

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

April 16, 2001
8:00 a.m.

Hearing Room 357
Tapes 71 - 74

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

MEMBERS EXCUSED: **Rep. Charlie Ringo**

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

MEASURE/ISSUES HEARD: **HB 3264 Work Session**
 HB 3647 Public Hearing
 HB 2175 Public Hearing
 HB 3838 Public Hearing
 HB 3245 Public Hearing
 HB 2809 Work Session
 HB 2840 Work Session
 HB 2918 Work Session
 HB 3264 Work Session
 HB 3665 Work Session
 HB 3647 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.

TAPE/#	Speaker	Comments
TAPE 71, A 004	Chair Walker	Calls the meeting to order at 8:10 a.m. and opens a work session on HB 3264.
<u>HB 3264 WORK SESSION</u> 006	Rep. Max Williams	House District 9 Testifies in support of HB 3264 to limit tort liability of employer for certain intentional actions of employee or agent and submits testimony (EXHIBIT A).
161	Rep. Ringo	Asks if there are examples where juries have applied the rule of Fearing and Lourim to hold an employer liable.
168	Rep. Williams	Replies that once this new rule has been implemented, most of these cases don't typically go to a jury.
183	Rep. Ringo	Asks if this will take away from the jury what is in the employer-employee relationship and what is not.
190	Rep. Williams	Responds that the course and scope of the employment test is typically a jury test.

235	Rep. Shetterly	Asks if there has been an appeal on the Minnis case.
236	Rep Williams	Replies he does not know.
238	Chair Walker	Closes the work session on HB 3264 and opens a public hearing on HB 3647.

HB 3647 PUBLIC HEARING

251	Counsel Shartel	Introduces HB 3647 that directs Department of Justice to establish a hotline to allow students and others to report criminal or suspicious activities on school grounds or at school-sponsored activities.
262	Rep. Bill Morrisette	House District 42 Testifies in support of HB 3647.
268	Hardy Myers	Oregon Attorney General Testifies in support of HB 3647.
386	Rep. Morrisette	Continues testimony in support of HB 3647.
TAPE 72, A 019	Kevin Campbell	Oregon Association of Chiefs of Police Testifies in support of HB 3647.
036	Rep. Shetterly	Supports the bill and asks about initiating false reports on these lines.
048	Myers	Answers that there has been no direct discussion of the consequences of improper use of the hot line.
058	Campbell	Responds that they will work on this issue immediately and get back to the committee with ideas on prevention.
066	Myers	Adds that in Oklahoma they have treated prank calls as pranks, and have not undertaken to prosecute in any way.
073	Rep. Lowe	Asks if fiscal has looked at additional costs this bill may impose on the schools.
092	Rep. Morrisette	School administrators and teachers voiced no concern about significant fiscal impact on school districts.
100	Chair Walker	Comments that they received a fiscal impact for the next four years.
109	Rep. Lowe	Asks if they have the blessing of the Department of Justice.
113	Myers	Responds that it is his understanding that they have no problem with it.
118	Rep. Morrisette	States that the school districts they have talked to are very supportive of this project.
131	Kristen Emich	Silverton High School Testifies in support of HB 3647.
151	Neil Vargas	Forest Grove High School Testifies in support of HB 3647.
170	Rep. Backlund	Asks how they found out about the bill.
173	Emich	Replies that she was contacted by her advisor.
170	Vargas	Replies that he was on the Attorney General's Safety Coalition and heard about it through the meetings.
182	Rep. Shetterly	Thanks Ms. Emich and Mr. Vargas for coming forward.
190	Derrick Sanderson	Dallas High School Testifies in support of HB 3647.
226	Michael Thomas	Dallas High School Testifies in support of HB 3647.
261	Rep. Lowe	Asks what can be done to eliminate the root cause of

