

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

April 11, 2001  
8:00 a.m.

Hearing Room 357  
Tapes 68 - 70

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

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

**MEASURE/ISSUES HEARD:**     **HB 3665 Public Hearing**  
                                  **HB 2840 Public Hearing**  
                                  **HB 3677 Public Hearing**  
                                  **HB 2381 Work Session**  
                                  **HB 2739 Work Session**  
                                  **HB 2460 Work Session**  
                                  **HB 2382 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 68, A</b> 004	Chair Walker	Calls the meeting to order at 8:17 a.m. Opens a public hearing on HB 3665.
<b><u>HB 3665 PUBLIC HEARING</u></b> 012	Counsel Shartel	Introduces HB 3665 that authorizes holder of temporary sales license issued by Oregon Liquor Control Commission to sell wine, malt beverages or cider in factory-sealed container for consumption off license premises and discusses –1 amendments <b>(EXHIBIT A)</b> .
015	<b>Rep. Brown</b>	<b>House District 4</b> Testifies in support of HB 3665.
025	<b>Lisa Noah</b>	<b>Newport Chamber of Commerce</b> Testifies in support of HB 3665 and submits testimony <b>(EXHIBITS B &amp; C)</b> .
095	Rep. Ringo	Thinks that there should not be a different standard for nonprofit events versus other events where they sell liquor.
115	<b>Mayor Mark Jones</b>	<b>City of Newport</b> Testifies in support of HB 3665.
142	<b>John Stubenvol</b>	<b>Communications Director, Oregon Liquor Control Commission</b> Testifies on HB 3665 and discusses a temporary sales license.

191	Chair Walker	Closes the work session on HB 3665 and opens a public hearing on HB 2840.
<b><u>HB 2840 PUBLIC HEARING</u></b>		
195	<b>Merrilee Harrell</b>	<b>Committee Extern</b> Introduces HB 2840 that adds office of county judge who exercises judicial functions to list of nonpartisan offices.
200	<b>Rep. Greg Smith</b>	<b>House District 59</b> Testifies in support of HB 2840.
215	<b>Judge Mike McArthur</b>	<b>Sherman County</b> Testifies in support of HB 2840 and submits testimony <b>(EXHIBIT D)</b> .
222	Rep. Shetterly	Asks if he serves a dual function as a county commissioner and as a judge.
244	Judge McArthur	Answers that sometimes he likes to say he represents all three branches of government and in fact he does play several different roles.
281	Chair Walker	Inquires as to what kind of judicial functions he performs.
283	Judge McArthur	Answers that he hears juvenile cases and probate cases.
290	Chair Walker	Closes the public hearing on HB 2840 and opens a public hearing on HB 3677.
<b><u>HB 3677 PUBLIC HEARING</u></b>		
297	<b>Rep. Max Williams</b>	<b>House District 9</b> Testifies in support of HB 3677 that prescribes method for judicial construction of statutes and addresses the Oregon Supreme Court's approach to statutory interpretation as announced in <u>PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143 (1993)</u> .
385	<b>Greg Mowe</b>	<b>Oregon State Bar Public Affairs Committee</b> Testifies in support of HB 3677 and submits testimony <b>(EXHIBIT E)</b> .
<b>TAPE 69, A</b>		
002	Mowe	Continues testimony in support of HB 3677.
036	Rep. Ringo	Wonders if under his proposed fix if the court is examining a statute that is unambiguous but nevertheless seems to be contradictory to the statutory scheme, to the legislative intent, to other case law whether the court can rule against what is unambiguous language.
057	Rep. Williams	Answers that he has effectively zeroed in on what is perhaps the most challenging part of this discussion as we attempt to address PGE vs. BOLI.
090	Rep. Shetterly	Wonders if in Section 1, subsection 3, page 1, the language effectively gives the court the ability to look at all the information and consider or not consider what it wants to.
104	Rep. Williams	Says that as written that's probably true, but what he thinks it does is address a number of judges concerns.
114	Rep. Ringo	Asks if he knows what they do in other states.
116	Rep. Williams	Answers that he doesn't know, but thinks that this may be an issue unique to Oregon.
120	Mowe	States that he doesn't know either.
124	Rep. Shetterly	Comments that he thinks it's a good approach.
147	Counsel Shartel	Says that with respect to subsection 2, Section 1, page 1, she is concerned with the wording that says the court has to rely on

what the parties provide for you as legislative history. Suggests that the court should have the ability to go to the archives and look at everything in the record.

