

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

April 18, 2001
8:00 a.m.

Hearing Room 357
Tapes 75 - 77

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

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

MEASURE/ISSUES HEARD: **HB 3251 Public Hearing and Work Session**
 HB 2932 Public Hearing
 HB 3677 Work Session
 HB 2389 Work Session
 HB 2687 Work Session
 HB 3647 Work Session
 HB 3398 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.

TAPE/#	Speaker	Comments
TAPE 75, A		
004	Chair Walker	Calls the meeting to order at 8:20 a.m. and opens a public hearing on HB 3251.
<u>HB 3251 PUBLIC HEARING</u>		
014	Counsel Andrea Shartel	Introduces HB 3251 that modifies procedures for promulgation, amendment or repeal of rule of civil procedure by Council on Court Procedures.
018	Maury Holland	Executive Director, Council on Court Procedures Testifies in support of HB 3251.
094	Rep. Ringo	Says that he appreciates his attempt at efficiency, but feels he could have stepped up the process so that it started sooner and then had the comments earlier for a more practical way.
097	Holland	Answers that that is a possible way of doing it and explains that his suggestion would be a very difficult way to do it.
136	Rep. Shetterly	Recollects that the process is that the counsel adopts the amendments, but they do not become effective until after the next legislative session.
154	Chair Walker	Closes the public hearing on HB 3251 and opens a work session on HB 3251.
<u>HB 3251 WORK SESSION</u>		
158	Rep. Shetterly	MOTION: Moves HB 3251 to the full committee with a DO PASS recommendation.
		VOTE: 5-0
160	Chair Walker	Hearing no objection, declares the motion CARRIED.

171	Chair Walker	Closes the work session on HB 3251 and opens a public hearing on HB 2932.
<u>HB 2932 PUBLIC HEARING</u>		
173	Counsel Shartel	Introduces HB 2932 that provides that the physician-patient privilege does not apply to confidential communication relevant to physical, mental or emotional condition of patient if patient relies on condition as element of patient's claim or defense, or if other party relies on the condition as an element of that party's claim or defense and that the patient has died.
194	Bill Sime	Oregon Association of Defense Counsel Testifies in support of HB 2932 and submits testimony (EXHIBIT A) .
394	Rep. Shetterly	Asks if this gives the defendant direct access to the plaintiff's medical records—the ability to send a letter to the doctor and require disclosure directly from the doctor to the defendant.
415	Sime	Answers yes, if there is a waiver of the privilege upon filing.
430	Rep. Shetterly	Asks who makes the determination of relevance of one's medical records.
441	Sime	Answers that a physician does not have to respond to a letter asking for medical records and expounds.
TAPE 76, A		
002	Sime	Continues discussion.
018	Rep. Lowe	Asks if it's true that a cluster of symptoms can be attributable to a lot of things—isn't this going to make it much easier for insurance companies to defend a claim for an illness or injury caused by another.
042	Sime	Answers that he does not think that is unfair. Says that it's the jury's decision to decide on the issue of causation.
060	Rep. Lowe	Gives a scenario of an individual and wonders if the defense lawyer can use medical facts of this person during trial. Asks if this bill would prevent people from disclosing medical problems to their doctor.
109	Sime	Says he does not think this will have a chilling effect on the physician/patient relationship.
142	Rep. Lowe	Reports that there is nothing in the bill that states that the medical conditions have to be close in time.
151	Sime	Answers no, that there is not any time limit in the bill and feels that there should not be.
170	Rep. Lowe	Says that she does not have the same degree of confidence in record tracking as he does (Sime) and asks about the work group on this issue.
198	Sime	Answers that he does not know much about the work group.
247	Rep. Ringo	Gives Sime a quick hypothetical--asks if the defense then has the ability to inquire into their counseling records.
281	Sime	Says it depends on how relative it is to the case.
305	Mike Crew	Counsel, Oregon Medical Association Testifies on HB 2932 and submits testimony (EXHIBIT B) . Says they have some concerns.
414	Rep. Lowe	Says that she is concerned with DNA typing and wonders how easy it would be for an insurance company to get a DNA profiling of an individual.
431	Crew	Remarks that there is a genetic privacy act before this legislature that is extremely complex—discusses issue.

