

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

March 7, 2001  
8:00 a.m.

Hearing Room 357  
Tapes 29 - 32

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

**MEMBER EXCUSED:**     **Rep. Kathy Lowe**

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

**MEASURE/ISSUES HEARD:**     **HB 2809 Public Hearing**  
                                  **HB 2170 Public Hearing**  
                                  **HB 2665 Public Hearing and Work Session**  
                                  **HB 2207 Public Hearing and Work Session**  
                                  **HB 2945 Public Hearing and 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.

---

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 29, A</b>		
003	Chair Walker	Calls the meeting to order at 8:10 a.m. Opens a public hearing on HB 2809.
<b><u>HB 2809 PUBLIC HEARING</u></b>		
007	Counsel Shartel	Introduces HB 2809 that modifies provisions relating to sale of prearrangement and preconstruction funeral plans as trusts.
010	<b>Rep. Al King</b>	<b>House District 44</b> Testifies in support of HB 2809.
084	<b>John Latimer</b>	<b>Secretary of State's Audit Division</b> Testifies in support of HB 2809.
148	<b>Randy Tjaden</b>	<b>Oregon Funeral Directors Association</b> Testifies in support of HB 2809.
230	<b>Ty Cochrane</b>	<b>Past President, Cemetery Association of Oregon</b> Testifies in support of HB 2809.
242	Rep. V. Walker	States that she was the court reporter who was deeply involved in this case and appreciates what they have done.
253	Rep. Shetterly	Asks if they are going to build in some investigative function within the Department of Consumer and Business Services before it would be referred to the Department of Justice.
266	Latimer	Answers that they are going to come in with some amendments

278	Rep. Shetterly	to the bill and that is one issue they will address.
		Questions if the bill needs to address the hearings process in the event of discipline.
290	Chair Walker	Closes the public hearing on HB 2809 and opens a public hearing on HB 2170.

**HB 2170 PUBLIC HEARING**

300	<b>Rep. Vicki Walker</b>	<b>House District 41</b> Testifies in support of HB 2170 that allows person to request hearing from Department of Revenue to contest claim assigned by state agency to department for collections.
320	<b>Edward Hill</b>	<b>Attorney, Eugene</b> Testifies in support of HB 2170.
402	Rep. V. Walker	States that they have the -1 and the -2 amendments ( <b>EXHIBITS A &amp; B</b> ).
404	Rep. Shetterly	Describes a situation that a constituent of his was involved in relating to this bill.

**TAPE 30, A**

024	Hill	Discusses amendments.
064	Rep. Shetterly	Says that he would like to hear from the rest of the witnesses on the bill.
069	Chair Walker	Closes the public hearing on HB 2170 and re-opens a public hearing on HB 2809.

**HB 2809 REOPENS PUBLIC HEARING**

079	<b>Sen. Mae Yih</b>	<b>Senate District 19</b> Testifies in support of HB 2809 and submits testimony ( <b>EXHIBIT C</b> ).
118	<b>Diane Bassett-Pohl</b>	<b>Clatskanie</b> Testifies in support of HB 2809 and submits testimony ( <b>EXHIBIT D</b> ).
255	<b>David Koach</b>	<b>Executive Director, Mortuary and Cemetery Board</b> Testifies in support of HB 2809.
282	<b>Meg Reinhold</b>	<b>Department of Consumer and Business Services (DCBS)</b> Testifies on HB 2809 and states that if they are going to regulate the program they would like to regulate the entire program.
340	Rep. Shetterly	Asks if she is suggesting that the employers be absolved from responsibility in appropriate cases.
346	Reinhold	Answers absolutely not and that they would like control over both entities depending on the circumstances.
355	Koach	Believes that the Mortuary and Cemetery Board are doing a pretty good job of assuring compliance with the funeral rule so he feels it would be important for the board to continue to regulate the activities of pre-need sales people.

**TAPE 29, B**

011	Rep. Shetterly	Says that in reference to the amendments that they are going to draft that he wants an examination of the administrative process by which discipline is imposed and a decision on how much responsibility DCBS will be given.
034	Chair Walker	Closes the public hearing on HB 2809 and re-opens a public hearing on HB 2170.

**HB 2170 RE-OPENS PUBLIC HEARING**

044	<b>Debra Buchanan</b>	<b>Oregon Department of Revenue</b>
-----	-----------------------	-------------------------------------

053           **Bruce Laudon**           Testifies on HB 2170.  
**Oregon Department of Revenue**

088           **Randall Jordan**           Testifies on HB 2170 and submits testimony (**EXHIBIT E**).  
**Department of Justice**

172           Laudon                       Testifies on HB 2170 and submits testimony (**EXHIBIT F**).  
266           Rep. Shetterly             Continues testimony on HB 2170.  
  Comments that the Department of Revenue may not be the best  
  agency to conduct the hearing.

