmed should receive the most benefit. Advises that the cost of litigation to the average consumer is about \$800 per person in the country. Wants to reduce the caseload in the courts, making quicker remedies possible.

TAPE 49, B

005 Rep. Wirth Seeks clarification why Mr. Walker's organization favors legislation that expands government regulation. Comments that his testimony was on behalf of the consumer but no consumers have testified that there is a problem.

009 Walker Responds that if it was a market, the organization would not support, but the legal profession does not fall into that category. States that they may bring consumers in at some point but knew that time constraints would make it difficult at this time.

024 Rep. Wirth Comments that the medical profession appears to also be a self-regulating monopoly. Inquires if Mr. Walker knows of any consumer cases personally that would be unreasonable.

029 Walker Answers that Mr. Mannix's comments on contingency fees are accurate. Advises that most people usually don't complain about contingency fees if they received a remedy, and lower income people tend to agree with what is offered to them.

044 Rep. Wirth Asks about personal knowledge of any cases where the fees were considered excessive, and what would be considered excessive.

047 Walker Responds that tobacco and asbestos attorneys make \$30,000 per hour, and the average fee of \$1,200 per hour for class action attorneys are both excessive. Advises that those costs get passed on to the consumer.

063 Rep. Macpherson States that the definition of a monopoly is when there is only one provider. Asks that if the allegation is price fixing, why not pursue a remedy against that.

071 Walker Answers that the legal profession is a regulatory body that keeps the free market from occurring. Continues that it is controlled by one entity, the American Bar Association, and no one enters that market

place unless accepted by them, and that is what they mean by a monopoly.

- 088 Rep. Macpherson Doesn't agree.
- 093 Chair Ackerman Asks if they favor legislative control of insurance defense costs, such as competitive bidding by insurance companies to hire counsel to take cases.
- 097 Walker Answers, no.
- 107 Jeff Foote Attorney, Portland, Oregon. Provides personal background. Introduces other witnesses.
- 123 Linda McCathryn Testifies in opposition to HB 2746. Indicates that limiting fees will hinder an attorney's ability to represent people and limit a consumer's ability to hire an attorney but sets no limit on the other side.
- 134 McCathryn Shares personal circumstances of injuries received in a 1995 roll-over accident. Explains Mr. Foote's representation during the six-year period it took to settle the case.
- 174 Bill Sime Oregon Association of Defense Counsel. Explains that they are not contingency fee lawyers. Testifies in opposition to HB 2746 and HB 3211 as being an unfair impingement on the right of a jury trial. Continues that HB 2746 would limit cases that would go to jury trial.
- 212 Rep. Wirth Asks Mr. Foote if he would have taken cases as complicated as Ms. McCathryn's had this proposal been in place
- 216 Foote Responds that he couldn't have. Continues that in addition to the fee issue, there are considerable out-of-pocket costs which most clients can't afford so attorneys advance those costs. States that a case such as Ms. McCathryn's costs several hundred thousand dollars.
- 234 Rep. Wirth Inquires if any clients represented on a contingency fee basis have complained about the fee amount.
- 238 Foote Answers that sometimes there are complaints but has always been able to resolve. Advises that the Oregon State Bar has a fee resolution process available for unhappy clients to use.

- 250 Rep. Macpherson Asks if there is competition among plaintiffs' lawyers working on a contingency fee and does the competition include the percentages of recovery.
- 253 Foote Replies, absolutely. Advises that the Oregon State Bar used to have a suggested fee schedule which was abolished because of the necessity for competition.

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

- Bruce Bishop Oregon Association of Hospitals and Health Systems. Submits written testimony in support of HB 2746 (**EXHIBIT P**).
- 275 Chair Ackerman Closes the public hearing on HB 2746 and HB 3211 and opens a public hearing on HB 3207 and HB 3336.

-

HB 3207 AND HB 3336 – PUBLIC HEARING

- 288 Sam Sears Counsel. Explains that HB 3207 and HB 3336 are essentially the same and provide that upon an offer of expert scientific evidence at trial, the court must first determine whether the theory or technique supporting the offered evidence is based on scientifically valid principles and is pertinent. Continues that HB 3207 and HB 3336 set forth specific factors that the court must use to determine whether the theory or technique is based on scientifically valid principles and allow the courts to seek the assistance of its own expert for the purposes of evaluating certain evidence. Explains further that HB 3207 and HB 3336 provide a witness may not testify about scientific, technical or other specialized knowledge if the compensation of the witness is contingent on the outcome of the proceeding.
- 304 Kevin Mannix Project Manager, Oregon Litigation Fairness Project. Testifies in support of HB 3207 and HB 3336. Refers to the written information packet submitted at the public hearing on HB 2743 (**EXHIBIT A**) which is to be made a part of the record on all the tort bills being heard. Continues that HB 3207 is clear that all factors listed shall be considered and relates to expert scientific evidence offered at any stage in the case, and HB 3336 suggests that it is limited to scientific evidence offered at trial. Advises that the civil justice system is being addressed in this legislation, not the criminal justice system.
- 354 Linda Eyerman