TAPE 75, B Unusable

TAPE 77, A

020 Bill Gaylord

Oregon Trial Lawyers Association

Testifies in opposition to HB 2932 and submits testimony **(EXHIBIT C)**. Represents injured people and their families. States that this bill will harm the relationship between patients and their medical providers.

268 Chair Walker

Closes the public hearing on HB 2932 and opens a work session on HB 3677.

HB 3677 WORK SESSION

279 Rep. Max Williams

House District 9

Discusses HB 3677 that prescribes method for judicial construction of statutes and supports the -1 amendments **(EXHIBIT D)**.

313 Justice Mick Gillette

Oregon Supreme Court

Testifies in support of HB 3677 and the -1 amendments.

361 Phillip Schradle

Attorney General's Office

Testifies on HB 3677. Says they are not opposed to the bill, but have some concerns.

369 Rep. Ringo

Asks if a statute is unambiguous, but the legislative history indicates a contrary intent, could the court decide to go with what they believe to be the actual intent despite unambiguous language.

380 Rep. Williams

Answers that he believes that it allows any party to present the legislative history to the court, but it still vests in the judge the right to determine the weight that that legislative history ought to receive given the full analysis of the text, the context and the legislative history.

TAPE 76, B

004 Justice Gillette

Answers that what is necessary is that the court find that the words were not intended to be used in their ordinary sense, but rather in a special or unusual sense.

020 Schradle

Says that this statute would not amend ORS 174.010 so that this would not allow the court to do something that is plainly inconsistent with statutory language.

056 Rep. Shetterly

Adds that we are not inviting the court to use this tool to sabotage what is the apparent intent or purpose of particular legislation.

079 Rep. Shetterly

MOTION: Moves to ADOPT HB 3677-1 amendments dated 04/17/01.

VOTE: 5-0

085 Chair Walker

Hearing no objection, declares the motion CARRIED.

090 Rep. Shetterly

MOTION: Moves HB 3677 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 4-1-0

AYE: 4 - Backlund, Ringo, Shetterly, Walker C

NAY: 1 - Lowe

091 Chair Walker

The motion CARRIES.

100 Chair Walker

Closes the work session on HB 3677 and opens a work session

on HB 2389.

HB 2389 WORK SESSION

107 Counsel Shartel

Introduces HB 2389 that provides that public official may be held personally liable for unlawful expenditure of public moneys only if expenditure constitutes malfeasance in office or wanton neglect of duty.

117 Rep. Lowe

MOTION: Moves HB 2389 to the full committee with a DO PASS recommendation.

VOTE: 4-0-1

EXCUSED: 1 - Shetterly

119 Chair Walker

Hearing no objection, declares the motion CARRIED.

120 Chair Walker

Closes the work session on HB 2389 and opens a work session on HB 2687.

HB 2687 WORK SESSION

127 Counsel Shartel

Introduces HB 2687 that prohibits discrimination by public bodies against persons with disabilities and discusses the -3 and the -4 amendments (**EXHIBITS E & F**).

150 Rep. Shetterly

States that he supports the -3 amendments.

174 Rep. Ringo

Says that he completely agrees with Rep. Shetterly's concerns.

192 Counsel Shartel

Comments that she thinks that the reason that the proponents of the bill like the -4 amendments is because it covers the groups that they were concerned about.

204 Rep. Shetterly

Says that they should stay with the -3 amendments and that they are sufficient.

240 Chair Walker

States that she would like a clarification from Legislative Counsel. Closes the work session on HB 2687 and opens a work session on HB 3647.

HB 3647 WORK SESSION

242 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 and mentions proposed amendments.

264 Rep. Shetterly

MOTION: Moves HB 3647 to the full committee with a DO PASS recommendation.

VOTE: 5-0

266 Chair Walker

Hearing no objection, declares the motion CARRIED.

270 Chair Walker

Closes the work session on HB 3647 and opens a public hearing on HB 3398.

