

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

February 12, 2001  
8:00 a.m.

Hearing Room 357  
Tapes 12-14

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

**MEMBER EXCUSED:**     **Rep. Cherryl Walker**

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

**MEASURE/ISSUES HEARD:**     **HB 2352 Work Session**  
                                  **HB 2372 Public Hearing**  
                                  **HB 2374 Public Hearing**  
                                  **HB 2375 Public Hearing and Work Session**  
                                  **HB 2381 Public Hearing**

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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 12, A</b> 004	Chair Williams	Calls the meeting to order at 8:08 a.m. Opens a work session on HB 2352.
<b><u>HB 2352 WORK SESSION</u></b> 010	<b>Dave Heynderickx</b>	<b>Senior Deputy, Legislative Counsel</b> Testifies on HB 2352 relating to unlawful practices. Discusses – 2 amendments ( <b>EXHIBIT A</b> ) and –3 amendments ( <b>EXHIBIT B</b> ).
088	Rep. Shetterly	Says that unifying the statutes of limitation is important.
104	Rep. Lowe	Asks about the difference between the –2 amendments and the – 3 amendments.
108	Heynderickx	Answers that the –2 amendments are the fix-it amendments to clarify the language. Adds that the –3 amendments are the only ones relating to the 90-day statute of limitations.
136	<b>Rep. Shetterly</b>	<b>MOTION: Moves to ADOPT HB 2352-2 amendments dated 2/12/01.</b> <b>VOTE: 4-0-1</b> <b>EXCUSED: 1 - Walker, C.</b>
136	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>

146                    **Rep. Shetterly**                    **MOTION: Moves HB 2352 to the full committee with a DO PASS AS AMENDED recommendation.**

148                    Rep. Lowe  
153                    Rep. Shetterly                    Recommends that they adopt –2 amendments.  
Reports that Labor Commissioner Jack Roberts concurs with their assessment.

**VOTE: 4-0-1**

**EXCUSED: 1 - Walker, C.**

160                    **Chair Williams**                    **Hearing no objection, declares the motion CARRIED. SHETTERLY will lead discussion on the floor.**

163                    Chair Williams                    Closes the work session on HB 2352 and opens the public hearing on HB 2372.

**HB 2372 PUBLIC HEARING**

170                    **Jerry Casby**

**Oregon State Bar, Procedure & Practice Committee**

Testifies in support of HB 2372 relating to testimony in civil trials and submits testimony (**EXHIBIT C**).

216                    Rep. Lowe                    Asks if bill casts vulnerability to criminal cases.

232                    Casby                    Says he does not see why that would occur.

235                    Rep. Lowe                    Says compelling circumstances as opposed to inconvenience.

236                    Casby                    Says that this only applies to civil jury trials and does not apply to the criminal justice system.

243                    Rep. Ringo                    Asks what simultaneous transmission means.

245                    Casby                    Answers that it means any technology that would be characterized by those terms.

247                    Rep. Ringo                    Asks if potentially could it mean “email”.

253                    Casby                    Answers that potentially it could, but email testimony would only be allowed if all counsel consented.

260                    Rep. Ringo                    Asks if simultaneous transmission applies to telephones.

262                    Casby                    Responds that it could apply to telephone testimony, but not in many cases and explains.

273                    Rep. Ringo                    Asks if he is intending to expand the circumstances in which telephone testimony is allowed.

276                    Casby                    Says, yes, and that telephone testimony is allowed now in non-jury cases and in some other procedures. Says that this bill would permit telephone testimony in civil jury trials under the limiting conditions that are included.

286                    Chair Williams                    Reports that in ORS 45.400 there is a whole section on telephone testimony and asks about “compelling circumstances”.

311                    Casby                    Answers that in this bill “compelling circumstances” means that it would not be reasonable to expect the proponent of the testimony to have accomplished the presence of the witness for a deposition.

344                    Rep. Shetterly                    Wonders if they are creating confusion establishing “good cause” and “compelling circumstances” as separate factors that have to be shown. Asks if we need both “good cause” and “compelling circumstances.”