Oregon Trial Lawyers Association. Testifies and submits written testimony in opposition to HB 3207 and HB 3336 (**EXHIBITS I AND J**). Explains that HB 3207 and HB 3336 amend the Oregon Evidence Code (OEC) which governs the admissibility of expert testimony in every case that comes into court.

400 Eyerman Advises that if the purpose is to tighten the rules on admissibility of scientific evidence, the practical effect is it will make it more difficult for the state of Oregon to convict people charged with serious crimes. Points out that there is no other state with similar regulation.

Tape 50, b

016 Eyerman Continues that HB 3207 and HB 3336 mandate a hearing on any case in which scientific evidence is offered. Advises that is unnecessary as most scientific evidence is based on conventional science and usually admitted without objection.

042 Eyerman Points out that current Oregon law requires that the courts screen scientific evidence whenever a party to the case requests it.

087 Rep. Wirth Asks if a client has the financial means to compensate an expert witness up front that would be allowed.

093 Mannix Responds, absolutely; no expert witness should ever be invested in the results of a proceeding.

110 Rep. Wirth Inquires about the kinds of cases where clients would be unable to pay expert witnesses up front and rely on the outcome.

113 Mannix Replies that there should be a legislative standard prohibiting that.

118 Eyerman Answers that experts are not compensated on a contingency basis in Oregon. Cites the disciplinary rule that prohibits an attorney from paying compensation to any witness contingent on the outcome of the case.

128 Sears Asks specifically how HB 3207 and HB 3336 change current law.

142 Mannix

Responds that OEC 702 and 703 have not been updated since 1981. Advises that the commentary for OEC 702 leaves for judicial discretion the standard to be used for the admissibility of novel scientific evidence. Continues that HB 3207 and HB 3336 establish legislative standards that the court must consider but still allow for consideration of additional factors.

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| 163 | Rep. Wirth | Inquires if any members of the judicial community have an opinion on HB 3207 and HB 3336. |
| 165 | Mannix | Replies that it is not usually a practice for judiciary to testify. |
| 170 | Rep. Wirth | Comments that based on the new requirements thought they would have an opinion. |
| 175 | Mannix | States that they may have an opinion but have not expressed it. |
| 181 | Eyerman | Adds that each case before the court has been fact-based and the analysis by the court was based on the record in that case and the evidence that supported scientific validity of that type of scientific evidence. Expresses concern that in trying to list factors in statute, some will be left out. |
| 212 | Rep. Gordon
Anderson | House District 3. Testifies on HB 3336. Reports that evidence-based science is usually peer reviewed and “junk” science is anecdotal and based on testimony of emotion. |
| 253 | Rep. Anderson | Advises that HB 3336 is his bill, and he didn’t realize there were others with almost identical wording. Indicates willingness to combine HB 3336 with the others if necessary. |
| 271 | Terry Witt | Executive Director, Oregonians for Food and Shelter. Testifies in support of HB 3207 and HB 3336. Reports on a proliferation of citizen law suits through several of the environmental acts. Continues that individuals or groups are filing suits for injunctive relief against natural resource businesses, and the evidence brought forth is “junk” science. |
| 306 | Russ Walker | Citizens for Sound Economy. Testifies in support of HB 3207 and HB 3336. Expressed concerned about the “junk” science being used in the courts. Asks that minimal standards be established for expert witnesses to prove that the science they are providing is real science and not something that hasn’t been peer reviewed or tested. |

- 332 Rep. Krieger Refers to a book called *Science 101* which is a way for boards, commissions and policy makers to analyze the accuracy of science. States that people who have something to gain by what they tell boards and commissions, seeking guidance to do right, need to remove personal opinions in scientific literature.
- 378 Ray Wilkeson Oregon Forest Industries Council. Testifies and submits written testimony of Chris Jarmer in support of HB 3336 (**EXHIBIT K**). Discusses the resource side of the issue. States that there are numerous examples of litigation in Oregon based largely on scientific opinion that has had profound impacts on the history of the state. Cites specific examples. Believes that the standards written into HB 3336 are common sense.