294           Jordan                       Says that the liquidated debt definition did not exist years ago  
  when Rep. Shetterly’s constituent’s case occurred and discusses  
  this case. Discusses Mr. Hill’s case also.

399           Rep. Shetterly             Asks if those policies have been in effect since his constituent’s  
  case.

409           Jordan                       Says, yes.

440           Rep. V. Walker             Asks Mr. Laudon if they would withhold the money from the  
  debtor before the debtor has due process in a set-off situation.

443           Laudon                     States that the way the system is in place now if it’s a restricted  
  liability is that the refund is matched and put into the agency’s  
  account and the notification to the taxpayer goes out at that same  
  time that says that they can have a hearing with the claimant  
  agency.

**TAPE 30, B**

006           Rep. V. Walker             Asks why they don’t want to find the correct addresses so that  
  the people get proper notice.

012           Laudon                     Says that the notice that they currently send out is taken off of  
  the income tax return that they filed.

031           Jordan                     Points out that one concern that should be addressed in the  
  proposed amendments is that there needs to be a limitation on  
  questions that properly could be raised on a direct appeal and  
  should not be given a new right.

057           Chair Walker             Closes the public hearing on HB 2170 and opens a public  
  hearing on HB 2665.

**HB 2665 PUBLIC HEARING**

072           Merrilee Harrell           Introduces HB 2665 that allows a state agency to amend  
  administrative rule without prior notice or hearing if amendment  
  is solely for purpose of certain technical corrections and  
  discusses –1 amendments (**EXHIBIT G**).

092           Rep. Shetterly             Points out his wife’s written testimony (**EXHIBIT H**).  
121           **Bob Livingston**           **Oregon State Fire Fighters Council**  
  Testifies on HB 2665.

144           **Brian Boe**               **Salem**  
  Testifies in support of HB 2665.

182           **Janet Whitfield**         **Bureau of Labor and Industries**  
  Testifies in support of HB 2665.

192           Chair Walker             Closes the public hearing on HB 2665 and opens a work session  
  on HB 2665.

**HB 2665 WORK SESSION**

216           Rep. Williams             **MOTION: Moves to ADOPT HB 2665-1 amendments dated**  
  **03/06/01.**

**VOTE: 5-0-2**

**EXCUSED: 1 – Lowe, Ringo**

216           Chair Walker             **Hearing no objection, declares the motion CARRIED.**

257 Rep. Williams **MOTION: Moves HB 2665 to the full committee with a DO PASS AS AMENDED recommendation.**  
**VOTE: 5-0-2**  
**EXCUSED: 2 - Lowe, Ringo**  
257 Chair Walker **Hearing no objection, declares the motion CARRIED.**

278 Chair Walker Closes the work session on HB 2665 and opens a public hearing on HB 2207.

**HB 2207 PUBLIC HEARING**

282 Counsel Shartel Introduces HB 2207 that permits taxpayers to appeal certain failure to file penalties to tax court.

301 John Phillips **Department of Revenue**  
Testifies in support of HB 2207 and submits testimony **(EXHIBIT I)**.

399 Rep. Shetterly Says that this sounds like a good bill.  
404 Chair Walker Closes the public hearing on HB 2207 and opens a work session.

**HB 2207 WORK SESSION**

414 Rep. Shetterly **MOTION: Moves HB 2207 to the full committee with a DO PASS recommendation.**  
**VOTE: 5-0-2**  
**EXCUSED: 2 – Lowe, Ringo**  
414 Chair Walker **Hearing no objection, declares the motion CARRIED.**

437 Chair Walker Closes the work session on HB 2207 and opens a public hearing on HB 2945.

**TAPE 31, A**

**HB 2945 PUBLIC HEARING**

007 Counsel Shartel Introduces HB 2945 that defines an advisory committee for medical assistance program.

015 Jim Gardner **Pharmaceutical Research and Manufacturers of America (PhRMA)**

090 Hersh Crawford Testifies in support of HB 2945.  
**Office of Medical Assistance Programs**

187 Rep. Williams Testifies on HB 2945 and submits testimony **(EXHIBIT J)**.  
Asks about a meeting that Mr. Gardner mentioned regarding the formulary.

192 Crawford Explains that they contract with about 15 managed health care plans who deliver services under the Oregon Health Plan and each of those managed health care plans have a medical director. Says that those medical directors meet regularly to talk about issues and these medical directors on their own have established a formulary subcommittee to address issues of the coordination of the drug formularies across the medical assistance programs and managed health care plans. Stresses that the medical directors have decided that their discussion in these meetings would be inhibited if there were representatives from drug manufacturers sitting in on the meetings.

