

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**June 8, 2005 Hearing Room 357**

**8:30 A.M. Tapes 98 - 99**

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

**Rep. Linda Flores**

**Rep. Bill Garrard**

**Rep. Kelley Wirth**

**GUEST MEMBERS:           Rep. Greg Macpherson**

**Rep. Andy Olson**

**STAFF PRESENT:           Bill Taylor, Counsel,**

**Joe O’Leary, Counsel**

**Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**SB 262A – Public Hearing and Work Session**

**SB 229A – Public Hearing and Work Session**

**SB 920A – Public Hearing and Work Session**

**SB 235A – Public Hearing**

**SB 236 – Public Hearing**

**SB 239 – Public Hearing**

**HB 2285 – 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 98, A**

003              Chair Ackerman              Calls the meeting to order at 8:45 a.m. Removes HB 2247 from the agenda. Opens a public hearing on SB 262A.

**SB 262A – PUBLIC HEARING**

014              Joe O'Leary                      Counsel. Explains SB 262A which extends the sunset for an exemption to the public records statute for records identifying persons engaged in animal research at Oregon Health and Science University (OHSU). Refers to the OHSU provost's previous testimony that SB 262A is offered to protect the name, home address and location of persons engaged in or providing services for medical research on animals other than rodents. Discusses an amendment that clarifies that the exemption does not apply to information contained in OHSU press releases, Web sites or other publications circulated to the general public.

032              Jim Newman                      OHSU. Testifies and submits written testimony in support of SB 262A (**EXHIBIT A**). Describes incidents of harassment relating to activists' access to names and information about OHSU.

082              Andrea Meyer                      American Civil Liberties Union. Testifies and submits written testimony in opposition to SB 262A (**EXHIBIT B**) which extends the sunset on the amendments to ORS 192.501, part of the public records laws. Clarifies that Oregon law has already protected the home addresses and personal telephone numbers of threatened individuals.

139              Meyer                                  Continues reading from prepared statement. Believes OHSU places their researchers at risk by posting their photographs on their Web site. States that OHSU has denied access to organizations that oppose OHSU policies.

161	Meyer	Refers to written testimony ( <b>EXHIBIT B</b> ) on investigative reporting by local media on identified abuse of OHSU research monkeys.
186	Chair Ackerman	Asks counsel for the distinction between ORS 192.501 and 192.445.
193	O’Leary	Replies that ORS 192.445 states that an individual may submit a written request for non-disclosure of information. Continues that ORS 192.445 directs the Attorney General to adopt rules to spell out the type of written request required.
228	Chair Ackerman	Inquires if SB 262A provides broader coverage.
230	O’Leary	Responds that employees of an agency would not have to make a request and advises that it applies to OHSU researchers and individuals who provide goods and services to OHSU.
244	Rep. Garrard	Asks about the OHSU Web site.
247	Newman	Answers that OHSU provides overviews of research and some pictures of researchers with their permission. States that activists are looking for very detailed information about studies, and OHSU wants to remove any connection between research information and the name of the researcher.
266	Meyer	Offers that organizations are trying to obtain accurate information. Observes that the media gets researcher names but that information has been refused to others.
284	Rep. Olson	Refers to Ms. Meyer’s testimony about OHSU picking and choosing who gets information. Asks about a policy on how to deal with requests.
291	Newman	Responds that there is a review process for every inquiry received to be sure everyone is treated fairly.
301	Meyer	Reads a statement from written testimony ( <b>EXHIBIT B</b> ) citing delay and denial of public records requests by the media.
321	Chair Ackerman	Believes the amendment only applies to providing an exemption for the names and home and professional addresses of OHSU staff, and not its work product as such.

- 335 Meyer Does not have a problem with the addresses but the names of researchers are important to determine any pattern of abuse.
- 359 Rep. Flores Refers to comments that OHSU opposes what people and animal rights organizations say. Appears that some of the documented cases of personal threats and harassment go beyond “saying. “
- 368 Meyer Responds to information provided by OHSU where they used their new authority to deny information.
- 393 Rep. Flores Understands that names of researchers are posted on the OHSU Web site.

**TAPE 99, A**

- 010 Newman Replies correct, and sometimes their pictures but specific locations are not. Refers to comments that OHSU has been found guilty of animal abuse, and that is not true. Comments on a U. S. Department of Agriculture investigation of false allegations of abuse in the primate center where OHSU was cleared.
- 029 Chair Ackerman Summarizes that the exemption would apply to persons and locations but doesn't mean it cannot otherwise be disclosed, because under ORS 192.501 these records are exempt unless the public interest requires disclosure. Continues there is a process to make that determination through the Attorney General's office.
- 043 Chair Ackerman Closes the public hearing and opens a work session on SB 262A.

**SB 262A – WORK SESSION**

- 044 Chair Ackerman MOTION: Moves SB 262A to the full committee with a DO PASS recommendation.**
- 046 Chair Ackerman Comments that he believes the behavior exhibited against OHSU employees is outrageous and menacing and has no element of free speech in it.
- 055 Rep. Garrard Indicates a courtesy vote to move to the full committee.