TAPE 51, A

- 012 John Ledger Associated Oregon Industries. Testifies in support of HB 3207. Indicates that the issue of standards and scientific proof has become more speculative, and standards are being set that cannot be measured.
- 044 Kevin Neely Oregon District Attorneys Association. Testifies in opposition to HB 3207 and HB 3336. Advises that HB 3207 and HB 3336 would have a significant impact on criminal lawsuits.
- 060 Chair Ackerman Asks Ms. Eyerman and Mr. Mannix how it is possible that qualified experts come to two different conclusions on the same topic.
- 064 Mannix Responds that in many cases the experts will be on one side or the other, but it should be incumbent on the experts and those who are proposing their testimony to look at common sense standards and how they apply to the testimony.
- 083 Eyerman Replies that the courts are not allowed to look at the conclusions the experts reach but rather the methodology used. Believes that different conclusions may be based on new science that is being proposed and not yet well established. Refers to the history of asbestos cases as an example.
- 108 Scott Barry Oregon Building Industry Association. Testifies in support of HB 3207 and HB 3336. Refers to HB 3336, Page 2, Line 1. Cites a situation of companies testifying and then benefiting from that testimony.

- 127 Eyerman Continues testimony on HB 3207 and HB 3336. Refers to the difficulty to pick factors that should go into a statute when dealing with the concept of science. Comments on the ability of a court to obtain assistance from its own expert. Suggests that further study of this issue is needed.
- 159 Chair Ackerman Closes the public hearing on HB 3207 and HB 3336 and adjourns the meeting at 4:50 p.m.

EXHIBIT SUMMARY

- A. HB 2743, written information packet, Kevin Mannix, 32 pp
- B. HB 2743, newspaper article, Richard Lane, 2 pp
- C. HB 2749, -1 amendments, Kevin Mannix, 4 pp
- D. HB 2743, written testimony, Jim Gardner, 1 p
- E. HB 2743, written testimony, Tom Burns, 2 pp
- F. HB 2743, written testimony, Cheryl Pellegrini, 2 pp
- G. HB 2743, written testimony, Maribeth Healey, 1 p
- H. HB 2749, written testimony, Bruce Bishop, 1 p
 - I. HB 3207, written testimony, Linda Eyerman, 4 pp
 - J. HB 3336, written testimony, Linda Eyerman, 4 pp
- K. HB 3336, written testimony of Chris Jarmer, Ray Wilkeson, 1 p

- L. HB 2743, written testimony, Amber Michaelson, 3 pp
- M. HB 2745, written testimony, Tom Burns, 2 pp
- N. HB 2747, written testimony, Tom Burns, 2 pp
- O. HB 2745, written testimony, Bruce Bishop, 1 p
- P. HB 2746, written testimony, Bruce Bishop, 1 p
- Q. HB 2747, written testimony, Bruce Bishop, 1 p

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

March 23, 2005 Hearing Room 357

8:30 A.M. Tapes 34 - 35

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

Rep. Linda Flores

Rep. Bill Garrard

MEMBER ABSENT: **Rep. Kelley Wirth**

GUEST MEMBERS: **Rep. Wayne Krieger**

Rep. Greg Macpherson

STAFF PRESENT: **Sam Sears, Counsel**

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 3119 – Public Hearing and Work Session

HB 2978 – Public Hearing and Work Session

HB 2938 – Public Hearing and Work Session

HB 3157 – 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 34, A

003 Chair Ackerman Calls the meeting to order at 8:37 a.m. and opens a public hearing on HB 3119.

HB 3119 – PUBLIC HEARING

- 008 Sam Sears Counsel. Explains HB 3119 which authorizes county clerks to keep permanent and long-term records of documents that are filed or recorded by the county clerks as computer-based data files instead of microfilm, if the county clerks provide for a regular and routine backup of data files.
- 012 Rep. Sal Esquivel House District 6. Testifies in support of HB 3119. Explains that current law requires microfilming of county records. Advises that HB 3119 allows backup on disk. Informs that counties would incur considerable savings.
- 038 Rep. Flores Asks if county clerks currently use both microfilm and computer.
- 042 Rep. Esquivel Answers, yes.
- 048 Rep. Garrard Thanks Rep. Esquivel for bringing the issue forward. Advises that Klamath County has storage problems.
- 054 Rep. Esquivel Comments that this method allows for clearer documents as about 40 percent of microfilm documents are unreadable.
- 066 Rep. Garrard Asks if clerks would have to record previous information or if they would have an option once the law takes effect.
- 072 Rep. Esquivel Responds that HB 3119 does not require retroactive action. Indicates that those counties with the technology have already been doing this.
- 086 Rep. Macpherson Comments that HB 3119 does not reference an ORS chapter for placement or a proposed effective date.
- 093 Sears Responds that he is unsure why this was not done.
- 095 Rep. Macpherson Indicates that if there is a requirement in current law to do back-up microfilming, that language should be shown as deleted.
- 098 Sears