220 Rep. Williams Asks why.

221 Crawford Says that the drug manufacturers invest a tremendous amount of money marketing their products and making sure that they encourage the utilization of their products to the degree that

		formularies are preferred lists of drugs that include some products and exclude other products. Adds that the medical directors feel that frank discussions about that would be inhibited if the drug manufacturers attended those meetings.
239	Rep. Williams	Asks who runs the meetings.
244	Crawford	Answers that the chair of the meeting is rotated and some staff is provided.
254	Gardner	Says that he thinks it is very important that a maximum effort should be made to extend the sunshine law into the deliberations of groups like this.
317	Rep. Williams	Asks Mr. Crawford if he has concerns that they are violating a fair competition provision.
325	Crawford	Answers that they have asked the Attorney General for informal advice on this. Comments that the medical directors of the managed health care plans do not provide advice to the state agency on the operation of the Oregon Health Plan. Says that they do not control the formularies.
360	Rep. Williams	Says that since they are meeting together to have a discussion about formularies, it creates a presumption that they are operating in concert with one another about decisions on how they will handle the formulary as in relation to the operation of the medical assistance plan.
369	Crawford	Thinks that that is exactly the purpose of the meetings.
390	Rep. Williams	Struggles with the anti-competitive nature of those meetings.
404	Crawford	Says that he thinks this is not about monopolies at all.
409	Rep. Williams	States that he is not suggesting that this is a monopoly, but that these meetings that they are discussing lead toward anti-competitive behavior.
419	Crawford	Explains drug formularies and how they try to point people to drugs that are cost-effective and effective, as opposed to the latest drug that a physician is urged to prescribe by a representative of a pharmacy manufacturer. Says that the medical directors are not required to have drug formularies, but the plans choose to have them.
<b>TAPE 32, A</b>		
005	Rep. Williams	Asks about the particular meeting that is being facilitated.
010	Crawford	Says that they provide staff to take minutes at the medical directors meetings and doesn't know if they provide staff support for the formulary subcommittee meetings. Adds that he does not believe that those meetings are held on public property.
021	Gardner	Stresses that what we have heard today has raised some interesting and challenging questions under the Sherman Act, but says those are discussions for another day.
040	<b>Scott Manchester</b>	<b>Oregon Health Plan Policy and Research (OHPPR)</b>
		Testifies in opposition to HB 2945.
095	Rep. Ringo	Asks what specific clarification he would find acceptable.
100	Manchester	Answers that he wants language in the bill that is intended not to apply to internal staff working groups.
109	Rep. Williams	Says that he believes Mr. Gardner stipulated that they don't intend this to apply to internal working groups or even interagency groups.
147	Manchester	Expresses concern that the language of the bill goes beyond making policy recommendations. Says that they do not make any

185	Chair Walker	final decisions, only recommendations. Asks if he has some work groups that are assigned within his department that actually analyze the data they have to make the best policy recommendations to whomever asks for it.
189	Manchester	Answers yes.
202	Gardner	Explains that this bill is not intended to apply to internal meetings of state personnel.
222	Chair Walker	Closes the public hearing on HB 2945 and opens a work session on HB 2945.
<b><u>HB 2945 WORK SESSION</u></b>		
293	Rep. Williams	Discusses conceptual amendment. Says that on line 6 of the bill, page 1, after the word "appointed" insert the word "convene".
301	Rep. Williams	<b>MOTION: Moves to ADOPT conceptual amendments to HB 2945.</b>
		<b>VOTE: 5-0-1</b>
		<b>EXCUSED: 1 - Lowe</b>
301	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
303	Rep. Williams	<b>MOTION: Moves HB 2945 to the full committee with DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-0-1</b>
		<b>EXCUSED: 1 - Lowe</b>
303	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
314	Chair Walker	<b>MOTION: Moves to SUSPEND the rules for the purpose of allowing Rep. Ringo to vote on HB 2207 and HB 2665. Votes "aye" on both bills.</b>
320	Chair Walker	Closes the work session on HB 2945 and adjourns the meeting at 11:30 a.m.

Submitted By,

Reviewed By,

Ann Martin,  
Committee Assistant

Andrea Shartel,  
Counsel

**EXHIBIT SUMMARY**

- A – HB 2170, -1 amendments, submitted by staff, dated 3/6/01, 2 pgs.
- B – HB 2170, -2 amendments, submitted by staff, dated 3/6/01, 1 p.
- C – HB 2809, written testimony submitted by Senator Mae Yih, dated 3/7/01, 1 p.
- D – HB 2809, written testimony submitted by Diane Bassett-Pohl, dated 3/7/01, 4 pgs.
- E – HB 2170, written testimony submitted by Bruce Laudon, dated 3/7/01, 2 pgs.
- F – HB 2170, written testimony submitted by Randall Jordan, 2 pgs.
- G – HB 2665, -1 amendments, submitted by staff, dated 3/6/01, 1 p.
- H – HB 2665, written testimony of Francine Shetterly submitted by staff, dated 3/7/01, 1 p.
- I – HB 2207, written testimony submitted by John Phillips, 5 pgs.
- J – HB 2945, written testimony submitted by Hersh Crawford, dated 3/7/01, 2 pgs.