- 213 Chair Ackerman Hearing no objection, declares the motion **CARRIED**.
- 214 Chair Ackerman **MOTION: Moves SB 920A 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**
- 222 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 226 Chair Ackerman Closes the work session on SB 920A and opens a public hearing on SB 229A.

#### **SB 229A –PUBLIC HEARING**

- 227 Sam Sears Counsel. Explains SB 229A which requires the court in a dependency proceeding to give preference to placement of a child to a person with a caregiver relationship to the child; clarifies the definition of “caregiver relationship” for placement as well as intervener status; sets forth a process for substitution of appointed counsel in termination of parental rights cases; and allows the court to only substitute appointed counsel for a party pursuant to the rules adopted by the Public Defense Service Commission concerning appointed counsel.
- 239 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies and submits written testimony in support of SB 229A (**EXHIBIT E**). Advises that SB 229A is “housekeeping.”
- 255 Chair Ackerman Closes the public hearing on SB 229A.
- 265 Chair Ackerman Opens a public hearing on SB 235A.

#### **SB 235A – PUBLIC HEARING**

- 274 Bill Taylor Counsel. Explains SB 235A which requires a place of public accommodation to remove physical barriers to entering and using

existing facilities if removal is readily achievable; provides auxiliary aids and services to a disabled person when necessary to ensure equal access to goods, services, and facilities; removes physical and administrative barriers if removal of barriers is readily achievable; and requires a place of public accommodation to take alternative steps if removal is not readily achievable.

- 283 Wendy Johnson Deputy Director, Oregon Law Commission. Submits copies of Bureau of Labor and Industries (BOLI) administrative rules (**EXHIBIT F**), federal law (**EXHIBIT G**), written testimony (**EXHIBIT H**), written testimony by Marcia Ohlemiller, BOLI Legal Policy Advisor (**EXHIBIT I**) and the -3 amendments (**EXHIBIT J**). Testifies in support of SB 235A. Summarizes that the SB 235A language is taken from federal law. Continues that BOLI has administrative rules because Oregon has been out in front in terms of providing accommodations requiring no discrimination against the disabled.
- 341 Johnson Describes the difficulty in writing SB 235 due to federal law. Advises that the statute was kept general to allow the federal law to develop. Explains that the -3 amendments respond to legislators who were originally opposed to SB 235.
- 374 Bob Joondeph Oregon Advocacy Center. Testifies and submits written testimony in support of SB 235A (**EXHIBIT K**). Advises that the original SB 235 defined terms. Explains that some legislators wanted a set standard in state law established by the Oregon Legislature.

#### **TAPE 98, B**

- 006 Taylor Reads from SB 235A that if barrier removal is not readily achievable, the place of accommodation must take alternative steps. Asks if a store is required to make a home delivery free of charge or if they can provide other means of accommodation for the disabled.
- 015 Joondeph Responds that the law requires a solution to the accessibility problem that is most effective and doesn't prescribe a specific activity. Provides an example. Continues that there is nothing in the Americans with Disabilities Act (ADA) that requires extraordinary services be provided.
- 031 Taylor Asks if a disabled person could demand home delivery.
- 033 Joondeph Answers no.

035	Johnson	Refers to the federal law ( <b>EXHIBIT G</b> ) that details the same list as shown in SB 235A.
039	Chair Ackerman	Asks how the need for changes would be assessed based upon current market situations.
043	Johnson	Responds that if SB 235A is not passed, there will doubtless be continued litigation on what Oregon statute means. Continues that federal law already requires the standard of providing an accommodation to a disabled person, so the law is not being changed.
055	Chair Ackerman	Expresses an interest in hearing from the disabled community on their experiences and problems.
060	Joondeph	Replies that their firm represents disabled persons who have problems accessing businesses. Advises that SB 235A is trying to clarify state law and applies to businesses of all sizes. Continues that there appears not to be a big area of concern in Oregon but using the complaint process through BOLI is faster than the federal process.
099	Marcia Ohlemiller	Legal Policy Advisor, BOLI. Testifies in support of SB 235A. Offers that BOLI takes administrative complaints and tries to resolve them at the lowest level.
123	Ohlemiller	Continues that BOLI has rule writing authority in ORS 659A so the specific language in SB 235A contains detailed definitions which would be affected if federal law changed. Explains that is why the work group decided that the rule making should be as flexible as possible.
156	Dan Floyd	Oregon Grocery Association. Testifies in opposition to SB 235A. Has been unable to identify any of their members not in compliance. Refers to SB 235A that lists suggestions on how to accommodate disabled persons and indicates they are doing those things now. Comments that SB 235A attempts to move authority from the federal government to state government to BOLI. Asks about the fiscal impact.
199	Julie Brandis	Association Oregon Industries. Testifies in opposition to SB 235A. Notes that the current regulations in the ADA impose affirmative obligation to remove barriers and create access for those who are disabled. Believes further discussion is needed with associations that



have to explain these laws to alleviate some of the issues with SB 235A. States that it is better to follow one set of standards and that is federal law.

