

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

June 15, 2005 Hearing Room 357

8:30 A.M. Tapes 103 - 104

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

MEMBER ABSENT: Rep. Kelley Wirth

GUEST MEMBER: Rep. Greg Macpherson

STAFF: Joe O’Leary, Counsel

Sam Sears, Counsel

William Taylor, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2157A – Work Session

SB 273A – Public Hearing and Work Session

SB 973A – Public Hearing and Work Session

SB 965A – Public Hearing and Work Session

SB 881A – Public Hearing and Work Session

SB 215 – Public Hearing

SB 239 – Work Session

SB 920A – Reconsideration 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 103, A

003 Chair Ackerman Calls the meeting to order at 8:45 a.m. Explains the order of the agenda. Opens a work session on HB 2157A.

HB 2157A – WORK SESSION

013 Sam Sears Counsel. Describes the work group that met on HB 2157A. Advises that witnesses will explain the various amendments and recommend which ones should be adopted. **Note:** Amendments A3 through A13 were distributed at the public hearing. Distributes and explains the A14, A15, A17 and A18 amendments **(EXHIBITS A THROUGH D)**.

031 Chair Ackerman Invites testimony. Asks if the conflicts pointed out at public hearing were resolved in the amendments before the committee.

044 Sears Responds yes and points to the specific language. Continues that Legislative Counsel clarified that the “opt in” language was intentional.

068 Chair Ackerman Asks if there is any formality to “opt in.”

069 Sears Answers yes with enabling legislation which explains the number of amendments.

076 Rep. Kevin Cameron House District 19. Refers to the two amendments that are critical.

090 Chair Ackerman Asks if there is agreement on all the amendments.

- 093 Rep. Cameron Advises that the A18 amendments will need to be followed up on as there is language about elderly individuals being 65 years old. Continues that the A15 amendments refer to vulnerable persons.
- 103 Chair Ackerman Seeks clarification that the only change in the A18 amendments is from age 65 to age 60.
- 105 Rep. Cameron Answers correct.
- 106 Andrea Meyer American Civil Liberties Union. Testifies and submits testimony in opposition to HB 2157A (**EXHIBIT E**). Raises concerns that the scope of who could be fingerprinted is extremely broad. Believes each agency needs to articulate specifically its scope. Describes the A15 and A18 amendments. Reiterates concern about the Lottery Commission being omitted.
- 165 Chair Ackerman Accommodates Sen. Walker. Closes the work session on HB 2157A and opens a public hearing on SB 273A.

SB 273A – PUBLIC HEARING

- 174 Sen. Vicki Walker Senate District 7. Defers to counsel to explain SB 273A.
- 180 Joe O’Leary Counsel. Summarizes SB 273A which increases the exemption set out in ORS 18.345 that lists the property the Legislature has deemed exempt from enforcement of a creditor’s civil judgment. Cites the current exemptions and the proposed increases. Refers to the A4, A5 and A6 amendments (**EXHIBITS F, G AND H**).
- 195 Sen. Walker Testifies in support of SB 273A. Advises that the amendments are not to be considered. Requests that the original SB 273A be considered. Goes on that the exemptions are reviewed every 12 years, and it is time to elevate them again. Informs that increases are a conservative 20 percent.
- 227 Rep. Garrard Thanks Sen. Walker for bringing SB 273 forward.
- 233 Sen. Walker Discusses the exemption for the earned income credit passed in a previous session.
- 247 Rep. Macpherson Asks if the numbers in the A-engrossed version are a result of compromise.

- 253 Sen. Walker Responds they reflect a 20 percent increase. Explains using research of surrounding states. Concludes that credit unions agreed to the 20 percent right away but some other lenders did not.
- 27 Justin Baxter Oregon State Bar. Testifies and submits written testimony in support of SB 273A (**EXHIBIT I**). States that the A-engrossed version was negotiated by interested parties. Advises that the united finance lobby does not plan to oppose SB 273A.
- 314 Chair Ackerman Closes the public hearing and opens a work session on SB 273A.

