

HOUSE COMMITTEE ON JUDICIARY

May 02, 2003 Hearing Room 357
1:00 p.m. Tapes 171 - 173

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

MEMBER EXCUSED: Rep. Greg Macpherson

STAFF PRESENT: Bill Joseph, Counsel
 Craig Prins, Counsel
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: SB 43A Public Hearing and Work Session
 SB 39 Public Hearing and Work Session
 SB 101A Public Hearing
 SB 42 Public Hearing and Work Session
 SB 41 Public Hearing
 HB 2118 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 171, A		
004	Chair Williams	Calls the meeting to order at 1:25 p.m. Opens a public hearing on SB 43A.
<u>SB 43A PUBLIC HEARING</u>		
010	Scott Morrill	Oregon State Bar. Submits testimony and testifies in support of SB 43A which exempts certain activities of title insurers, title insurance agents and escrow agents from prohibitions on unauthorized practice of law (EXHIBIT A).
057	Cleve Abby	State Counsel, Lawyers Title Insurance Corporation and Chair, Legislative Committee of the Oregon Land Title Association. Testifies in support of SB 43A.
086	Susan Grabe	Oregon State Bar, Government Relations Office. Testifies in support of SB 43A.
090	Vice Chair Anderson	Asks about people in other states writing forms that are being used in Oregon.
091	Abby	Says they are not and explains the forms that title companies use.
128	Rep. Jenson	Asks if we have a problem with the current statute in Oregon.
124	Morrill	Answers that this is a proactive measure from the title and escrow companies to help them not practice law without a license.
149	Rep. Krummel	Wonders about the purpose of the bill.
161	Morrill	Answers that a title and escrow agent should not be explaining provisions of the contract or document.

167 Rep. Krummel Says that he thought that the title and escrow agents could explain documents. Asks where the line is drawn on this.

177 Abby Responds that it is a fuzzy line and explains that the escrow agent/realtor is there to provide information, but not legal advice.

204 Rep. Shetterly Asks what it means to “arrange” on page 1, Section 1, line 12.

210 Abby Answers that that language is existing law.

230 Chair Williams Closes the public hearing on SB 43A and opens a work session.

The following prepared testimony is submitted for the record without public testimony for SB 43A:
James W. Nass Submits written testimony (**EXHIBIT G**).

SB 43A WORK SESSION

236 Rep. Prozanski MOTION: Moves SB 43A to the floor with a DO PASS recommendation.

238 Rep. Krummel Asks about a discussion in the bill regarding disclosure as to what constitutes practicing law.

247 Chair Williams Believes that is what the bill is doing and that the disclosure in the bill on page 2, lines 22-32, highlights the distinction for a person in the middle of a transaction.

234 VOTE: 8-0-1

235 Chair Williams EXCUSED: 1 - Macpherson
Hearing no objection, declares the motion CARRIED.
REP. ACKERMAN will lead discussion on the floor.

283 Chair Williams Closes the work session on SB 43A and opens a public hearing on SB 39.

SB 39 PUBLIC HEARING

288 Dan Olsen Washington County Counsel, Oregon State Bar, Government Law Section. Submits testimony and testifies in support of SB 39 which modifies rule of evidence relating to privileges (**EXHIBIT B**).

371 Stephanie Smythe Testifies in support of SB 39.

373 Vice Chair Ackerman Talks about being at several executive sessions when the discussion has strayed off and the press representatives warn them. Asks if the privilege could be waived in those circumstances.

387 Olsen Explains that the privilege is separate from the public meetings law.

407 Vice Chair Ackerman Discusses the difference in privileges.

428 Chair Williams Closes the public hearing on SB 39 and opens a work session.

SB 39 WORK SESSION

433 Rep. Prozanski MOTION: Moves SB 39 to the floor with a DO PASS recommendation.

VOTE: 8-0-1

EXCUSED: 1 - Macpherson
Hearing no objection, declares the motion CARRIED.
REP. KRUMMEL will lead discussion on the floor.

440 Chair Williams Closes the work session on SB 39 and opens a public hearing on SB 42.

453 Chair Williams

SB 42 PUBLIC HEARING

456 Chair Williams Recesses the public hearing on SB 42 which provides that statutes of limitation and other procedural statutes governing civil and criminal proceedings are computed in calendar years.