162 Mowe Responds that their intent was not to preclude a court from doing that, but rather to make it clear that the court's obligation was limited by what the parties did.

171 Rep. Shetterly Says that he thinks the language is pretty clear.

174 Rep. Williams States that he hopes that at some time in the future the legislature can create a more uniform manner of collecting, maintaining and archiving legislative history.

192 Rep. Lowe Comments that she likes the bill but worries about restricting judicial discretion.

218 **Michael Gillette** **Associate Justice, Supreme Court**  
Testifies on HB 3677.

**TAPE 68, B**

014 Rep. Shetterly Says doesn't this just say to look at it then apply the judicial judgment and the canons of construction.

028 Justice Gillette Answers yes.

055 Rep. Shetterly Asks if this overrules PGE v. BOLI.

060 Justice Gillette Says no, but it changes the paradigm.

069 Rep. Shetterly Remarks that it changes the paradigm, but will it likely change the result.

071 Justice Gillette Answers rarely at all.

142 **Philip Schradle** **Department of Justice**  
Testifies in opposition to HB 3677 and submits testimony **(EXHIBIT F)**.

256 Rep. Ringo Asks if he knows how they do it in other states.

258 Schradle Says that he is not aware of how they do it in other states. States that they have been driven in the case law in Oregon on the paradigm of the statutes in Oregon.

262 Rep. Ringo Asks if he thinks they have the same problem in every state.

264 Schradle Responds that they may not have exactly the same problem, but very similar problems.

307 **David Groom** **State Public Defender's Office**  
Testifies in opposition to HB 3677. Explains that there could be a fiscal impact with this bill.

392 **Bruce Bishop** **Attorney, Salem**  
Testifies on HB 3677 and shares some concerns.

**TAPE 69, B**

001 Bishop Continues testimony on HB 3677.

026 Chair Walker Closes the public hearing on HB 3677 and opens a work session on HB 2381.

**HB 2381 WORK SESSION**

042 Counsel Shartel Introduces HB 2381 that requires award of reasonable attorney fees to prevailing plaintiff in action on contract if amount claimed is \$5,500 or less and plaintiff serves demand on defendant at least 10 days before filing claim. Discusses -2 amendments **(EXHIBIT G)** and -3 amendments **(EXHIBIT H)** and written testimony received by the Judiciary staff **(EXHIBITS I & J)**.

055 **Jim Markee** **Oregon Collectors Association**  
Testifies in support of HB 2381 and supports the -2

104	Rep. Lowe	amendments. Asks if Robert Neuberger and Greg Mowe are okay with the amendments.
106	Markee	Answers yes.
114	Rep. Lowe	Asks if this bill includes checks.
116	Markee	Says no and that checks are handled under ORS 30.701.
119	Rep. Lowe	Asks if oral contracts are included.
121	Markee	Says yes, he thinks so.
140	Rep. Lowe	Remarks that Robert Neuberger raised an important policy question of why allow additional attorneys fees where a debtor simply allows a judgment to be taken because 90 percent of those go by default anyway. Asks if the amendments take care of this.
147	Markee	Answers that the court would be allowed to grant attorneys fees on default cases that are subject to reasonable attorney fee rules.
176	Rep. Ringo	States that he is uncomfortable with this and wonders if this is a good public policy stance to allow attorney fees.
222	Markee	Answers that he is very familiar with ORS 20.080 and its use throughout the legal industry.
230	Rep. Ringo	Says that ORS 20.080 recognizes a power disparity.
238	Markee	Responds that he understands that, but is arguing against public policy that already exists.
260	Rep. Lowe	Says that she has done a lot of collection practice law and thinks this is an improvement and is not comfortable with the -3 amendments, but likes the -2 amendments.
268	Rep. Lowe	<b>MOTION: Moves to ADOPT HB 2381-2 amendments dated 03/22/01.</b> <b>VOTE: 4-1-0</b> <b>AYE: 4 - Backlund, Lowe, Shetterly, Walker C</b> <b>NAY: 1 - Ringo</b>
272	Chair Walker	<b>The motion CARRIES.</b>
282	Rep. Lowe	<b>MOTION: Moves HB 2381 to the full committee with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 4-1</b> <b>AYE: 4 - Backlund, Lowe, Shetterly, Walker C</b> <b>NAY: 1 - Ringo</b>
282	Chair Walker	<b>The motion CARRIES.</b>
295	Chair Walker	Closes the work session on HB 2381 and opens a work session on HB 2739.
<b><u>HB 2739 WORK SESSION</u></b>		
298	Rep. Shetterly	Introduces HB 2739 that authorizes creation of pet trusts and explains the -1 amendments ( <b>EXHIBIT K</b> ).
345	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2739-1 amendments dated 04/09/01.</b> <b>VOTE: 5-0</b>
346	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
352	Rep. Shetterly	<b>MOTION: Moves HB 2739 to the full committee with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 5-0</b>