		States that this is voluntary and allows computer recording but does not require it.
103	Rep. Esquivel	Advises that if the current language was deleted, the counties without the computer ability would not be microfilming either. Reiterates that this method is voluntary, if the technology is available.
108	Rep. Macpherson	Comments that there may be confusion.
117	Jan Coleman	Yamhill County Clerk. Informs that this gets its basis from archival law, which is administrative rule by the Secretary of State. Clarifies that microfilming is the only recognized media at present that will last 100 years.
130	Rep. Macpherson	Asks if there is a place in statute now that requires backup by microfilm.
133	Coleman	Responds that statute only talks about retention of records and does not specify microfilming; that is in administrative rule.
137	Rep. Esquivel	States that all counties have old handwritten records.
142	Chair Ackerman	Questions whether this should be an administrative matter rather than law.
145	Rep. Esquivel	Indicates that county clerks have wanted this ability for some time and there have been discussions but nothing has ever been done.
164	Rep. Garrard	Asks if there will be a fiscal impact on the counties.
167	Rep. Esquivel	Answers, yes, but it should be positive cash flow for the counties that can, in fact, have this ability. Reiterates that some counties are using both methods.
172	Rep. Flores	Indicates support but is concerned about where it will be placed in statute.
185	Chair Ackerman	States he is inclined to move HB 3119 to the full committee and request a housekeeping amendment.

190 Rep. Esquivel Believes HB 3119 could be tied into ORS chapter 205, and it should be a simple fix.

196 Chair Ackerman Closes the public hearing and opens a work session on HB 3119.

HB 3119 – WORK SESSION

202 Rep. Garrard **MOTION: Moves HB 3119 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

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

ABSENT: 1 - Wirth

213 Chair Ackerman **The motion CARRIES.**

REP. GARRARD will lead discussion in the full committee.

217 Chair Ackerman Closes the work session on HB 3119 and opens a public hearing on HB 2978.

HB 2978 – PUBLIC HEARING

231 Sam Sears Counsel. Explains that HB 2978 permits courts in dissolution judgments to order revocation of beneficiary designations made by one spouse in favor of the other spouse on certain financial assets. Advises that HB 2978 was previously presented as HB 2292. Refers to the -1 amendments (**EXHIBIT A**) which allow judges to change beneficiary designations also on judgments for separation.

243 Tammy Dentinger Member, Oregon State Bar's Family Law Executive Committee. Testifies and submits written testimony in support of HB 2978 (**EXHIBIT B**). Indicates that HB 2978 has a narrower relating clause than HB 2292. Explains the changes HB 2978 will make. Advises that the -1 amendments make technical and clarifying changes.

277 Rep. Flores Requests clarification that in annulment, legal separation or divorce, new documents do not automatically deal with survivorship or beneficiary provisions.

284 Dentinger Responds that, if one chooses to not include, it does not happen automatically.

296 Rep. Macpherson Asks about the relationship of HB 2978 to HB 2292 and the -1 amendments.

299 Dentinger Indicates the change from HB 2292 to HB 2978 was a narrowing of the relating clause to more specifically define what was intended. Does not believe any amendments were prepared for HB 2292.

314 Rep. Macpherson Seeks clarification that the only difference in HB 2292 and HB 2978 is the relating clause.

316 Dentinger Answers, yes.

318 Chair Ackerman Closes the public hearing and opens a work session on HB 2978.

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HB 2978 – WORK SESSION

322 Rep. Flores **MOTION: Moves to ADOPT HB 2978-1 amendments dated 3/22/05.**

VOTE: 3-0-1

ABSENT: 1 - Wirth

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

326 Rep. Flores **MOTION: Moves HB 2978 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.

336 Chair Ackerman The motion CARRIES.

REP. FLORES will lead discussion in the full committee.