TAPE 172, A

019 Chair Williams Closes public hearing on SB 42. Opens a public hearing on SB

SB 101 PUBLIC HEARING

023	Thomas Castle	Assistant Attorney General, Department of Justice. Testifies in support of SB 101A which allows public servant or public servant's employer to seek injunction against person engaging in conduct constituting specified crimes.
045	Shelley K. McIntyre	Assistant Attorney General, Department of Justice. Testifies in support of SB 101A.
064	Rep. Shetterly	Asks why they limit this to public servants if this is good public policy.
071	McIntyre	Says that they already have laws that protect the general public. Emphasizes that public officials have been targeted and this bill is to protect them.
092	Rep. Krummel	Asks about his constituents that have been fairly "spirited" and tried to do business with an agency and then become angry. Wonders if this bill refers to them.
109	McIntyre	Says that it would depend on the facts because it is already against the law to behave like that.
127	Rep. Krummel	Explains that if a person has had an injunction against them, but has to have future contact with this agency then would they be violating their injunction.
144	Castle	Answers that the injunction can be fashioned for each individual situation.
152	Chair Williams	Discusses example of a Department of Environmental Quality (DEQ) employee testing an underground storage tank on someone's property.
175	McIntyre	Explains that if a person cannot control himself and is threatening and interfering with an agency employee, then the opportunity there is to seek a contempt citation from the court.
199	Chair Williams	States that if a person is threatening with a firearm then he would hope that the state would send someone to protect them.
211	McIntyre	Agrees and says that these employees are not paid enough to have themselves or their children threatened.
216	Chair Williams	Asks what a person can do if someone is threatening them and there is a court order, but they keep violating them.
251	McIntyre	Explains and says that in this case the agency can seek the injunctive relief on behalf of its employee. Sees this as incremental.
274	Rep. Shetterly	Says that there are circumstances that are equivalent that occur in the private sector. States that it troubles him that we are providing a remedy only for public employees.
286	Castle	Asks Rep. Shetterly if he is talking about a person waiving their 5 th amendment rights.
312	Rep. Shetterly	Says, yes, which alleges a crime, but in a civil context.
364	McIntyre	Says that they have not committed a crime, but have engaged in the conduct which meets the definition under these provisions.
375	Rep. Prozanski	Questions intent of bill.
TAPE 171, B		
007	Rep. Barker	Says that he sees this as a good thing so that the employer can act for the employee.
012	McIntyre	Responds that this will keep people from coming to meetings and causing problems.
025	Vice Chair	Wonders what the fiscal impact might be if a right-to-counsel

	Ackerman	issue is raised.
030	McIntyre	Says that she has not thought about the fiscal impact.
039	Bill Joseph	Committee Counsel. Discusses changing the language.
050	Chair Williams	Closes the public hearing on SB 101A and re-opens a public hearing on SB 42.

SB 42 PUBLIC HEARING RE-OPENED

064	Mark Morrell	Oregon State Bar, Procedure and Practice Committee Chairman. Submits testimony and testifies in support of SB 42 which provides that statutes of limitation and other procedural statutes governing civil and criminal proceedings are computed in calendar years (EXHIBIT C).
070	Michael Zusman	Oregon State Bar, Procedure and Practice Committee. Testifies in support of SB 42.
110	Rep. Shetterly	Discusses leap years.
200	Chair Williams	Closes the public hearing on SB 42 and opens a work session.

SB 42 WORK SESSION

204	Rep. Prozanski	MOTION: Moves SB 42 to the floor with a DO PASS recommendation. VOTE: 8-0-1 EXCUSED: 1 - Macpherson
213	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
233	Chair Williams	Closes the work session on SB 42 and opens a public hearing on SB 41.