HB 3398 PUBLIC HEARING

279 Counsel Shartel

Introduces HB 3398 that sets two-year limit for requesting special education due process hearing.

289 Andrea Hungeford

Lawyer, Clackamas County

Testifies in support of HB 3398.

351 Rob Saxton

Superintendent of Sherwood School District

Testifies in support of HB 3398.

422 Rep. Lowe

Says that she supports the bill.

436 Craig Roessler

Silver Falls School District

Testifies in support of HB 3398 and submits testimony (**EXHIBITS G & H**).

023	Petrea Hagen-Gilden	Tigard-Tualatin School District Testifies in support of HB 3398 and submits written testimony of Christine Moore (EXHIBIT I).
038	Christine Moore	Beaverton School District Testifies in support of HB 3398.
046	Rep. Shetterly	Comments about the effective date and some amendments that might need to be made in the Senate.
065	Chair Walker	Closes the public hearing on HB 3398 and opens a work session on HB 3398.
<u>HB 3398 WORK SESSION</u>		
066	Rep. Shetterly	MOTION: Moves HB 3398 to the full committee with a DO PASS recommendation. VOTE: 4-0-1 EXCUSED: 1 - Ringo Hearing no objection, declares the motion CARRIED.
070	Chair Walker	
082	Chair Walker	Closes the work session on HB 3398 and adjourns the meeting at 10:15 a.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

- A – HB 2932, written testimony submitted by Bill Sime, dated 4/18/01, 7 pp.**
- B – HB 2932, written testimony submitted by Mike Crew, dated 4/17/01, 13 pp.**
- C – HB 2932, written testimony submitted by Bill Gaylord, dated 4/18/01, 6 pp.**
- D – HB 3677, -1 amendments, submitted by staff, dated 4/17/01, 1 p.**
- E – HB 2687, -3 amendments, submitted by staff, dated 4/13/01, 1 p.**
- F – HB 2687, -4 amendments, submitted by staff, dated 4/13/01, 1 p.**
- G – HB 2687, written testimony of Steve Johnson, Office of Special Education, Oregon Department of Education, submitted by staff, 2 pp.**
- H – HB 3398, written testimony submitted by Craig Roessler, 1 p.**
- I – HB 3398, written testimony submitted by Petrea Hagen-Gilden, dated 4/18/01, 2 pp.**

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

April 18, 2001
3:30 p.m.

Hearing Room 357
Tapes 79 - 80

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

MEMBERS EXCUSED: **Rep. Vic Backlund**
 Rep. Charlie Ringo

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

MEASURE HEARD: **HB 3910 Public Hearing**

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 79, A		
003	Chair Walker	Calls the meeting to order at 3:35 p.m. and opens a public hearing on HB 3910.
<u>HB 3910 PUBLIC HEARING</u>		
012	Andrea Shartel	Counselor. Summarizes HB 3910 which, creates Uniform Computer Information Transactions Act, (UCITA). Submits correspondence from Ray Hoving, Society for Information Management (SIM) (EXHIBIT A) .
019	Rep. Phil Barnhart	House District 40 Discusses HB 3910-1 amendments, (EXHIBIT B) . States the purpose for the amendments.
060	Jim Craven	American Electronics Association States that UCITA is an issue of debate. Introduces Ray Nimmer and John Woodard.
074	John Woodard	Senior Counsel, Intel Corporation Compares UCITA to the UCC Article 2 as it relates to evolution in economics. Refers to the law review from Tulane University, (EXHIBIT C) . States support for HB 3910.
090	Ray Nimmer	Professor of Law, University of Houston – Drafter of UCITA Summarizes the background of UCITA.
144	Nimmer	Explains that UCITA is a contract statute, (EXHIBIT D) .
191	Nimmer	Discusses the goals of UCITA.
338	Nimmer	Concludes testimony with an overview of the opposition to UCITA.
395	Craven	States support for HB 3910.
385	Paula Holm Jensen	Stoel Rives LLP, on behalf of Computer and Electronic Information (CEI) Workgroup of the Oregon State Bar

Summarizes prepared testimony, **(EXHIBIT E)**. Notes that Maryland and Virginia have adopted UTICA and refers to the amendments since the adoption. Recommends that UCITA be studied further and revisited in 2003.