SB 273A – WORK SESSION

- 318 Rep. Garrard **MOTION: Moves SB 273A 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

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

- 329 Chair Ackerman Closes the work session on SB 273A.

- 347 Chair Ackerman Opens a public hearing on SB 973A.

SB 973A – PUBLIC HEARING

- 352 Sam Sears Counsel. Explains SB 973A which requires the petitioner of a minor child to file a statement containing full names and permanent addresses if the child; the petitioner; persons with whom the child has lived during the last five years and the places where the child has lived during that period, if the names and addresses may be readily ascertained by the petitioner; and if known to the petitioner, any person who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with, the child. Continues that SB 973A requires the petitioner to serve the petition to the child's grandparents if the parents are deceased or

incapacitated if the names and addresses are known or readily ascertainable by the petitioner.

373 Sen. Kate Brown Senate District 21. Testifies and submits written testimony in support of SB 973A (**EXHIBIT J**). Cites a constituent's experience. Continues that SB 973A gives grandparents the same rights in adoption proceedings that are already given to grandparents in step-adoption cases.

TAPE 104, A

027 Rep. Macpherson Asks about the effect of the notice. Inquires if grandparents would have an opportunity to intervene and seek custody or visitation rights.

037 Sen. Brown Responds that SB 973A provides for notice so they can be aware of adoption proceedings and allows legal grandparents to maintain a relationship. Plans further work on this issue next session.

047 Rep. Macpherson Comments SB 973A is a great bill and encourages pursuing the next step.

053 Kathy Ledesma Adoption Program Manager, Department of Human Services (DHS). Testifies and submits written testimony in support of SB 973A (**EXHIBIT K**). Advises that DHS is the petitioner in about one-third of adoptions in Oregon. Offers that there is no fiscal impact.

078 Chair Ackerman Closes the public hearing and opens a work session on SB 973A.

SB 973A – WORK SESSION

081 Rep. Garrard **MOTION: Moves SB 973A 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

092 Chair Ackerman **The motion CARRIES.**

REP. GARRARD will lead discussion in the full committee.

095 Chair Ackerman Closes the work session on SB 973A and opens a public hearing on SB 965A.

SB 965A – PUBLIC HEARING

102 Joe O’Leary Counsel. Explains SB 965A which creates a civil cause of action for invasion of personal privacy. Provides the four ways a tort can be proven.

120 Sen. Betsy Johnson Senate District 16. Offers information about a case in Astoria, Oregon, where an individual took underwater pictures with a camera fitted with a special filter that ostensibly stripped away all vestiges of clothing and then made the pictures public.

148 Sen. Kate Brown Senate District 21. Testifies and submits written testimony in support of SB 965A (**EXHIBIT L**). Cites the original purpose of SB 965A was to address a concern that people have the ability to take photos up women skirts. Cites another case in Beaverton, Oregon, of an individual photographing intimate activities and displaying them on the internet. Continues that there was no law prohibiting that type of harassment or posting of photos on the internet.

169 Chair Ackerman Refers to the language “without the consent of the plaintiff.” Seeks clarification.

177 Sen. Brown Defers to counsel.

180 Sen. Johnson Defers to counsel.

186 O’Leary Believes that refers back to the defendant being in a location to observe the plaintiff in a state of nudity.

191 Chair Ackerman Believes that raises a question. Cites a hypothetical example.

194 O’Leary Responds that the plaintiff has to be in a place or circumstance where the plaintiff has a reasonable expectation of privacy. Reads list of locations from SB 965A.

205 Chair Ackerman Raises concern about a defendant being in a location where a plaintiff does not have the legal right to prohibit that person from being there.