273	Thomas	harassment.
284	Sanderson	Answers that he believes the root cause is lack of respect. Comments that it is caused by lack of understanding and communication between the different groups.
300	Rep. Backlund	Asks if they see bullying and harassment as a major problem.
302	Sanderson	Replies with the new administration, it has declined significantly.
313	Rep. Backlund	Asks if they have a policy regarding bullying and harassment at their school.
314	Sanderson	Replies it is treated as an infringement or referral.
324	Rep. Backlund	Asks Rep. Morrisette if there is a correlation between this bill and HB 3403.
328	Rep. Morrisette	Says the bill defines bullying and harassment that would give principals a tool to use.
358	Rep. Shetterly	Asks if the bill on the Education Committee makes it a crime.
363	Rep. Backlund	Says he is thinking of the bill as establishing a statewide policy.
401	Chair Walker	Closes the public hearing on HB 3647 and opens a public hearing on HB 2175.

HB 2175 PUBLIC HEARING

398 **Rep. V. Walker**

House District 41

Submits testimony (**EXHIBITS B & C**) and testifies in support of

HB 2175 regarding earned income tax credit.

TAPE 71, B

002 Rep. V. Walker
057 **Richard Slottee**

Continues testimony in support of HB 2176.

Professor, Lewis & Clark College

Testifies in support of HB 2175 and submits testimony (**EXHIBIT D**).

083 Rep. Ringo
085 Slottee
094 Rep. V. Walker
099 Rep. Backlund
100 Rep. V. Walker
111 Chair Walker

Asks how much is the tax credit.

Answers that it averages between \$2,000 to \$4,000.

Referring to the Rutter decision, the amount was \$2,274.

Asks if there is any opposition to this bill.

Answers no.

Closes the public hearing on HB 2175 and opens a public hearing on HB 3838.

HB 3838 PUBLIC HEARING

125 **Marshall Coba**

Consulting Engineers Counsel

Testifies in support of HB 3838 regarding complaints asserting claim against engineers, surveyors, geologists, architects and other professions required to be licensed.

132 **James Marvin**

Attorney, Multnomah and Clackamas County

Testifies in support of HB 3838 and submits testimony (**EXHIBIT E**).

265 **Tom Fowler**

Miller Consulting Engineers

Testifies in support of HB 3838 and submits testimony (**EXHIBIT F**).

303 Marvin

Adds that there are seven other states that have a form of certificate of merit legislation.

325 Chair Walker

Asks for a definition of standard of care in the community.

327 Marvin

Clarifies what is needed by a professional to maintain that status.

345	Chair Walker	Asks what the restriction is on the community.
347	Marvin	Explains that the definition has changed over the years.
369	Chair Walker	States her concern of areas outside the tri-counties areas of having only one or two individuals for a community.
374	Marvin	Responds to her concern.
381	Chair Walker	Asks if costs are higher to bring in someone 60 days prior, if there were only two surveyors in one county and they would not make a statement against the other.
385	Marvin	Replies probably not any more because of the community.
404	Rep. Ringo	Asks if a lawyer should already have an opinion verifying the negligence before filing.
413	Marvin	Replies that before signing litigation, a lawyer should notify the adverse party that the litigation has merit.
417	Rep. Ringo	Asks if an expert opinion is necessary to support the case, depending on the type of litigation.
426	Marvin	Agrees with the analysis.
427	Rep. Ringo	Asks if a lawyer will have violated the rule if they haven't gotten an expert opinion before filing a lawsuit,
430	Marvin	Concurs and expands on explanation.
444	Rep. Ringo	States that he would like to encourage the courts to impose sanctions if a lawyer files a lawsuit and hasn't taken the time or effort to obtain an expert opinion
453	Marvin	Says that HB 3838 accomplishes that.
461	Rep. Shetterly	Asks how this relates to discovery in a case.
TAPE 72, B		
024	Marvin	Answers that opinions can be changed.
054	Rep. Shetterly	Comments on the professional reputations of the experts who sign their name to an affidavit in advance of filing a suit.
072	Marvin	Says HB 3838 provides for that the event.
090	Rep. Ringo	Asks what if the plaintiff's lawyer requires an affidavit saying you swear you've consulted with an expert and have received an opinion that negligence has occurred.
094	Marvin	Replies that that is the nature of the California plan.
099	Chair Walker	Says that she received written testimony from James Van Dyke, Senior Deputy City Attorney for the City of Portland in opposition to the bill (EXHIBIT G). Closes the public hearing on HB 3838 and opens a public hearing on HB 3245.