356                    Chair Williams                    Concurs with Rep. Shetterly and wants to know what is meant by “compelling circumstances”.

**TAPE 13, A**

002 Rep. Shetterly Notes that a simultaneous communication device is not defined in the bill.

014 Casby Suggests that the way to solve that is to have the ORS 45.010 (6) re-examined.

028 Chair Williams Closes the public hearing on HB 2372 and opens a public hearing on HB 2374.

**HB 2374 PUBLIC HEARING**

063 **Jeff Johnson** **Secretary, Oregon State Bar Procedure and Practice Committee**  
Submits testimony and testifies in support of HB 2374 relating to attorney fees (**EXHIBIT D**).

190 **Bill Sime** **Oregon Association of Defense Counsel**  
Submits testimony and testifies as neutral on HB 2374. (**EXHIBIT E**).

370 **Paul Cosgrove** **Oregon Financial Services Association**  
Submits testimony and testifies on HB 2374 (**EXHIBIT F**).

400 Chair Williams Asks Mr. Johnson if it was his intent to address issues where by contract parties had agreed as to how they wanted their attorney's fee issue to be resolved.

412 Johnson Answers that the committee felt strongly that they didn't want anything in this bill that would adversely affect the legislature's intent to grant attorney fees under certain statutory schemes.

**TAPE 12, B**

005 Chair Williams Asks about intent to affect Uninsured Motorist/Underinsured Motorist (UM/UIM) and Personal Injury Protection (IP) arbitration provisions and their current operation.

013 Johnson Says that it was not the intention of the committee to amend the statute. Says that the bottom line of this bill is to codify the Newell case.

022 Chair Williams States that the question is coming up with the wording that is going to accomplish that task while still providing protection to the statutory and private right of contract within the arbitration scheme.

027 Rep. Ringo Asks what would happen if the Legislature did nothing with this bill.

038 Johnson Answers that you would have the unresolved question of equitable relief versus monetary damage relief.

047 Rep. Ringo Points out that you still have the problem of who comes up with the biggest claim.

049 Johnson Responds that he couldn't agree with him more.

068 Chair Williams Closes the public hearing on HB 2374 and opens a public hearing on HB 2375.

**HB 2375 PUBLIC HEARING**

071 **Jeff Johnson** **Secretary, Oregon State Bar Procedure and Practice Committee**  
Submits testimony and testifies in support of HB 2375 relating to use of depositions at trial (**EXHIBIT G**).

132 Chair Williams Asks if the unavailability of the use of the deposition testimony resulted in the failure of the case.

144 Johnson Says that he's not sure.

153 Rep. Ringo Asks if another reason to disallow deposition testimony was the failure to follow-up during subsequent opportunities.  
161 Johnson Responds that that was a factor that was discussed.  
179 Chair Williams Closes the public hearing on HB 2375 and opens a work session on HB 2375.

**HB 2375 WORK SESSION**

181 Rep. Shetterly **MOTION: Moves HB 2375 to the full committee with a DO PASS recommendation.**

**VOTE: 4-0-1**

**EXCUSED: 1 - Walker, C.**

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

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

185 Chair Williams Closes the work session on HB 2375 and opens a public hearing on HB 2381.

**HB 2381 PUBLIC HEARING**

195 Jim Markee

**Oregon Collectors Association**

Submits testimony and testifies in support of HB 2381 relating to attorney fees (**EXHIBIT H**).

308 Rep. Lowe Asks if in the jurisdictions that allow cases to proceed under contract have any of the problems raised by the insurance industry or the bar increased.

313 Markee Answers that they haven't, but they could.

322 Rep. Lowe Asks if he could give them some background on which jurisdictions allow ORS 20.080 to go under contract.

304 Jeff Hasson

**Oregon Collectors Association**

Testifies in support of HB 2381. Answers that there is a conflict even among judges within jurisdictions on cases under contract.

359 Rep. Shetterly Says that he is curious about that and adds that they should not exempt certain types of contract claims.

