

## HOUSE COMMITTEE ON JUDICIARY

May 1, 2003 Hearing Room 357

1:00 pm Tapes 169 - 170

**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 2080 Work Session**  
,                                    **HB 2494 Work Session**  
                                 **HB 2498 Work Session**  
                                 **HB 2591 Work Session**  
                                 **HB 3338 Work Session**  
                                 **Introduction of LC 221**  
                                 **SB 37 Work Session**  
                                 **SB 35 Work Session**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 169, A</b>		
005	Chair Williams	Opens meeting at 1:10 pm. Opens work session on HB 2080.
<b><u>HB 2080 WORK SESSION</u></b>		
009	Bill Joseph	Committee Counsel. Explains HB 2080 which provides that statute of limitations for product liability civil actions commences to run when plaintiff first discovered, or in exercise of reasonable care should have discovered, death, injury or damage complained of.
023	Chair Williams	Discusses language and policy choices that need to be resolved with the parties.
031	Richard Lane	Oregon Trial Lawyers Association. Testifies in support of HB 2080 and discusses three choices in the -3 and -4 amendments <b>(EXHIBITS A and B)</b> .
082	Lane	Continues explaining the -3 and -4 amendments.
100	Jim Gardner	Gardner and Gardner. Explains agreement in principle with modification of the -4 amendments. Explains difference between the -3 and -4 amendments that is crucial. Wants more time to make the necessary compromises.
178	Chair Williams	Explains his understanding of the bill, and says he finds two different approaches.
190	Lane	Replies the problem is with the judicial adjudication on the

		Gladhart decision. Intent was to resurrect those impacted by the Gladhart decision but the actual adjudication language was too focused.
194	Chair Williams	Concern is that it is difficult to define. Supports the narrower version.
210	Chair Williams	Asks for more discussion.
241	Rep. Shetterly	Asks about the three considerations.
250	Lane	Responds by giving examples.
270	Chair Williams	Responds by suggesting more discovery language.
300	Rep. Shetterly	Discusses using standards for discovery.
330	Lane	Answers he is not aware of statutes defining discovery.
363	Gardner	Reads the operative language from HB 2080. Suggests acceptable language on discovery.
390	Vice Chair Ackerman	Comments on the -4 amendments.

**TAPE 170, A**

006	Gardner	Responds the language in the -4 was the requestor's language in the original version of the bill.
016	Lane	Discusses ORS 30.908 has a three-part test that the harmed individual needs to know in order to begin a cause of action.
018	Gardner	Wants to take this under evaluation.
022	Chair Williams	Says this bill will be back on the agenda for Monday, May 5. Closes work session on HB 2080. Opens work session on HB 2494.

**HB 2494 WORK SESSION**

030	Bill Joseph	Committee Counsel. Explains HB 2494 which requires disclosure of expert witnesses in civil actions. Explains the -1 amendments ( <b>EXHIBIT C</b> )
093	Mike Crew	Cooney and Crew, Portland. Oregon Medical Association (OMA). Explains their concern with the -1 amendments, page 1, line 16 and other language.
134	Chair Williams	Discusses adding an expert witness at the last minute.
170	Rich Lane	Oregon Trial Lawyers Association. Testifies in opposition to HB 2494.
192	Rep. Shetterly	Refers to the original bill and the same problem of supplemental disclosure. Says the -1 amendment tracks same as original bill.
200	Crew	Discusses how the amendment relates to the original bill.
216	Vice Chair Ackerman	Suggests an effective date is needed.
235	Chair Williams	Closes work session on HB 2494. Opens work session on HB 2498.

**HB 2498 WORK SESSION**

220	Bill Joseph	Committee Counsel. Explains HB 2498 which sets rate of interest on judgments in civil actions relating to professional negligence of person licensed by Board of Medical Examiners or Oregon State Board of Nursing at lesser of five percent per annum or three percent in excess of discount rate. Explains the -1 amendments ( <b>EXHIBIT D</b> ).
240	Mike Crew	States OMA supports the -1 amendments.
245	Jim Dorigan	States Pacific NW Physicians support the -1 amendments.
250	Lane	Supports the -1 amendments.
255	Rep. Shetterly	Asks about the small claims challenge.
306	Jim Markee	Oregon Collectors Association. States he has not been involved in this negotiation. Wants to discuss HB 2498 with the courts.

325 Chair Williams Discusses tying to a federal rate.

360 Bradd Swank Office of State Court Administrator. Testifies the court does not advise individuals on interest rates.

**TAPE 169, B**

003 Swank Continues discussing that the court will not provide interest rates.

014 Rep. Shetterly Discusses a fixed rate in small claims cases. Says the bill is in the right direction.

015 Chair Williams Closes work session on HB 2498. Opens work session on HB 2591.

**HB 2591 WORK SESSION**

025 Bill Joseph Committee Counsel. Explains HB 2591 which requires entry of judgment with installment payments in certain actions in which \$100,000 or more is awarded for losses that will be incurred by plaintiff after entry of judgment. Submits -1 amendment **(EXHIBIT E)**

058 Mike Crew Oregon Medical Association. Explains objections to amendments.

070 Jim Dorigan Pacific NW Physicians. Explains the issues with HB 2591 and the -1 amendment. Says this bill needs a lot of work before they could approve it.

041 Lane Opposes the -1 amendments. Discusses Section 1(c).

144 Rep. Prozanski Asks, how do defendants get to determine how to pay damages to the plaintiff.

150 Jim Dorigan Replies the periodic payments are designed to mirror the ongoing needs of the injured party.

154 Rep. Prozanski Asks if the plaintiff dies prior to full payment, are you limiting what type of payments are not recoverable.

155 Dorigan Responds the California statute allows for continued payment of potential lost wages, but if there is an economic lost damage that deals with medical care, then that portion ends.