235 Chair Ackerman Closes the public hearing on SB 235A and opens a work session on SB 229A.

### **SB 229A – WORK SESSION**

244 Chair Ackerman **MOTION: Moves SB 229A to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

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

**EXCUSED: 1 - Garrard**

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

256 Chair Ackerman Closes the work session on SB 229A.

268 Chair Ackerman Announces the committee is at ease for a few minutes.

281 Chair Ackerman Opens a public hearing on SB 236.

### **SB 236 – PUBLIC HEARING**

284 Bill Taylor Counsel. Explains that SB 236 clarifies that a civil action for discrimination in a place of public accommodation or a civil action for aiding and abetting discrimination in a place of public accommodation must be commenced within one year of the occurrence of the unlawful practice. Advises that current statute does not contain a statute of limitations.

297 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies and submits written testimony in support of SB 236 (**EXHIBIT L**).

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

- Marcia Ohlemiller Legal Policy Advisor, Bureau of Labor and Industries. Submits written testimony in support of SB 236 (**EXHIBIT M**).
- 307 Chair Ackerman Closes the public hearing on SB 236.
- 317 Chair Ackerman Opens a public hearing on SB 239.

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### **SB 239 – PUBLIC HEARING**

- 318 Bill Taylor Counsel. Describes SB 239 which creates consistency throughout Oregon anti-discrimination laws concerning who is protected under the law.
- 324 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies and submits written testimony in support of SB 239 (**EXHIBIT N**) and a chart showing the classes added to SB 239 (**EXHIBIT O**). Explains the classes covered under the Americans with Disabilities Act and that SB 239 adds a previously omitted class.

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

- Marcia Ohlemiller Legal Policy Advisor, Bureau of Labor and Industries. Submits written testimony in support of SB 239 (**EXHIBIT P**).
- 341 Chair Ackerman Closes the public hearing on SB 239 and opens a work session on HB 2285.

### **HB 2285 – WORK SESSION**

- 357 Sam Sears Counsel. Explains HB 2285 which requires health professional regulatory boards disclose information obtained by the boards in investigation of disciplinary actions of licensees. Refers to previous discussion on the -4 amendments which provide that the boards may withhold information regarding the identity of the person that made the complaint. Notes that the -6 amendments (**EXHIBIT Q**) further clarify which records the boards may withhold and clarifies what the licensees can do.
- 390 Chair Ackerman Seeks further clarification on the effects of the -6 amendments.

400 Sears Responds to the Chair's questions.

**TAPE 99, B**

**012 Chair Ackerman MOTION: Moves to ADOPT HB 2285-6 amendments dated 6/7/05.**

**VOTE: 4-0-0**

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

**016 Chair Ackerman MOTION: Moves HB 2285 to the full committee with a DO PASS AS AMENDED recommendation.**

019 Rep. Garrard Advises of the reason he will vote no.

**024 VOTE: 3-1-0**

**AYE: 3 - Flores, Wirth, Ackerman**

**NAY: 1 - Garrard**

**026 Chair Ackerman The motion CARRIES.**

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

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

Martin Pittioni Board of Psychologist Examiners. Submits written testimony in opposition to HB 2285 (**EXHIBIT R**).

028 Chair Ackerman Closes the work session on HB 2285 and adjourns the meeting at 10:07 a.m.

**EXHIBIT SUMMARY**

- A. SB 262A, written testimony, Jim Newman, 8 pp
- B. SB 262A, written testimony, Andrea Meyer, 4 pp
- C. SB 920, A4 amendments, staff, 16 pp
- D. SB 920, written testimony, Wendy Johnson, 4 pp
- E. SB 229, written testimony, Wendy Johnson, 3 pp
- F. SB 235A, administrative rules, Wendy Johnson, 3 pp
- G. SB 235A, federal law, Wendy Johnson, 34 pp
- H. SB 235A, written testimony, Wendy Johnson, 7 pp
  - I. SB 235A, written testimony by Marcia Ohlemiller, Wendy Johnson, 2 pp
- J. SB 235, A3 amendments, Wendy Johnson, 2 pp
- K. SB 235A, written testimony, Bob Joondeph, 1 p
- L. SB 236, written testimony, Wendy Johnson, 4 pp
- M. SB 236, written testimony, Marcia Ohlemiller, 1 p
- N. SB 239, written testimony, Wendy Johnson, 5 pp
- O. SB 239, chart, Wendy Johnson, 3 pp
- P. SB 239, written testimony, Marcia Ohlemiller, 1 pp
- Q. HB 2285, -6 amendments, staff, 3 pp
- R. HB 2285, written testimony, Martin Pittioni, 1 p