TAPE 80, A

- | | | |
|------------|-------------------------|--|
| 036 | Peter Bragdon | Attorney, Oregon Internet Commission
Testifies in support of predicable and uniform law, and updating the commercial code. Opposes passage of HB 3910 without further study. |
| 060 | Geoffrey Burling | Worker in the Computer Industry
Discusses law of first sale and reverse engineering. Opposes HB 3910. |
| 105 | Gary Miller | President of Rellin Consulting Engineering Company, Bend
States that UCITA attempts to remove existing consumer protections, provides examples. Opposes HB3910 stating that it needs a lot of work. |
| 207 | Todd Thakar | Prudential Insurance Company
Expresses concern about contracts that can not be read until after the product is purchased. Opposes to HB 3910 stating there are issues that need to be resolved. |
| 234 | Rep. Shetterly | Questions how it will cost Prudential \$20,000,000. |
| 252 | Thakar | Explains the self-help aspect and the shrink-wrap licenses. |
| 254 | Chuck Bennett | Confederation of Oregon Schools Administrators
Opposes HB 3910 and submits prepared testimony, (EXHIBIT F) . |
| 277 | Thor Prichard | Executive Director, Oregon Educational Technology Consortium
Testifies that present law has suited schools well. Opposes HB 3910. |
| 289 | Ben Rawlins | Director of Legal Services, Oregon University System
Expresses four areas of concern of UCITA as currently written. Submits prepared testimony in opposition to HB 3910, (EXHIBIT G) . |
| 394 | Nan Heim | Oregon Library Association
Introduces Deborah Carver and Cindy Gibbon. |
| 416 | Deborah Carver | University Librarian, University of Oregon
Summarizes three concerns of UCITA. Submits and reads (EXHIBIT H) . Concurs that further study is needed and expresses that the library perspective be included in that study. |
| 056 | Cindy Gibbon | Director, Multnomah County Central Library
Summarizes prepared testimony in opposition to HB 3910, (EXHIBIT I) . Concurs that further study is needed. |

TAPE 79, B

- | | | |
|------------|---------------------|---|
| 112 | Lynn Johnson | Industries Affairs Manager, Boeing Company
Concurs with most of the points made in previous testimony. Opposes UCITA and states that Weyerhaeuser is also in opposition of UCITA. Discusses the cost increases to companies. States support for uniformity but opposes HB 3910 as currently |
|------------|---------------------|---|

150	Carl Page	written. Northwestern Director for Computer Professionals for Social Responsibility
204	Pete Shepherd	Testifies that UCITA makes it easy to get into a contract without realizing it. Opposes HB 3910. Deputy Attorney General, Oregon Department of Justice
285	Steve Telfer	Responds to Professor Nimmer's testimony to focus on the text of the measure. Provides an example. States the conclusion of the Attorney General is not to adopt HB 3910 in this session and that it deserves an interim study. Alliance of American Insurers
355	Chair Walker	Submits and summarizes correspondence and article reprint, (EXHIBIT J). Closes the public hearing on HB 3910 and adjourns the meeting at 4:55 p.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

Transcribed By,

Linda K. Gatto,
Committee Assistant

EXHIBIT SUMMARY

- A. HB 3910, correspondence, Ray Hoving, 3 pp.**
- B. HB 3910, -1 amendments dated 4/11/01, 2 pp.**
- C. HB 3910, Tulane Law Review, John Woodard, 28 pp.**
- D. HB 3910, UCITA outline, Ray Nimmer, 7 pp.**
- E. HB 3910, prepared testimony, Paula Holm Jensen, 25, pp.**
- F. HB 3910, prepared testimony, Chuck Bennett, 1 p**
- G. HB 3910, prepared testimony, Benjamin E. Rawlins, 2 pp.**

- H. HB 3910, prepared testimony, Deborah Carver, 2 pp.**
- I. HB 3910, prepared testimony, Cindy Gibbon, 2 pp.**
- J. HB 3910, prepared testimony, Steve Telfer, 6 pp.**