158 Rep. Prozanski Reiterates that economic damages are determined by medical needs that would be paid if the person was alive.

165 Vice Chair Ackerman Asks if the inquiry is limited to the person, or is it the vehicle to make payments such as a trust fund.

175 Dorigan Answers generally an annuity is purchased and guaranteed by another insurance company.

182 Vice Chair Ackerman Comments on installment payment plan is constitutionally challenged.

200 Stuart Brown Oregon State Bar Procedures and Practices Committee. Agrees that reduction of present value and gross amount needs to be addressed. Asks that subsection 7 be conditioned on property security.

230 Chair Williams Closes work session on HB 2591. Opens work session on HB 3338.

**HB 3338 WORK SESSION**

234 Bill Joseph Committee Counsel. Explains HB 3338 which modifies provisions relating to desertion by parent in adoption proceedings. Submits the -2 amendments **(EXHIBIT F)**.

254 Kathy Ledesma Department of Human Services (DHS). Says changes to the -1 amendments have been agreed upon. Refers to page 2, line 13. Page 2, delete last sentence. Summarizes HB 3338 as to what it does.

**250 Rep. Krummel MOTION: Moves to conceptually AMEND HB 3338 on page**

2, in line 13, delete "or" and change to "and." On page 2, delete the last sentence.

**VOTE: 8-0-1**

**EXCUSED: 1 – Ackerman**

251 Chair Williams  
252 Rep. Krummel

**Hearing no objection, declares the motion CARRIED.**

**MOTION: Moves to ADOPT HB 3338-2 amendments dated 5/1/03 as conceptually amended.**

**VOTE: 8-0-1**

**EXCUSED: 1 – Ackerman**

253 Chair Williams  
254 Rep. Krummel

**Hearing no objection, declares the motion CARRIED.**

**MOTION: Moves HB 3338 to the floor with a DO PASS AS AMENDED and CONCEPTUALLY AMENDED recommendation.**

**VOTE: 8-0-1**

**EXCUSED: 1 – Ackerman**

255 Chair Williams

**Hearing no objection, declares the motion CARRIED.**

**REP. KRUMMEL will lead discussion on the floor.**

256 Chair Williams

Closes work session. Moves to introduce measure (**EXHIBIT H**).

**INTRODUCTION OF LC 221**

257 Chair Williams

**MOTION: Moves LC 221 BE INTRODUCED as a committee bill.**

**VOTE: 9-0**

**Hearing no objection, declares the motion CARRIED.**

258 Chair Williams  
259 Chair Williams

Opens work session on SB 37.

**SB 37 WORK SESSION**

260 Bill Joseph

Committee Counsel. Explains SB 37 which modifies Elderly and Disabled Person Abuse Prevention Act to allow guardian or guardian ad litem to file petition on behalf of elderly or disabled person and submits the -1 amendment (**EXHIBIT I**).

261 Chair Williams

**MOTION: Moves to ADOPT SB 37-1 amendments dated 4/30/03.**

**VOTE: 9-0**

**Hearing no objection, declares the motion CARRIED.**

261 Chair Williams

**MOTION: Moves SB 37 to the floor with a DO PASS AS AMENDED recommendation.**

262 Chair Williams

**VOTE: 9-0**

**Hearing no objection, declares the motion CARRIED.**

**REP. PROZANSKI will lead discussion on the floor.**

263 Chair Williams

Closes work session on SB 37. Opens work session on SB 35.

264 Chair Williams

**SB 35 WORK SESSION**

280 Bill Joseph

Committee Counsel. Explains SB 35 which requires prior court approval for payment of compensation to persons employed by fiduciary to provide direct services to protected person or services to fiduciary that directly affect protected person when fiduciary has pecuniary or financial interest in person employed. Submits SB 35-1 amendment (**EXHIBIT G**).

**TAPE 170, B**

030 Susan Grabe

Oregon State Bar. Explains SB 35 -1 amendment clarifies the bill to ensure the court approves payment for compensation to persons employed by the fiduciary before the services are provided.

043	Professor Jennifer Wright	Willamette University School of Law. Supports the -1 amendment. Introduces Joanna Harbor.
040	Rep. Jenson	Asks about “significant others” and other terms in the bill.
050	Wright	Explains the language was discussed by the committee and interested parties and was worked out with the real estate commission.
070	Tim Martinez	Oregon Bankers Association. Testifies that banks and trust companies should be exempt. Supports SB 35 with the -1 amendments.
072	Holly Robinson	Legislative Counsel. Explains ORS 125.242 that had a specific exemption for financial institutions and trust companies.
075	Rep. Shetterly	<b>MOTION: Moves to ADOPT SB 35-1 amendments dated 5/1/03.</b>
		<b>VOTE: 9-0</b>
077	Chair Williams	<b>Hearing no objection, declares the motion CARRIED.</b>
079	Rep. Shetterly	<b>MOTION: Moves SB 35 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 9-0</b>
080	Chair Williams	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>REP. MACPHERSON will lead discussion on the floor.</b>
082	Chair Williams	Closes work session on SB 35 and adjourns meeting at 2:40 pm

## **EXHIBIT SUMMARY**

- A – HB 2080-3 amendment, staff, 2 pp**
- B – HB 2080-4 amendment, staff, 2 pp**
- C – HB 2494-1 amendment, staff, 2 pp**
- D – HB 2498-1 amendment, staff, 1 p**
- E – HB 2591-1 amendment, staff, 2 pp**
- F – HB 3338-2 amendment, staff, 4 pp**
- G – SB 35-1 amendment, staff, 1 p**
- H - LC 221, staff, 1 p**
- I – SB 37-1 amendment, staff, 26 pp**