215	O’Leary	Asks for clarification.
218	Chair Ackerman	Continues with explanation of concern.
221	Sen. Brown	Believes the Chair is right as there are two issues. Does not believe SB 965A addresses the scenario described by Sen. Johnson.
229	Sen. Johnson	Agrees. Offers that there was discussion whether a reasonable expectation of privacy exists in a public place such as an aquatic center.
241	Sen. Brown	Addresses the issue of a consenting plaintiff and defendant at the time photographs were taken but no consent to release the photos to the internet.
248	Chair Ackerman	Discusses a possible amendment. Asks why it is necessary for the plaintiff to establish in the claim the purpose of the activity was to arouse or gratify the sexual desire of the defendant. Believes the act is enough.
261	Sen. Brown	Responds that women have a reasonable expectation of privacy when wearing a bathing suit.
269	Sen. Johnson	Adds that time was spent discussing issues raised by the Chair with the local District Attorney and he may be a resource for committee staff.
275	Chair Ackerman	Doesn’t think an element difficult to prove should be included.
282	Sen. Johnson	Has no problem removing the language.
287	Chair Ackerman	Asks if there is a duplication of claims for liquidated and compensatory damages.
294	O’Leary	Needs to check definitions. Addresses the Chair’s concern. Explains the four different paragraphs for each scenario. Believes the language structure is right.
323	Sen. Brown	Believes SB 965A covers all the fact scenarios described.

- 333 Chair Ackerman Recommends moving to the full committee with the expectation of a formal amendment at that time.
- 342 Sen. Brown Refers to a memorandum from Rep. Bruun that “nudity” may be defined too broadly in SB 965A.
- 350 Chair Ackerman Closes the public hearing and opens a work session on SB 965A.

SB 965A – WORK SESSION

- 354 Chair Ackerman **MOTION: Moves SB 965A 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

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

- 364 Chair Ackerman Closes the work session on SB 965A and opens a public hearing on SB 881A.

SB 881A – PUBLIC HEARING

- 374 Joe O’Leary Counsel. Explains SB 881A which creates a process for tracking information about court-appointed trustees and requires court-appointed trustees to provide a detailed statement to the court including contact information, educational credentials and any other trust administered by the person.
- 404 Sen. Laurie Monnes Anderson Senate District 25. Testifies in support of SB 881A. Refers to a constituent’s situation. Cites need for a system to prevent mismanagement of trusts.

TAPE 103, B

- 006 Bradd Swank Oregon Judicial Department. Testifies as neutral on SB 881A. Explains their work on this program.

014 Chair Ackerman Closes the public hearing and opens a work session on SB 881A.

SB 881A – WORK SESSION

016 Chair Ackerman **MOTION: Moves SB 881A 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

020 Chair Ackerman **The motion CARRIES.**

REP. ACKERMAN will lead discussion in the full committee.

024 Chair Ackerman Closes the work session on SB 881A and opens a work session on HB 2157A.

HB 2157A – WORK SESSION

042 Rep. Kevin Cameron House District 19. Advises of an existing Department of Human Services statute so need to add “elderly native Americans” to the A18 amendments.

053 Chair Ackerman Explains that he prefers completing all amendments in the full committee before referral to the Senate.

057 Rep. Cameron Informs that “elderly native Americans” don’t have a limit on age. Suggests changes needed.

064 Chair Ackerman Asks of any other substantive changes needed.

066 Rep. Cameron Is not aware of any.

068 Andrea Meyer American Civil Liberties Union. Responds that most of the amendments add agencies. Reiterates concern about the Legislative

Administrative Committee being included and the explicit exclusion of the Lottery Commission.

