

HOUSE COMMITTEE ON JUDICIARY

April 15, 2003 Hearing Room 357

1:00 pm Tapes 141 - 142

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Robert Ackerman, Vice-Chair
 Rep. Gordon Anderson, Vice-Chair
 Rep. Jeff Barker
 Rep. Bob Jenson
 Rep. Jerry Krummel
 Rep. Greg Macpherson
 Rep. Floyd Prozanski
 Rep. Lane Shetterly

STAFF PRESENT: **Bill Joseph, Counsel**
 Nancy Masee, Committee Assistant

MEASURE/ISSUES HEARD:
 HB 2581 work session
 HB 2066 work session
 HB 2279 work session
 HB 2235 work session
 HB 2103 work session
 HB 2658 work session
 HB 2080 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 141, A		
005	Chair Williams	Opens meeting at 1:22 pm. Opens work session on HB 2581.
<u>HB 2581 WORK SESSION</u>		
014	Bill Joseph	Committee Counsel. Explains HB 2581 which allows governing body to commence proceeding in circuit court to determine regularity and legality of certain actions of governing body.
018	Chair Williams	States the committee's concern that the language created issue of claim preclusion for parties who are not party to initial action seeking determination.
023	Hannah Mills	Legislative Counsel. Explains how the bill is written. Describes the adverse party.
060	Vice Chair Ackerman	Discusses claim preclusion. Refers to ORS 33.720 sub 6, which sets up notice requirement.
064	Mills	Responds it does give notice to parties.
067	Vice Chair Ackerman	States that if notice is given to a party, and the party answers joins the issues specified in the complaint, there is controversy to be ruled upon. States aside from the notice requirement there could be staff effort of the governing body to identify interested parties that might file answers and litigate the case.
080	Mills	Says she did not consider that part of the statute.
087	Vice Chair Ackerman	Asks if a complaint was filed to consider the validity of certain municipal action, if the complaint did identify all relevant issues,

that would be a matter by which issue preclusion could be avoided.

091 Mills Answers the courts have difficulty ruling when they do not have every issue that could possibly happen.

096 Vice Chair Ackerman Answers that is characteristic of most litigation. Supports the bill.

111 Joseph Discusses offensive non-mutual collateral estoppel.

165 Chair Williams Declares it seems like it does broaden. Hesitates because it may not provide the protection a municipality wants.

189 Christy Munson League of Oregon Cities. Says the League supports HB 2581 with future changes.

200 Joseph Comments the bill, assuming the notice gets to a party that has an issue, would be decided and litigated as part of the decision.

213 Vice Chair Ackerman Describes thinly drafted complaints that cause problems. Comments that existing law works.

230 Joseph Explains the -1 and the -2 amendments from Rep. Ackerman **(EXHIBITS A and B)**.

231 **Rep. Ackerman** **MOTION: Moves to ADOPT HB 2581-2 amendments dated 3/28/03.**
VOTE: 9-0

232 **Chair Williams** **Hearing no objection, declares the motion CARRIED.**

233 **Rep. Ackerman** **MOTION: Moves to ADOPT HB 2581-1 amendments dated 3/28/03.**
VOTE: 9-0

234 **Chair Williams** **Hearing no objection, declares the motion CARRIED.**

235 **Rep. Ackerman** **MOTION: Moves HB 2581 to the floor with a DO PASS AS AMENDED recommendation.**

236 Rep. Shetterly Declares reservations regarding HB 2581.

237 Rep. Jenson Declares reservations regarding HB 2581.

238 Rep. Krummel Supports HB 2581.
VOTE: 7-2
AYE: 7 - Ackerman, Anderson, Barker, Krummel, Macpherson, Prozanski, Williams
NAY: 2 - Jenson, Shetterly

239 Rep. Prozanski Declares reservations regarding HB 2581.

240 **Chair Williams** **The motion CARRIES.**
REP. ACKERMAN will lead the discussion on the floor.

241 Chair Williams Closes work session on HB 2581. Opens work session on HB 2066.

HB 2066 WORK SESSION

242 Chair Williams Reviews previous testimony on HB 2066 which makes miscellaneous changes to laws governing courts. Refers to the -15 and -16 amendments already approved by the committee **(EXHIBITS C and D)**. There is no fiscal impact.

243 **Rep. Shetterly** **MOTION: Moves HB 2066 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.**
VOTE: 9-0

244 **Chair Williams** **Hearing no objection, declares the motion CARRIED.**
REP. WILLIAMS will lead discussion on the floor.