391 Markee Explains that there are some other statutes that may need to be looked at by the subcommittee.

468 Rep. Ringo Asks for some explanation on Section 7, page 4 and how the change will impact small claims cases.

**TAPE 13, B**

012 Markee Says he doesn't think that Section 7 is talking about how this statute would be used in small claims. Adds that Section 7 is a re-wording of present law.

031 Rep. Ringo Inquires about the application of the sentence on page 5, lines 1-3.

038 Markee Says that he is not sure what the language means.

045 Rep. Ringo Asks what percentage of claims currently allow for attorney fees.

057 Hasson Says that it's a difficult question for him, but guesses more than 50 percent.

068 Rep. Ringo Asks him how many lawsuits he files each year.

070 Hasson Answers that his business has changed in the last year. States that he files between 50 and 100 complaints per month.

077 Rep. Ringo Asks how many of those he takes default judgments on as opposed to how many are contested cases.

079 Hasson Says that he has a better handle on that and that most of them go to default.

084	Rep. Ringo	Asks what he is awarded for an attorney fee for a default judgment.
085	Hasson	States that generally it is \$500.00.
087	Rep. Ringo	Explains that he is trying to understand what the financial impact of this bill is to him. Asks if he has assessed that.
090	Hasson	Answers no.
094	Rep. Shetterly	Comments that there are many other statutes that provide for recovery of attorney fees.
125	<b>John Powell</b> <b>Tom Mortland</b> <b>Steve Murrell</b>	<b>CGU North Pacific, State Farm Insurance</b> <b>Vice President of Claims, CGU North Pacific</b> <b>Claims Attorney, State Farm Insurance</b> Testify on HB 2381.
145	Powell	States that ORS 20.080 would conflict with the provisions of ORS 742.061.
182	Chair Williams	Asks about attorney's fees provisions.
193	Mortland	Testifies on HB 2381 and expresses that a complete analysis needs to be done on this subject before proceeding with this bill.
229	<b>Greg Mowe</b>	<b>Oregon State Bar Litigation Section</b> Testifies in opposition to HB 2381 and submits testimony <b>(EXHIBIT I)</b> .
304	<b>Robert Neuberger</b>	<b>Chair, Oregon State Bar Litigation Section</b> Testifies in opposition to HB 2381 and submits testimony <b>(EXHIBIT J)</b> .
401	<b>Jeff Johnson</b>	<b>Secretary, Oregon State Bar Procedure and Practice Committee</b> Testifies on HB 2381.
<b>TAPE 14, A</b> 017	<b>Dave Heynderickx</b>	<b>Senior Deputy, Legislative Counsel</b> Testifies on HB 2381. Explains -1 amendments <b>(EXHIBIT K)</b> .
071	Chair Williams	Closes the public hearing on HB 2381. Adjourns the meeting at 10:03 a.m.

Submitted By,

Reviewed By,

Ann Martin,  
Committee Assistant

Andrea Shartel,  
Counsel

**EXHIBIT SUMMARY**

- A – HB 2352, -2 amendments, submitted by staff, dated 2/12/01, 1 p.**
- B – HB 2352, -3 amendments, submitted by staff, dated 2/12/01, 1 p.**
- C – HB 2372, written testimony submitted by Jerry Casby, dated 2/12/01, 2 pgs.**
- D – HB 2374, written testimony submitted by Jeff Johnson, dated 2/12/01, 3 pgs.**
- E – HB 2374, written testimony of Joel DeVore, submitted by Bill Sime, dated 2/8/01, 11 pgs.**
- F – HB 2374, written testimony submitted by Paul Cosgrove, dated 2/12/01, 1 p.**

**G – HB 2375, written testimony submitted by Jeff Johnson, dated 2/12/01, 2 pgs.**  
**H – HB 2381, written testimony submitted by Jim Markee, dated 2/12/01, 1 p.**  
**I – HB 2381, written testimony submitted by Greg Mowe, dated 2/12/01, 1 p.**  
**J – HB 2381, testimony submitted by Robert Neuberger, dated 2/12/01, 7 pgs.**  
**K – HB 2381, -1 amendments, submitted by staff, dated 2/9/01, 2 pgs.**