HB 3245 PUBLIC HEARING

107	Counsel Shartel	Introduces HB 3245 that directs Mental Health and Developmental Disability Services Division to ensure that designee conducting investigation of alleged abuse of mentally ill or developmentally disabled adult has training and experience to conduct impartial investigation.
126	Bob Joondeph	Oregon Advocacy Center Testifies in support of HB 3245 and submits testimony (EXHIBIT H).
216	Greg Monaco	Multnomah County Testifies in support of HB 3245 and submits testimony (EXHIBITS I & J).
388	Becky Child	Oregon Developmental Disabilities Council (ODDC) Testifies in support of HB 3245.
486	Rep. Shetterly	Asks Mr. Joondeph about changes in bill.

TAPE 73, A

043	Joondeph	Answers that there is flexibility when dealing with the term impartial.
068	Rep. Shetterly	Comments that without the particulars of impartiality, it raises questions to impartial means.
080	Rep. Lowe	Asks if they will be hearing from anyone at Pacific Gateway Hospital.
084	Joondeph	Replies that he has not had any contact from them.
085	Rep. Lowe	Suggests a study during the interim on the reduction of system-wide medical errors.
101	Joondeph	Replies that they have been involved in health planning bills.
120	Rep. Lowe	Asks if the Attorney General or the District Attorney's office play a role in this situation.
128	Joondeph	Replies that he is unaware of what role the Attorney General's office plays.
148	Chair Walker	Reports that Kathryn Weit, Oregon Developmental Disabilities Council, submitted written testimony (EXHIBIT K).
153	Bob Montgomery	Association Of Community Mental Health Programs
178	Barry Kast	Testifies in opposition to HB 3245. Mental Health and Developmental Disability Services Division
280	Rep. Backlund	Testifies in opposition to HB 3245 and submits testimony (EXHIBIT L). Asks if there is some way to communicate with the families in this tragic circumstance.
290	Kast	Replies he does not know what communication has occurred with the family in this case.
311	Rep. Lowe	Comments that an acknowledgement should be made to address the needs of this vulnerable population.
335	Kast	Reports that the Governor did convene a work group to reexamine the public health system for improvements.
341	Rep. Lowe	Comments that this new bill did not include more money.
342	Kast	Says there are funds in the Governor's proposed budget that are new investments.
378	Chair Walker	Closes the public hearing on HB 3245 and opens a work session on HB 2809.

HB 2809 WORK SESSION

395	Counsel Shartel	Introduces HB 2809 relating to modifying provisions relating to sale of prearrangement and preconstruction funeral plans as trusts, and discusses the -1 amendments and written testimony of Rep. Al King (EXHIBITS M & N).
409	John Brenneman	Oregon Funeral Directors Association
422	Meg Reinhold	Speaks in support of the bill and the amendments. Department of Consumer and Business Affairs
457	Chair Walker	Speaks in support of the bill and the amendments.
464	Rep. Shetterly	States she will welcome the changes before the next meeting.
474	Reinhold	Notes that "shall" is still on page 2, line 3 of the -1 amendments.
484	Chair Walker	Comments that this is something they are planning on changing. Closes the work session on HB 2809 and opens a work session on on HB 2840.

TAPE 74, A

HB 2840 WORK SESSION

026 Counsel Shartel Introduces HB 2840 that makes the office of county judge a nonpartisan office.

028 Rep. Shetterly **MOTION: Moves HB 2840 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-1

AYE: In a roll call vote, all members present vote Aye.

030 Chair Walker **EXCUSED: 1 – Ringo**

The motion CARRIES.

038 Chair Walker Closes the work session on HB 2840 and opens a work session on HB 2918.

HB 2918 WORK SESSION

040 Counsel Shartel Summarizes HB 2918 that adds electronic communication to the contact for the purpose of stalking. Discusses the –1 amendments (EXHIBIT O).

