

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

February 7, 2001  
8:00 a.m.

Hearing Room 357  
Tapes 10 and 11

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

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

**MEASURE/ISSUES HEARD:**      **HB 2363 Public Hearing**  
                                 **HB 2364 Public Hearing and Work Session**  
                                 **HB 2365 Public Hearing**  
                                 **HB 2366 Public Hearing and Work Session**  
                                 **HB 2367 Public Hearing**  
                                 **HB 2368 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 10, A</b>		
004	Chair Walker	Calls the meeting to order at 8: 04 a.m. Opens a public hearing on HB 2363.
<b><u>HB 2363 PUBLIC HEARING</u></b>		
005	Merrilee Harrell	Committee Extern Introduces HB 2363 relating to notice in adult protective proceedings.
035	<b>Jennifer Wright</b>	<b>Oregon State Bar, Elder Law Section</b> Testifies in support of HB 2363 and submits testimony <b>(EXHIBIT A)</b> .
066	Rep. Shetterly	Questions whether there was an oversight in last session's bill.
085	Wright	Says there is some overlap of words in Subsection 2 on page 1.
096	Rep. Shetterly	Suggests that they delete from Subsection 2 those aspects that are covered in the notice.
109	Wright	States that the problem is that the notice is not required for minor respondents. Says that the information provided in subsection 2 is important to be provided to minor respondents who do not get the statutory form.
130	Rep. Shetterly	Recommends that they work with this bill saying that the "little fix may not be enough".

122	Chair Walker	Closes the public hearing on HB 2363 and opens a public hearing on HB 2364.
<b><u>HB 2364 PUBLIC HEARING</u></b>		
184	Merrilee Harrell	Introduces HB 2364 relating to necessary guardianship expenses.
194	Counsel Shartel	Reports that there is a fiscal statement on HB 2364 and two sets of amendments, -1 and -2 ( <b>EXHIBITS B AND C</b> ).
225	<b>Jennifer Wright</b>	<b>Oregon State Bar, Elder Law Section</b>
		Defers to Ryan Gibb and Dady Blake.
230	<b>Ryan Gibb</b>	<b>Oregon State Bar, Elder Law Section</b>
		Testifies in support of HB 2364 and submits testimony ( <b>EXHIBIT D</b> ).
305	Rep. Ringo	Asks what it costs in attorney fees for a guardianship.
335	Gibb	Answers that it costs \$500.00 to \$1,000.00 which covers basic filing and notices and other documentation. Says that in Multnomah County the filing fee runs \$400.00 to cover their pilot project.
358	Rep. Ringo	Wonders if there is room for abuse with regard to attorney fees.
364	Gibb	Answers that the fees be approved by the court before they are paid, but beyond judicial review there is not a review of those fees.
378	Rep. Ringo	Comments that currently you might have that abuse if the clients have more than \$1590.00
381	Gibb	Says that there is local caseworker review of any changes with the income cap trust for those who receive more than \$1590.00 in income.
400	<b>Dady Blake</b>	<b>Oregon State Bar, Elder Law Section</b>
		Testifies in support of HB 2364. States that there is a review of all fees in the probate process across the state. Says that they need a mechanism by which the person's income can pay for the guardianship fees.
<b>TAPE 11, A</b>		
009	Rep. Lowe	Ask which expenses get paid first.
013	Blake	Answers that court fees must be paid first.
017	Rep. Shetterly	Asks about -2 amendments, line 6, on page 1.
029	<b>Ruth Simonis</b>	<b>Elder Law Attorney</b>
		Testifies in support of HB 2364.
068	<b>Rick Mills</b>	<b>Senior Disabled Services Division</b>
		Testifies on HB 2364.
156	Rep. Ringo	Asks if a problem exists for people who have medical necessities and need guardianship, but cannot get one established.
158	Mills	Answers that there are people out there that who would like to create guardianships but cannot afford it.
168	Rep. Ringo	Asks if he knows how many people there are in this situation.
169	Mills	Answers that he doesn't know how many.
171	Rep. Ringo	Asks if he agrees that this bill will allow people to create guardianships that now cannot.
175	Mills	Responds that it will help some people, but there are still some people that cannot afford guardianships.
187	Rep. Lowe	Asks if there are a high percentage of these "indigent" cases where the court waives filing fees.
194	Blake	Answers that the court has not been in the practice of waiving filing fees for indigent cases.