340 Chair Ackerman Closes the work session on HB 2978 and opens a public hearing on HB 2938.

HB 2938 – PUBLIC HEARING

344 Sam Sears Counsel. Explains HB 2938 which makes technical, conforming, and form and style changes to statutes requiring instruments to be filed with or presented for recordation to county clerks, and clarifies whether specified instruments are to be filed with or presented for recordation to county clerks.

363 Jan Coleman Yamhill County Clerk. Testifies on behalf of the Oregon Association of County Clerks. Advises that periodically county clerks review statutes for housekeeping needs.

TAPE 35, A

004 Coleman Points out that “presented for recording” doesn’t mean the recording happened.

015 Chair Ackerman Asks if the language “presented for recording” may be misinterpreted to mean “recording.”

017 Coleman Responds, yes. Indicates that the statute needs to say the document got recorded.

024 Chair Ackerman Inquires if a definition of the phrase would be sufficient.

027 Coleman Replies, yes.

032 Rep. Flores Points out that there are several references to “presented for recording.”

034 Coleman Offers to clean up HB 2938 for an amendment.

- 036 Chair Ackerman Asks Ms. Coleman to work with counsel on a proposed amendment.
- 047 Chair Ackerman Closes the public hearing and opens a work session on HB 2938.

HB 2938 – WORK SESSION

- 052 Rep. Flores Inquires if there will be work immediately on clarifying language.
- 053 Chair Ackerman Responds, yes.

056 Rep. Flores MOTION: Moves HB 2938 to the full committee with a DO PASS recommendation.

VOTE: 3-0-1

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

ABSENT: 1 - Wirth

062 Chair Ackerman The motion CARRIES.

REP. FLORES will lead discussion in the full committee.

- 063 Chair Ackerman Closes the work session on HB 2938 and opens a public hearing on HB 3157.

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HB 3157 – PUBLIC HEARING

- 070 Chair Ackerman Designates Rep. Flores as acting chair.
- 083 Sam Sears Counsel. Explains that HB 3157 provides that the duty of county courts or boards of county commissioners to inspect local correctional facilities is discretionary for facilities not operated by the county.
- 088 Rep. Ackerman House District 13. Testifies in support of HB 3157. Explains that under current law county commissioners are mandated to inspect correctional institutions that they own and operate, and facilities that they do not own or operate. Refers to the -1 amendments **(EXHIBIT**

C) which make the distinction between local correctional facilities owned and operated by the county and local facilities not owned by the county.

- 113 Rep. Garrard Comments that he has a problem with HB 3157. Realizes that HB 3157 makes it more voluntary but not sure it is a good idea.
- 123 Rep. Ackerman Responds that if a city has a correctional facility, it should be the city council's responsibility to inspect rather than the county.
- 128 Rep. Garrard Seeks clarification that HB 3157 is for only facilities not operated by the county.
- 132 Rep. Ackerman Replies, correct.
- 135 Rep. Terry Beyer House District 12. Testifies that HB 3157 is similar to a bill introduced in the 2003 legislative session. Reiterates that HB 3157 is intended for facilities not run by a county.
- 148 Rep. Macpherson Wonders if prior language could be interpreted so broadly as to include state facilities. Seeks clarification of intent.
- 154 Rep. Ackerman Answers that counties will have discretionary authority for inspection but not be mandated to do it.
- 158 Rep. Macpherson Comments that current language is being construed to apply only to municipal facilities and not a state correction facility.
- 165 Rep. Ackerman Agrees.
- 169 Acting Chair Flores Closes the public hearing on HB 3157.
- 171 Chair Ackerman Opens the work session on HB 3157.

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HB 3157 – WORK SESSION

- 173 Chair Ackerman **MOTION: Moves to ADOPT HB 3157-1 amendments dated 3/23/05.**

- 178 Rep. Garrard Indicates he will give a “courtesy vote” to move HB 3157 to the full committee, but reserves his opinion for the full committee debate.
- VOTE: 3-0-1**
- ABSENT: 1 - Wirth**
- 181 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 189 Chair Ackerman **MOTION: Moves HB 3157 to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- ABSENT: 1 - Wirth**
- 195 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 197 Chair Ackerman Closes the work session on HB 3157 and adjourns the meeting at 9:15 a.m.

EXHIBIT SUMMARY

- A. **HB 2978, -1 amendments, staff, 1 p**
- B. **HB 2978, written testimony, Tammy Dentinger, 1 p**
- C. **HB 3157, -1 amendments, staff, 1 p**