- 094 Chair Ackerman Asks about the A17 amendments.
- 100 Sam Sears Counsel. States that the work group agreed on the A3 through A11, A13, A14, A17 and A18 amendments which need to be adopted.
- 110 Meyer Inquires about the A17 amendments.
- 120 Sears Answers that the A17 amendments expand who the State Treasurer can request a background check on.
- 132 Meyer Sees that the expansion includes current employees as well as applicants for employment. Raises no objections.
- 138 Patricia Whitfield Oregon State Police (OSP). Supports the amendments counsel presented with no further issues.
- 143 Rep. Cameron Explains that the Federal Bureau of Investigation (FBI) requires specific legislative authority from each agency. Advises that the Oregon Lottery is one of 28 agencies currently authorized to do fingerprinting. Recommends continuing to look at the overall process.
- 163 Chair Ackerman Raises the issue about immunity from civil liability.
- 176 Meyer Believes the Oregon Trial Lawyers Association should review the language. Raises a concern about an impermissible disclosure by an employee. Provides an example.
- 207 Chair Ackerman Indicates that provision gives him the most problem as the enormity of a mistake could cost someone his/her license or career and does not justify the type of immunity that is granted in SB 965A.
- 218 Meyer States that immunity is limited to the determination whether a person is fit, and individuals still have the ability to challenge the accuracy of the information.
- 225 Chair Ackerman

		Responds that the accuracy of the information submitted by the FBI or state police cannot be challenged in an Administrative Procedures Act proceeding.
228	Meyer	Answers that if the FBI history is wrong, one cannot ask the OSP or an agency to correct as they do not have the authority. Continues the same applies to an OSP-created record.
242	Whitfield	Replies correct, errors in the record must be corrected by the agency submitting the information and not through the contested case process.
245	Chair Ackerman	Asks if agencies have a procedure.
247	Whitfield	Responds yes, in statute and administrative rule.
250	Helle Rode	Department of Justice. Advises of the contested case process that allows a person to contest the decision of the agency. Continues that immunity is limited to situations where the agency acts lawfully and in good faith.
260	Chair Ackerman	Understands that agencies have processes for dealing with the issue.
265	Meyer	Comments that agencies will have to put procedures in place.
279	Rep. Macpherson	Believes SB 965A is a work in progress.
284	Chair Ackerman	Advises there will be more discussion in the full committee.
291	Meyer	Seeks clarification that the A18 amendments replace the A15 amendments.
297	Rep. Cameron	Responds, correct.
302	Chair Ackerman	Asks if the A18 amendments should be left out and make the corrections for the full committee.
307	Sears	Suggests adopting now and then adopting another amendment in the full committee.

314 Rep. Garrard **MOTION: Moves to ADOPT HB 2157A-3, -4, -5, -6, and -7 amendments dated 5/27/05; -8 amendments dated 6/2/05; -9, -10, -11, and -13 amendments dated 6/3/05; -14 amendments dated 6/9/05; -17 amendments dated 6/13/05; and -18 amendments dated 6/14/05.**

VOTE: 3-0-1

ABSENT: 1 - Wirth

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

332 Rep. Garrard **MOTION: Moves HB 2157A 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

342 Chair Ackerman **The motion CARRIES.**

REP. GARRARD will lead discussion in the full committee.

353 Chair Ackerman Closes the work session on HB 2157A and opens a public hearing on SB 215.

SB 215 – PUBLIC HEARING

360 Bill Taylor Counsel. Explains SB 215 which requires attorneys who have filed an anti-trust class action on behalf of a natural person to give the Attorney General, within 30 days of the complaint, written notice of the action and a copy of the complaint; and requires the attorney of persons in a class action suit brought under Oregon Anti-Trust provisions to notify the Attorney General in writing of a proposed settlement and to provide a copy of the proposed settlement.