245 Chair Williams Closes work session on HB 2066. Opens work session on HB 2279.

HB 2279 WORK SESSION

258 Bill Joseph Committee Counsel. Reviews previous hearing of HB 2279 which enacts Revised Uniform Arbitration Act. The -4 amendments were approved by the committee previously. Discusses the -3 amendments (**EXHIBIT E**).

TAPE 142, A

040 James Damis Oregon State Bar. Explains why HB 2279 is needed and the amendments.

062 Rep. Shetterly MOTION: Moves to ADOPT HB 2279-3 amendments dated 3/19/03.

063 Rep. Jenson Asks questions regarding HB 2279-3.

069 Damis Responds to questions

080 Chair Williams Responds to questions.

093 Chair Williams Hearing no objection, declares the motion CARRIED.

094 Rep. Shetterly MOTION: Moves HB 2279 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 9-0

095 Chair Williams Hearing no objection, declares the motion CARRIED. REP. BARKER will lead discussion on the floor.

100 Chair Williams Closes work session HB 2279. Opens work session on HB 2235.

HB 2235 WORK SESSION

126 Bill Joseph Committee Counsel Explains previous discussion on HB 2235 which modifies provisions relating to private security providers. Explains -1 and -2 amendments (**EXHIBITS F and G**).

138 Scott Tighe Division Director, Standards and Certification Division, Department of Public Safety Standards and Training. Supports the -1 and -2 amendments.

143 Harold Burkesimmers Director of Public Safety, University of Portland. Chair, Private Security Advisory Committee. Testifies in support of HB 2235.

155 Rep. Prozanski MOTION: Moves to ADOPT HB 2235-1 amendments dated 2/20/03.

VOTE: 9-0

158 Chair Williams Hearing no objection, declares the motion CARRIED.

160 Rep. Prozanski MOTION: Moves to ADOPT HB 2235-2 amendments dated 3/21/03.

VOTE: 9-0

161 Chair Williams Hearing no objection, declares the motion CARRIED.

162 Rep. Prozanski MOTION: Moves HB 2235 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 9-0

163 Chair Williams Hearing no objection, declares the motion CARRIED. REP. ANDERSON will lead discussion on the floor.

164 Chair Williams Closes work session on HB 2235. Opens work session on HB 2103.

HB 2103 WORK SESSION

172 Bill Joseph Committee Counsel. Explains HB 2103 which prohibits person from selling, leasing or renting payment processing system that provides receipt with more information about customer than last four digits of customer's credit or debit card number. Explains the concerns from previous hearing.

188 Cheryl Pellegrini Department of Justice (DOJ). Explains the -1 amendment

		(EXHIBIT H). Notes interested parties have agreed to amendment.
216	Rep. Prozanski	MOTION: Moves to ADOPT HB 2103-1 amendments dated 4/7/03.
		VOTE: 9-0
217	Chair Williams	Hearing no objection, declares the motion CARRIED.
218	Rep. Prozanski	MOTION: Moves HB 2103 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 9-0
219	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. KRUMMEL will lead discussion on the floor.
220	Chair Williams	Closes work session on HB 2103. Opens work session on HB 2658.

HB 2658 WORK SESSION
TAPE 141, B

010	Bill Joseph	Committee Counsel. Reiterates testimony on HB 2658 which exempts public employee and volunteer Social Security numbers from disclosure under public records law. Explains the -1 amendments (EXHIBIT I).
024	Rep. Prozanski	MOTION: Moves to ADOPT HB 2658-1 amendments dated 3/31/03.
		VOTE: 9-0
025	Chair Williams	Hearing no objection, declares the motion CARRIED.
026	Rep. Prozanski	MOTION: Moves HB 2103 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 9-0
027	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. KRUMMEL will lead discussion on the floor.
030	Chair Williams	Closes work session on HB 2658. Opens work session on HB 2080.