046 Rep. Lowe **MOTION: Moves to ADOPT HB 2918-1 amendments dated 4/9/01.**

VOTE: 4-0-1

048 Chair Walker **EXCUSED: 1 – Ringo**

Hearing no objection, declares the motion CARRIED.

055 Rep. Lowe **MOTION: Moves HB 2918 to the full committee with a DO PASS AS AMENDED recommendation.**

VOTE: 4-0-1

AYE: In a roll call vote, all members present vote Aye.

057 Chair Walker **EXCUSED: 1 – Ringo**

The motion CARRIES.

068 Chair Walker Closes the work session on HB 2918 and opens a work session on HB 3264.

HB 3264 WORK SESSION

069 Counsel Shartel Discusses HB 3264 that was described earlier.

072 Rep. Lowe Says that she will vote no.

073 Rep. Shetterly Asks if the Governor is going to take a different approach to this.

078 Chair Walker Notes that she has no knowledge of that.

090 Chair Walker **MOTION: Moves HB 3264 to the full committee with a DO PASS recommendation.**

VOTE: 3-1-1

AYE: 3 - Backlund, Shetterly, Walker

NAY: 1 – Lowe

EXCUSED: 1 – Ringo

091 Chair Walker **The motion Carries.**

084 Chair Walker Closes the work session on HB 3264 and opens a work session on HB 3665.

HB 3665 WORK SESSION

103	Counsel Shartel	Summarizes the -1 amendments (EXHIBIT P).
106	Rep. Shetterly	MOTION: Moves to ADOPT HB 3665-1 amendments dated 3/28/01.
		VOTE: 4-0-1
		EXCUSED: 1 – Ringo
108	Chair Walker	Hearing no objection, declares the motion CARRIED.
120	Rep. Shetterly	MOTION: Moves HB 3665 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0-1
		AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 1 – Ringo
122	Chair Walker	The motion CARRIES.
167	Chair Walker	Closes the work session on HB 3665 and opens a work session on HB 3647.
<u>HB 3647 WORK SESSION</u>		
172	Rep. Shetterly	Prefers to wait until they get feedback from Kevin Campbell’s work group before voting on the bill.
186	Chair Walker	Closes the work session on HB 3647 and adjourns the meeting at 10:40 a.m.

Transcribed By,

Cheryl Young
Committee Assistant

Submitted By,

Ann Martin,
Committee Assistant

Reviewed By,

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

- A – HB 3264, testimony (legal cases) submitted by Rep. Max Williams, 47 pgs.**
- B – HB 2175, –1 amendments, submitted by Rep. V. Walker dated March 27, 2001, 1 pg.**
- C – HB 2175, testimony submitted by Rep. V. Walker, 7 pgs.**
- D – HB 2175, testimony submitted by R. Slottee, Professor Lewis & Clark Legal Clinic, 2 pgs.**
- E – HB 3838, testimony submitted by James Marvin, Attorney, 3 pgs.**
- F – HB 3838, testimony submitted by Tom Fowler, Miller Consulting Engineers, 1 pg.**
- G – HB 3838, testimony submitted by Staff for J. Van Dyke, City of Portland, 4 pgs.**
- H – HB 3245, testimony submitted by Bob Joondeph, Oregon Advocacy Center, 2 pgs.**
- I – HB 3245, testimony submitted by Greg Monaco, Multnomah County, 2 pgs.**
- J – HB 3245, testimony submitted by Greg Monaco, Multnomah County, 8 pgs.**
- K – HB 3245, testimony submitted by Staff for K. Weit, ODDC, 1 pg.**

- L – HB 3245, testimony submitted by Barry Kast, MHDDSD, 1 pg.**
- M – HB 2809, -1 amendments submitted by Staff, dated April 13, 2001, 33 pgs.**
- N – HB 2809, testimony submitted by Staff for Rep. Al King, 1 pg.**
- O – HB 2918, -1 amendments submitted by Staff, dated 4/9/01, 1 pg.**
- P – HB 3665, -1 amendments submitted by Staff, dated 3/28/01, 1 pg.**