

**HOUSE JUDICIARY**  
**SUBCOMMITTEE ON CIVIL LAW**

January 29, 2001  
8:00 a.m.

Hearing Room 357  
Tapes 6 and 7

**MEMBERS PRESENT:**     **Rep. Cheryl Walker, Chair**  
                                  **Rep. Vic Backlund**  
                                  **Rep. Kathy Lowe**  
                                  **Rep. Charlie Ringo**  
                                  **Rep. Lane Shetterly**

**STAFF PRESENT:**       **Andrea Shartel, Administrator**  
                                  **Ann Martin, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **HB 2414 Public Hearing**  
                                  **HB 2382 Public Hearing**  
                                  **HB 2361 Public Hearing and Work Session**  
                                  **HB 2425 Public Hearing and 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 6, A</b>                     |                                 |   |
| <b><u>HB 2414 PUBLIC HEARING</u></b> |                                 |   |
| 004                                  | Chair Walker                    | Calls the meeting to order at 8:10 a.m.   |
| 012                                  | Counsel Shartel                 | Explains HB 2414 relating to conflict of laws and codifying choice-of-law for Oregon-related contracts.                                 |
| 048                                  | <b>Rep. Shetterly</b>           | <b>House District 34, Chair, Oregon Law Commission (OLC)</b><br>Testifies in support of HB 2414.  |
| 100                                  | <b>Professor James Nafziger</b> | <b>Conflict of Laws Work Group, Oregon Law Commission</b><br>Testifies in support of HB 2414 and submits testimony <b>(EXHIBIT A)</b> . |
| 330                                  | Rep. Ringo                      | Asks if there were policy considerations in terms of Oregon law and its residents.  |
| 342                                  | Nafziger                        | Answers that one of the important considerations was to protect consumers in Oregon.  |
| 351                                  | Rep. Ringo                      | Asks if there were other drafts more friendly to out-of-state businesses as opposed to instate consumers.                               |
| 355                                  | Nafziger                        | Replies that they were trying to find the appropriate law and take full account of Oregon's jurisprudence.                              |
| 408                                  | Rep. Ringo                      | Asks if this has been reviewed by the Consumer Law Section of the State Bar.  |
| 409                                  | Nafziger                        | Answers that he doesn't personally know if the Consumer Law Section has addressed it directly.  |
| 435                                  | Rep. Ringo                      | Asks if he has any reason to think that practitioners of consumer law would object to any of the provisions.                            |

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| 438                                  | Nafziger             | Says not to the best of his knowledge.   |
| <b>TAPE 7, A</b>                     |                      |  |
| 004                                  | Rep. Ringo           | Asks if this is focused mostly on the choice of law issue as it relates to consumer disputes.                            |
| 006                                  | Nafziger             | Answers no.  |
| 012                                  | Rep. Shetterly       | Comments that this bill was designed to provide clarity so that people would know what the rules are.                    |
| 023                                  | Nafziger             | Adds that there was no effort to get more foreign law applied or more Oregon law applied.                                |
| 027                                  | Rep. Ringo           | Asks about a specific clause under Section 9, subsection 3(a), page 3.   |
| 031                                  | Nafziger             | Explains that this language has appeared in a number of other approaches.  |
| 047                                  | Rep. Ringo           | Asks about the word “systems”.   |
| 050                                  | Nafziger             | Responds that “systems” means social, political and legal systems.   |
| 056                                  | Rep. Backlund        | Comments that it’s good if we can simplify and add clarity to the law.   |
| 067                                  | <b>Paul Cosgrove</b> | <b>Nationwide Insurance and Oregon Financial Services Association</b>  |
|                                      |                      | Testifies on HB 2414 and feels that the law needs more study.  |
| 111                                  | <b>Jack Munro</b>    | <b>American Insurance Association</b>  |
|                                      |                      | Testifies on HB 2414 and says that they are evaluating the law relating to insurance contracts.                          |
| 141                                  | Chair Walker         | Asks if there is a particular section that they are concerned with.  |
| 142                                  | Munro                | Answers that insurance contracts are spoken to in Section 10, subsection 2 (f), page 4.                                  |
| 151                                  | Rep. Ringo           | Asks about insurance policy and inclusion of choice of law clause.   |
| 154                                  | Munro                | Says that is the question they are trying to look at.  |
| 164                                  | Rep. Ringo           | Says that a choice of law provision in the contract would take precedence over anything that this statute says.          |
| 171                                  | Munro                | Believes that is the intent.   |
| 174                                  | <b>Bruce Bishop</b>  | <b>Kaiser Foundation Health Plan</b>   |
|                                      |                      | Testifies on bill and has concerns about bill.   |
| 202                                  | Rep. Shetterly       | States that there are issues in this bill that can be resolved.  |
| 214                                  | Chair Walker         | Closes the public hearing on HB 2414 and opens a public hearing on HB 2382.  |
| <b><u>HB 2382 PUBLIC HEARING</u></b> |                      |  |
| 228                                  | Counsel Shartel      | Explains HB 2382 relating to default judgments.  |
| 277                                  | <b>Jim Markee</b>    | <b>Oregon Collectors Association</b>   |
|                                      |                      | Testifies in support of HB 2382 and submits testimony <b>(EXHIBIT B)</b> .   |
| 358                                  | <b>Jeff Hasson</b>   | <b>Legal Counsel, Collectors Association</b>   |
|                                      |                      | Testifies in support of HB 2382.   |
| 360                                  | Rep. Shetterly       | Asks if the Council on Court Procedures has looked at the bill.  |
| 267                                  | Markee               | Answers that he did not take this to the Council on Court Procedures.  |
| 393                                  | Rep. Shetterly       | Announces that he is not unsympathetic with what they are after, but says that he has a concern with this going too far. |
| <b>TAPE 6, B</b>                     |                      |  |
| 006                                  | Markee               | Says that definition of “financially incapable” is very broad.   |