200	Rep. Shetterly	Comments that this is good policy and wants to move the bill to full committee.
215	<b>Jennifer Wright</b>	<b>Oregon State Bar, Elder Law Section</b>
		Testifies in support of HB 2364.
226	Blake	Emphasizes that in many cases these people making guardianships are faced with emergency situations without much control and that this is not an elective process for them. Stresses that Elder Law lawyers are not looking for more work.
279	Rep. Shetterly	Comments on who is subsidizing whom and wants to get the bill down to Ways and Means.
283	Wright	States that the change from \$75.00 to \$200.00 and the percentage change do not have any impact on the total amount paid out only on the speed at which the attorney is compensated.
293	Chair Walker	Closes the public hearing on HB 2364 and opens a work session on HB 2364.

**HB 2364 WORK SESSION**

294	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2364-2 amendments dated 02/06/01.</b>
		<b>VOTE: 5-0</b>
294	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
294	Rep. Shetterly	<b>MOTION: Moves HB 2364 to the floor with a DO PASS AS AMENDED recommendation with a subsequent referral to Ways and Means.</b>
		<b>VOTE: 5-0</b>
335	Chair Walker	Closes the work session on HB 2364 and opens a public hearing on HB 2365.

**HB 2365 PUBLIC HEARING**

351	Merrilee Harrell	Committee Extern
385	<b>Dady Blake</b>	Introduces HB 2365 relating to durable power of attorneys. <b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2365 and submits testimony <b>(EXHIBIT E)</b> .
<b>TAPE 10, B</b>		
005	Blake	Continues testimony on HB 2365.
062	Rep. Shetterly	States that it's a great bill and asks about power of attorney being on bank forms.
093	<b>Ruth Simonis</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2365.
099	Rep. Backlund	Asks for examples of an action by an attorney brought against a person who refuses to recognize authority of power of attorney.
110	Blake	Answers that a common action might be brought against an institution like a bank, but often they might start an action and then the problem would be resolved.
130	Rep. Ringo	Asks what the damages would be under the action. Asks if the damage is to compel performance.
137	<b>Jennifer Wright</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2365. Addresses Rep. Ringo's question. Says that in some instances there may be monetary damages.
148	Rep. Ringo	Wonders if damages under an action should be clarified.

167	Rep. Shetterly	Says that he thinks that would be worthwhile.
180	Rep. Lowe	Suggests that they shouldn't limit amendments to attorneys fees related to an action.
190	Rep. Shetterly	Says that they should include bringing the banks into the conversation on this bill.
214	Rep. Ringo	Adds that he doesn't think that the banks are waiting on this issue.
220	Rep. Shetterly	Says that we need to consider some protection on the other side.
231	Rep. Lowe	Comments that the bill has a better chance of passing if we include the banks in our conversation.
234	<b>Ryan Gibb</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2365. Testifies that the Elder Law Section has not presented this in a sense of creating an action to attack banks. Says that the power of attorney is durable and the limited purpose of this bill is to assure that a bank, financial institution or other person is not going to deny that person's power of attorney.
250	<b>Bradd Swank</b>	<b>State Court Administrator's Office</b> Testifies on HB 2365 and introduces Bruce Miller, legal analyst, State Court Administrator's Office. States that they have not taken a position on the bill, but were concerned about this same issue.
270	Chair Walker	Explains that in view of the suggested amendments to this bill they will schedule another hearing. Closes the public hearing on HB 2365 and opens a public hearing on HB 2366.