SB 41 PUBLIC HEARING

241	Mark Morrell	Oregon State Bar, Procedure and Practice Committee Chairman. Submits testimony and testifies in support of SB 41 which provides that prevailing party in civil action relating to express or implied contract is entitled to award of attorney fees authorized by contract or by statute, even though party prevails by reason of claim or defense asserting that contract is in whole or part void or unenforceable (Exhibit C).
258	Michael Zusman	Oregon State Bar, Procedure and Practice Committee. Testifies in support of SB 41.
303	Rep. Krummel	Asks about page 1, line 9 of the bill, and if this applies to any contract that has ever been entered into.
310	Zusman	Says yes, and that they are not extending the 6-year statute of limitations.
315	Rep. Shetterly	Discusses examples of contracts.
328	Zusman	Mentions there is a 3 rd contract situation.
333	Vice Chair Ackerman	Asks about a successful defense based upon a jurisdictional issue.
339	Zusman	Says he does not believe jurisdictional would affect the contract at all.
345	Chair Williams	Asks for his thoughts on the -2 amendments (EXHIBIT D).
346	Zusman	Discusses the -2 amendments.
374	Morrell	Says that the Procedure and Practice Committee would like to see this apply across the board, but understands the realities of commerce.
395	Rep. Shetterly	Says that this bill seems to disadvantage the purchaser.
TAPE 172, B		
019	Chair Williams	Asks if a shareholder suit would fit into one of the categories.
031	Zusman	Answers that he would have to have the statute in front of him to

087 Harlan Levy answer that.
Staff attorney, Oregon Association of Realtors. Submits testimony and testifies in opposition to SB 41 (**EXHIBIT E**). Says he would like all real estate contracts to be exempt from this bill.

127 J.L. Wilson National Federation of Independent Business (NFIB). Testifies in opposition to SB 41.

139 Darrell Fuller Oregon Auto Dealers Association. Testifies in opposition to SB 41.

193 Chair Williams Discusses example of a contract to buy a car in relation to the bill.

225 Fuller Says a contract would be voided if someone was not 18 years old and the parents should be responsible.

239 Chair Williams Discusses other examples of contracts that can be void.

264 Rep. Shetterly Talks about a real estate contract.

319 Julie Brandis Associated Oregon Industries. Testifies in opposition to SB 41.

358 Vice Chair Ackerman Discusses possible compromise.

372 Levy Believes that there are statutes out there that provide attorneys fees provisions.

401 Rep. Shetterly Says that he doesn't see this bill as a great incentive for someone to file a lawsuit.

424 Chair Williams Closes the public hearing on SB 41 and opens a work session on HB 2118.

HB 2118 WORK SESSION

427 Pete Shepherd Deputy Attorney General. Testifies in support of HB 2118 which expands circumstances under which order authorizing use of pen register or trap and trace device may be entered.

TAPE 173, A

003 Shepherd Continues his testimony in support of HB 2118. Discusses the -1 amendments (**EXHIBIT F**).

077 Matt McCauley Assistant Attorney General. Testifies in support of HB 2118.

129 Rep. Shetterly Asks what the -1 amendments do. Wonders if misdemeanor crimes are covered by the bill in the first place.

137 Shepherd Explains the -1 amendments and the original bill have covered misdemeanors.

148 Chair Williams Discusses bill and the committee's concerns.

166 David Fidanque Executive Director, American Civil Liberties Union (ACLU) of Oregon. Testifies in opposition to HB 2118 and the -1 amendments.

196 Susan Russell Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 2118.

242 **Rep. Jenson** **MOTION: Moves to ADOPT HB 2118-1 amendments dated 04/18/03.**

VOTE: 6-0-3

EXCUSED: 3 - Krummel, Macpherson, Prozanski

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

244 **Rep. Jenson** **MOTION: Moves HB 2118 to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 6-0-3

EXCUSED: 3 - Krummel, Macpherson, Prozanski

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

255 Chair Williams **REP. WILLIAMS will lead discussion on the floor.**
Closes the work session on HB 2118 and adjourns the meeting at

3:30 p.m.

EXHIBIT SUMMARY

- A – SB 43A, written testimony, submitted by Scott Morrill, 2 pgs.**
- B – SB 39, written testimony, submitted by Dan Olsen, 1 pg.**
- C – SB 42, written testimony, submitted by Mark Morrell, 2 pgs.**
- D – SB 41, -2 amendments, submitted by staff, dated 4/15/03, 1 pg.**
- E – SB 41, written testimony of Matt Farmer, submitted by Harlan Levy, 1 pg.**
- F – HB 2118, -1 amendments, submitted by staff, dated 4/18/03, 2 pgs.**

The following exhibit is listed out of order in the body of the tape log:

- G – SB 43A, written testimony of James W. Nass, 1 pg.**