TAPE 104, B

004 Fred Boss Department of Justice. Testifies in support of SB 215 and reads from a prepared statement.

020	Jim Gardner	Microsoft Corporation. Testifies in support of SB 215. Describes the group that worked on this issue during interim. Goes on that SB 215 addresses a problem where often in anti-trust settlements, the plaintiff's attorney gets the money and class members get coupons.
046	Taylor	Asks what is meant by a "natural" person.
048	Boss	Answers a flesh and blood human being as opposed to a fictitious created entity like a corporation or partnership.
050	Rep. Macpherson	Inquires if the class is limited to only natural persons or if a class that includes natural persons is sufficient for this to be invoked.
055	Boss	Understands that it includes natural persons.
057	Rep. Macpherson	Asks if Oregon statute is used as the basis for remedy then notice of settlement has to be given to the Attorney General.
067	Boss	Replies correct.
068	Taylor	Asks for an example of "including natural persons."
073	Boss	Replies that the intent of SB 215 is to protect consumers, and business entities are not defined as consumers.
082	Taylor	Inquires if within the class action, it would be the class of natural persons.
083	Boss	Answers correct.
084	Gardner	Adds that in a mixed class of business entities and individuals, subclasses will be designated. Continues that the intent would be to afford this new protection to the subclass that consists of the natural persons within the overall class.
092	Chair Ackerman	Closes the public hearing on SB 215 and opens a work session on SB 239.

SB 239 – WORK SESSION

- 100 Bill Taylor Counsel. Explains SB 239 which creates consistency throughout Oregon anti-discrimination laws concerning who is protected. Points out the differences in the anti-discrimination statutes. Advises it is the Oregon Law Commission's intent to create a consistent class throughout the anti-discrimination statutes.
- 119 Chair Ackerman Inquires about substantive changes.
- 121 Taylor Responds that different groups were added so could be considered substantive.
- 125 Chair Ackerman **MOTION: Moves SB 239 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**
- 133 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 136 Chair Ackerman Closes the work session on SB 239.
- 139 Sam Sears Counsel. Explains that SB 920A revises Oregon's laws relating to execution sales. Continues that amendments need to be adopted as SB 920A conflicts with HB 2359.
- 149 Chair Ackerman Opens a work session on SB 920A.

SB 920A – WORK SESSION

- 151 Rep. Garrard **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 920A.**
- VOTE: 3-0-1**
- AYE: All members present vote Aye.**
- ABSENT: 1 - Wirth**

- 156 **Chair Ackerman** **The motion CARRIES.**
- 162 **Rep. Garrard** **MOTION: Moves to RECONSIDER the vote by which "SB 920A was sent to the full committee with a DO PASS AS AMENDED recommendation."**
- VOTE: 3-0-1**
- AYE: All members present vote Aye.**
- ABSENT: 1 - Wirth**
- 167 **Chair Ackerman** **The motion CARRIES.**
- 170 **Rep. Garrard** **MOTION: Moves to ADOPT SB 920A-5 amendments dated 6/14/05.**
- VOTE: 3-0-1**
- AYE: All members present vote Aye.**
- ABSENT: 1 - Wirth**
- 176 **Chair Ackerman** **The motion CARRIES.**
- 179 **Rep. Garrard** **MOTION: Moves SB 920A to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: All members present vote Aye.**
- ABSENT: 1 - Wirth**
- 185 **Chair Ackerman** **The motion CARRIES.**
- REP. GARRARD will lead discussion in the full committee.**
- 188 **Chair Ackerman** **Closes the work session on SB 920A and adjourns the meeting at 10:20 a.m.**

EXHIBIT SUMMARY

- A. **HB 2157, A14 amendments, staff, 2 pp**
- B. **HB 2157, A15 amendments, staff, 1 p**
- C. **HB 2157, A17 amendments, staff, 1 p**
- D. **HB 2157, A18 amendments, staff, 2 pp**
- E. **HB 2157A, written testimony, Andrea Meyer, 5 pp**
- F. **SB 273, A4 amendments, staff, 20 pp**
- G. **SB 273, A5 amendments, staff, 19 pp**
- H. **SB 273, A6 amendments, staff, 19 pp**
 - I. **SB 273, written testimony, Justin Baxter, 3 pp**
 - J. **SB 973, written testimony, Sen. Kate Brown, 1 p**
 - K. **SB 973, written testimony, Kathy Ledesma, 2 pp**
 - L. **SB 965, written testimony, Sen. Kate Brown, 1 p**
- M. **SB 920, A5 amendments, staff, 26 pp**