**HB 2366 PUBLIC HEARING**

306	Merrilee Harrell Committee Extern	Committee Extern Introduces HB 2366 relating to protective orders establishing trusts in protective proceedings.
321	<b>Ruth Simonis</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2366 and submits testimony of Penny Davis (EXHIBIT F).
402	<b>Jennifer Wright</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Comments that there is a small fiscal impact.
419	<b>Rick Mills</b>	<b>Senior Disabled Services Division</b> Testifies in support of HB 2366. States that they prepared a fiscal.

**TAPE 11, B**

<b>011</b>	<b>Chair Walker</b>	<b>Closes the public hearing on HB 2366 and opens a work session.</b>
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**HB 2366 WORK SESSION**

<b>013</b>	<b>Rep. Lowe</b>	<b>MOTION: Moves HB 2366 to the full committee with a DO PASS recommendation.</b>
<b>013</b>	<b>Chair Walker</b>	<b>VOTE: 5-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
019	Chair Walker	Closes the public hearing on HB 2366 and opens a public hearing on HB 2367.

**HB 2367 PUBLIC HEARING**

030	Merrilee Harrell	Committee Extern
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040	<b>Jennifer Wright</b>	Introduces HB 2367 relating to notice of intent in protective proceedings. <b>Attorney, Elder Law Section, Oregon State Bar</b>
070	Rep. Shetterly	Testifies in support of HB 2367 and submits testimony <b>(EXHIBIT G)</b> . Says that they should add language of ORS 125.060 to make the same provisions in this bill.
115	<b>Teresa Miller</b>	<b>Oregon Advocacy Center</b>
132	Chair Walker	Testifies in support of HB 2367. Closes the public hearing on HB 2367 and opens a public hearing on HB 2368.

**HB 2368 PUBLIC HEARING**

149	Merrilee Harrell	Committee Extern Introduces HB 2368 relating to judicial review of advance directives. Discusses –1 amendment <b>(EXHIBIT H)</b> .
160	<b>Ruth Simonis</b>	<b>Attorney, Elder Law Section, Oregon State Bar</b> Testifies in support of HB 2368 and submits testimony <b>(EXHIBIT I)</b> .
208	Chair Walker	Closes the public hearing on HB 2368 and opens a work session.
<b><u>HB 2368 WORK SESSION</u></b>		
214	Rep. Lowe	<b>MOTION: Moves to ADOPT HB 2368-1 amendments dated 02/05/01.</b>
214	Chair Walker	<b>VOTE: 5-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
215	Rep. Lowe	<b>MOTION: Moves HB 2368 to the full committee with a DO PASS AS AMENDED recommendation.</b>
215	Chair Walker	<b>VOTE: 5-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
210	Chair Walker	Closes the work session on HB 2368 and adjourns the meeting at 10:41 a.m.

Submitted By,

Reviewed By,

Ann Martin,  
Committee Assistant

Andrea Shartel,  
Counsel

**EXHIBIT SUMMARY**

- A – HB 2363, written testimony submitted by Jennifer Wright, dated 2/7/2001, 2 pgs.**
- B - HB 2364, -1 amendments, submitted by staff, dated 2/5/2001, 1 p.**
- C – HB 2364, -2 amendments, submitted by staff, dated 2/6/2001, 1 p.**
- D - HB 2364, written testimony submitted by Ryan Gibb, dated 2/7/2001, 2 pgs.**
- E – HB 2365, written testimony submitted by Dady Blake, dated 2/7/2001, 2 pgs.**
- F – HB 2366, written testimony of Penny Davis, submitted by Ruth Simonis, dated 2/6/2001, 4 pgs.**
- G – HB 2367, written testimony of Kathryn Belcher, submitted by Jennifer Wright, dated 2/7/2001, 2 pgs.**

**H – HB 2368, -1 amendments, submitted by staff, dated 2/5/2001, 1 p.**

**I – HB 2368, written testimony submitted by Ruth Simonis, dated 2/7/2001, 2 pgs.**