HB 2080 WORK SESSION

040	Richard Lane	Oregon Trial Lawyers Association. Testifies in support of HB 2080 and the -1 amendments (EXHIBIT J). Discusses <i>Gladhart v. Oregon Vineyard Supply Co.</i>
050	Linda Eyerman	Attorney, Portland. Discusses reasons for HB 2080. Testifies in support of HB 2080 and submits testimony (EXHIBIT K).
110	Eyerman	Continues presenting HB 2080 issues. Discusses need for an explicit discovery rule. Says products liability actions do not have discovery provisions. Mentions Oregon Supreme Court case <i>PGE v. BOLI</i> .
166	Eyerman	Discusses what will happen to Oregon consumers if rule is not adopted. Explains the -1 amendments have three purposes. <ul style="list-style-type: none"> • To better define the discovery rule. • To change the statute of limitations in cases of death to 3 years from date of death. • To revive cases dismissed by <i>Gladhart</i>.
180	Rep. Barker	Asks if this does not change the 8-year original statute of repose.
186	Eyerman	Responds there is no intent to change the statute of repose.
200	Chair Williams	Asks about language in section 2 relating to revival of actions.
220	Eyerman	Says the intent is to be specific to a category of cases that were dismissed based on the <i>Gladhart</i> rule and have been dismissed within two years of the effective date of the law.

240	Chair Williams	Questions lines 8 through 13 in the -1 amendments. Asks if this language is borrowed or codified case law.
263	Eyerman	Answers it was drafted by Legislative Counsel. ORS 30.908 provided the language.
270	Lane	Refers to lines 8 to 13, and <i>Gaston v Parsons</i> , a medical malpractice case.
272	Eyerman	Adds that <i>Gladhart</i> case defined a legally cognizable harm. Injury was defined as when the harm was incurred which was inconsistent with earlier cases. Explains the need for the -1 amendments.
280	Rep. Shetterly	Discusses identifying when harm occurs.
285	Eyerman	Replies that types of products fall under <i>Gladhart</i> involve pharmaceuticals, medical devices and products with latent injuries because they do not show signs of defectiveness.
290	Chair Williams	Describes letter from Lindsay, Hart, Neil and Weigler (EXHIBIT L) in opposition to HB 2080.
295	Eyerman	Explains previous to 1977 products liability cases were treated as negligence. Discusses ORS Chapter 12 and the discovery rule. Explains the exceptions statute in 1983. Continues relating the history of products liability law.
330	Lane	Adds information about asbestos and breast implant cases deal with ultimate repose area.
TAPE 142, B		
062	Chair Williams	Cites those in opposition to HB 2080, Jim Markee, Paul Cosgrove, and Julie Brandis.
087	Jim Markee	PhRMA Pharmaceutical. Testifies in opposition to HB 2080 and submits testimony (EXHIBIT M) .
100	Paul Cosgrove	Alliance of Automobile Manufacturers. Testifies in opposition to HB 2080.
118	Julie Brandis	Association of Oregon Industries (AOI). Testifies in opposition to HB 2080 which will increase product liability lawsuits and the cost of doing business.
130	Chair Williams	Discusses latent defect cases. Wonders how does it not essentially operate as a 2-year ultimate statute of repose.
135	Cosgrove	Responds that question is under discussion.
166	Chair Williams	Comments on ultimate repose of 8 years.
170	Markee	Says he did not see the -1 amendments until this meeting. Says the 8 years is rendered useless.
172	Chair Williams	Asks the parties to look at the -1 amendments.
186	Rep. Shetterly	Comments on losing one's rights before you know you have them.
190	Scott Gallant	Oregon Medical Association (OMA). Addresses the -1 amendments which he has just seen.
229	Gallant	States HB 2080 has major implications and needs review.
239	Rep. Shetterly	Discusses latent defect on medical products.
300	Gallant	Replies this needs to be looked at carefully.
307	Rep. Prozanski	Asks if there is a timeframe for this bill.
314	Chair Williams	Closes work session on HB 2080. Adjourns meeting at 3:05 pm.

EXHIBIT SUMMARY

A – HB 2581-1 amendment, Rep. Ackerman, 1 p

B – HB 2581-2 amendment, Rep. Ackerman, 1 p

- C – HB 2066-15 amendment, staff, 3 pp**
- D – HB 2066-16 amendment, staff, 2 pp**
- E – HB 2779-3 amendment, James Damis, 4 pp**
- F – HB 2235-1 amendment, staff, 1 p**
- G – HB 2235-2 amendment, staff, 2 pp**
- H – HB 2103-1 amendment, Cheryl Pellegrini, 1 p**
- I – HB 2658-1 amendment, staff, 1 p**
- J – HB 2080-1 amendment, staff, 2 pp**
- K – HB 2080, written testimony, Linda Eyerman, 1 p**
- L – HB 2080, written testimony, Jim Markee for Lindsay, Hart, Neil and Weigler, 2 pp**
- M – HB 2080, written testimony, Jim Markee, 1 p**
- N – HB 2080, written testimony, staff for National Federation of Independent Business (NFIB)**