352	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
375	Chair Walker	Closes the work session on HB 2739 and opens a work session on HB 2460.
<b><u>HB 2460 WORK SESSION</u></b>		
377	Counsel Shartel	Explains HB 2460 regarding SLAPP Suits which allows defendant in civil action to make special motion to strike if plaintiff's claim arises out of certain conduct in furtherance of exercise of constitutional right of petition or constitutional right of free speech in connection with public issue. Discusses –2 amendments ( <b>EXHIBIT L</b> ).
390	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2460-2 amendments dated 03/30/01.</b> <b>VOTE: 5-0</b>
390	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
428	Rep. Shetterly	<b>MOTION: Moves HB 2460 to the full committee with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 5-0</b>
428	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
 <b>TAPE 70, A</b>		
014	Chair Walker	Closes the work session on HB 2460 and opens a work session on HB 2382.
<b><u>HB 2382 WORK SESSION</u></b>		
015	Counsel Shartel	Introduces HB 2382 regarding default affidavits and describes the –3 amendments ( <b>EXHIBIT M</b> ).
024	Jim Markee	<b>Oregon Collectors Association</b>
		Testifies in support of HB 2382 and discusses amendments.
057	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2382-3 amendments dated 03/26/01.</b> <b>VOTE: 5-0</b>
059	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
060	Rep. Shetterly	<b>MOTION: Moves HB 2382 to the full committee with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 5-0</b>
060	Chair Walker	<b>Hearing no objection, declares the motion CARRIED.</b>
068	Chair Walker	Closes the work session on HB 2382 and adjourns the meeting at 10:15 a.m.

Submitted By,

Reviewed By,

Ann Martin,  
Committee Assistant

Andrea Shartel,  
Counsel

**EXHIBIT SUMMARY**

**A – HB 3665, -1 amendments, submitted by staff, dated 3/28/01, 1 p.**

**B – HB 3665, written testimony of Philip Hutchinson, Newport Chamber of Commerce, submitted by Lisa Noah, dated 4/11/01, 2 pgs.**

**C – HB 3665, petition submitted by Lisa Noah, 12 pgs.**

**D – HB 2840, written testimony submitted by Mike McArthur, Judge, Sherman County, dated 3/23/01, 1 p.**

**E – HB 3677, written testimony submitted by Greg Mowe, Oregon State Bar Committee, dated 4/11/01, 2 pgs.**

**F – HB 3677, written testimony submitted by Philip Schradle, Department of Justice, dated 4/11/01, 2 pgs.**

**G – HB 2381, -2 amendments, submitted by staff, dated 3/22/01, 3 pgs.**

**H – HB 2381, -3 amendments, submitted by staff, dated 3/28/01, 1 p.**

**I – HB 2381, written testimony of Rep. Zauner, House District 38, submitted by staff, dated 4/11/01, 1 p.**

**J – HB 2381, written testimony of James Little, Attorney, Silverton; submitted by staff, dated 4/10/01, 2 pgs.**

**K – HB 2739, -1 amendments, submitted by staff, dated 4/9/01, 2 pgs.**

**L – HB 2460, -2 amendments, submitted by staff, dated 3/30/01, 1 p.**

**M – HB 2382, -3 amendments, submitted by staff, dated 3/26/01, 1 p.**

**N – HB 2460, written testimony of Steve Pfeiffer, Land Conservation and Development Commission, submitted by staff, dated 4/10/01, 2 pgs.**