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| 038                                  | Rep. Shetterly        | States that one goes too far and one doesn't go far enough and is not sure that this is the fix.  |
| 047                                  | Markee                | Responds that if there is some middle ground he is happy to work towards that.  |
| 050                                  | Rep. Ringo            | Asks if there have been problems with the affidavits.   |
| 068                                  | Markee                | Defers to Mr. Hasson.   |
| 071                                  | Hasson                | Explains that Coos County started kicking back the default judgments as a result of affidavits that they felt were insufficient.  |
| 081                                  | Rep. Ringo            | Asks if a judge would investigate all of these items.   |
| 084                                  | Hasson                | Says that he doesn't know.  |
| 101                                  | Rep. Shetterly        | Suggests an amendment to protect those that are financially incapable or incapacitated.   |
| 119                                  | Markee                | Says that he doesn't want to substitute a creditor's judgment for the court's judgment.   |
| 137                                  | Hasson                | Explains that you can take a summary judgment without complying with Oregon Rules of Civil Procedure 69. Adds that if a person doesn't know they are served then a default judgment would not be appropriate. |
| 162                                  | Rep. Ringo            | Says it's interesting and the current situation needs fixing so that those that are truly incapacitated shouldn't be taken advantage of.  |
| 168                                  | <b>Randall Jordan</b> | <b>Department of Justice</b>  |
|                                      |                       | Testifies in support of HB 2382.  |
| 184                                  | Rep. Lowe             | Comments that people that are financially capable will probably pay their debts.  |
| 197                                  | Jordan                | States that there are problems and they cannot do their affidavits with Department of Veterans Affairs cases because they don't have enough information to establish incompetence.                            |
| 210                                  | Rep. Lowe             | Suggests that the period of time be extended in which a default be set aside on the basis of proven incapacity.   |
| 222                                  | Chair Walker          | Closes the public hearing on HB 2382 and opens the public hearing on HB 2361.   |
| <b><u>HB 2361 PUBLIC HEARING</u></b> |                       |   |
| 242                                  | Counsel Shartel       | Introduces HB 2361 relating to appeals from stipulated judgments.   |
| 282                                  | <b>David Hittle</b>   | <b>Oregon State Bar</b>   |
|                                      |                       | Testifies in support of HB 2361 and submits testimony (EXHIBIT C).  |
| 383                                  | Rep. Ringo            | Says this make a lot of sense and asks what were the policy considerations that caused the AFL-CIO and the Farm Bureau to file amicus briefs.   |
| 391                                  | Hittle                | Answers that he hasn't read the actual briefs but believes that both organizations had opposing interests in the case.  |
| 419                                  | Chair Walker          | Closes the public hearing on HB 2361 and opens a work session on HB 2361.   |
| <b><u>HB 2361 WORK SESSION</u></b>   |                       |   |
| 395                                  | Rep. Lowe             | <b>MOTION: Moves HB 2361 to the full committee with a DO PASS recommendation.</b>   |
|                                      |                       | <b>VOTE: 5-0</b>  |
| 395                                  | <b>Chair Walker</b>   | <b>Hearing no objection, declares the motion CARRIED.</b>   |
| 397                                  | Chair Walker          | Closes the work session on HB 2361 and opens a public hearing on HB 2425.   |

**HB 2425 PUBLIC HEARING**

|                  |                         |   |
|------------------|-------------------------|---|
| 405              | Counsel Shartel         | Introduces HB 2425 relating to terminology used for public bodies in Oregon Revised Statutes.                           |
| <b>TAPE 7, B</b> |                         |   |
| 001              | Counsel Shartel         | Continues introduction on HB 2425.  |
| 010              | <b>Dave Heynderickx</b> | <b>Senior Deputy, Legislative Counsel</b><br>Testifies as neutral on HB 2425 and submits testimony <b>(EXHIBIT D)</b> . |
| 289              | <b>Bradd Swank</b>      | <b>Department of Justice</b><br>Testifies in support of HB 2425.  |
| 358              | <b>Phillip Schradle</b> | <b>Special Counsel to the Attorney General</b><br>Testifies in support of HB 2425.                                      |
| 381              | Chair Walker            | Closes the public hearing on HB 2425 and opens a work session on HB 2425.   |

**HB 2425 WORK SESSION**

|     |                |   |
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| 382 | Rep. Shetterly | <b>MOTION: Moves HB 2425 to the Full Committee with a DO PASS recommendation.</b> |
| 382 | Chair Walker   | <b>VOTE: 5-0</b><br><b>Hearing no objection, declares the motion CARRIED.</b>     |
| 385 | Chair Walker   | Closes the work session on HB 2425 and adjourns the meeting at 9:55 a.m.          |

Submitted By,

Reviewed By,

Ann Martin,  
Committee Assistant

Andrea Shartel,  
Administrator

**EXHIBIT SUMMARY**

**A – HB 2414, Conflict Law Applicable to Contracts from David R. Kenagy, submitted by James Nafziger, dated 12/13/2000, 10 pgs.**  
**B – HB 2382, written testimony, submitted by Jim Markee, dated 1/29/01, 3 pgs.**  
**C – HB 2361, written testimony, submitted by David W. Hittle, Oregon State Bar, Appellate Law Section, dated 1/29/01, 2 pgs.**  
**D – HB 2425, Willamette Law Review Article, submitted by Dave Heynderickx, dated Winter 2000, 17 pgs.**  
**E – HB 2414, written testimony, submitted by Professor Hans A. Linde, Willamette University Law School, dated 1/29/01, 2 pgs.**