

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

April 9, 2001
8:00 a.m.

Hearing Room 357
Tapes 65 - 67

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**
 Marilyn Odell, Counsel
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **HB 3915 Public Hearing and Work Session**
 HB 2957 Public Hearing
 HB 3264 Public Hearing
 HB 2389 Public Hearing
 HB 2686 Public Hearing
 HB 2009 Work Session
 HB 2687 Work Session
 HB 2917 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 65, A		
004	Chair Walker	Calls the meeting to order at 8:15 a.m. Opens a public hearing on HB 3915.
<u>HB 3915 PUBLIC HEARING</u>		
012	Counsel Shartel	Introduces HB 3915 that removes certain archaic references to book and docket of county clerk.
024	John Kauffman	Oregon Association of County Clerks Testifies in support of HB 3915.
030	Chair Walker	Closes the public hearing on HB 3915 and opens a work session on HB 3915.
<u>HB 3915 WORK SESSION</u>		
060	Rep. Shetterly	MOTION: Moves HB 3915 to the full committee with a DO PASS recommendation.
060	Chair Walker	VOTE: 5-0 Hearing no objection, declares the motion CARRIED.
100	Chair Walker	Closes the work session on HB 3915 and opens a public hearing on HB 2957.
<u>HB 2957 PUBLIC HEARING</u>		
108	Counsel Shartel	Discusses HB 2957 that establishes defense in civil action for personal injury or wrongful death if injured or deceased person

119	Rep. Backlund	was engaged in conduct constituting Class C felony at time of injury or death.
126	Norman Cobb	Introduces his constituent, Norman Cobb. Keizer
180	Rep. Ringo	Testifies on HB 2957 and submits testimony (EXHIBIT A) . Asks if there was a particular incident that brought this to his attention.
183	Cobb	Says no.
195	Chair Walker	Closes the public hearing on HB 2957 and opens a public hearing on HB 3264.

HB 3264 PUBLIC HEARING

222	Counsel Shartel	Introduces HB 3264 that limits tort liability of employer for certain intentional actions of employee or agent to situations where employer has certain knowledge about employee or agent and fails to take reasonable steps to prevent commission of tort.
235	J. L. Wilson	National Federation of Independent Business Testifies in support of HB 3264 and submits testimony (EXHIBIT B) .
287	Rep. Shetterly	Says that he sponsored this bill last session, but the Governor vetoed it and wonders if this will happen again.
301	Wilson	States that he does not know what will happen down the line, but he believes that his case for the bill is stronger than last session.
321	Robert Neuberger	Attorney, Multnomah County Testifies in opposition to HB 3264 and submits testimony (EXHIBIT C) .

HB 2389 PUBLIC HEARING
TAPE 66, A

002	Chair Walker	Closes the public hearing on HB 3264 and opens a public hearing on HB 2389.
009	Counsel Shartel	Discusses 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.
019	Scott Parker	Association of Oregon Counties Testifies in support of HB 2389.
083	John Gray	Association of Oregon Counties, Yamhill County Testifies in support of HB 2389.
160	Rep. Shetterly	Wonders if “wanton” is defined in the statutes.
172	Parker	Says that if public employees are reckless then they know they will be personally liable, but if they are in “good faith” then they will be protected by the tort claims act.
208	Rep. Shetterly	Comments that the standard of strict liability is greater than necessary for this and is probably counter-productive. Recommends that they put the standard back to “mere negligence”.
231	Parker	Says that the good faith standard should be consistent.
269	Christy Munson	League of Oregon Cities Testifies in support of HB 2389 and submits testimony (EXHIBIT D) .
333	Chair Walker	Closes the public hearing on HB 2389 and opens a public hearing on HB 2686.

HB 2686 PUBLIC HEARING

361	Counsel Shartel	Introduces HB 2686 that modifies the incidents that are not material to a real estate transaction and discusses –2 amendments (EXHIBIT E) .
370	Andrea Bushnell	Oregon Association of Realtors Testifies in support of HB 2686 and submits testimony (EXHIBIT F) .
TAPE 65, B		
002	Rep. Lowe	Asks if the property had been cleaned up would it have to be disclosed that it had been a drug house.
008	Bushnell	Answers that it would have to be disclosed to the first buyer.
015	Rep. Lowe	Asks if it would have to be disclosed to other buyers.
118	Bushnell	Says that there is a “good faith” standard that would ensure that.
024	Rep. Shetterly	Asks if a drug house would have to be disclosed even with the –2 amendments.
028	Bushnell	Answers that clearly a drug house would adversely affect the physical condition of the property so it would have to be disclosed
041	Rep. Ringo	Asks if there is a definition of paranormal event.
053	Gary Oxley	Oregon Real Estate Commissioner Testifies in support of HB 2686.
048	Scott Taylor	Oregon Real Estate Commissioner Testifies in support of HB 2686 and discusses “paranormal event” in –2 amendments.
078	Chair Walker	Asks if the term paranormal event is being used in the real estate industry.
080	Taylor	Answers that the language was an attempt by the real estate industry to be all encompassing.
088	Chair Walker	Asks what realtors are currently disclosing.
095	Bushnell	States that right now the seller is required to disclose anything that is considered material to the property in relation to the buyer.
142	Chair Walker	Asks if listed items in the amendments do not have to be disclosed to the buyer.
143	Rep. Shetterly	Says that the items in the amendments are exclusions therefore not material.
155	Taylor	Says that under current statute if a house has a reputation for being haunted there would be liability under ORS 696.800 to ORS 696.995.
165	Rep. Shetterly	Comments that they should then harmonize the statutes.
177	Rep. Lowe	Asks if the reason that they are bringing this forward is because they’ve had litigation for failure to disclose things.
181	Bushnell	Answers that they rarely have litigation on real estate issues because it goes into arbitration, but they do see complaints being made against realtors and sellers for failure to disclose things that they couldn’t have known to be material to a buyer.
227	Chair Walker	Closes the public hearing on HB 2686 and opens a work session on HB 2009.
<u>HB 2009 WORK SESSION</u>		
238	Counsel Shartel	Discusses –2 amendments of HB 2009 that raise cap on prizes that may be awarded in bingo or lotto games from \$1,500 to \$2,500 (EXHIBIT G) .

250 Rep. Lowe **MOTION: Moves to ADOPT HB 2009-2 amendments dated 04/05/01.**
VOTE: 5-0
250 Chair Walker **Hearing no objection, declares the motion CARRIED.**

263 Rep. Lowe **MOTION: Moves HB 2009 to the full committee with a DO PASS AS AMENDED recommendation.**

265 Rep. Ringo Announces that he is uncomfortable with gambling and that the money is an important part of it even in Bingo so he is going to vote no.
VOTE: 4-1-0
AYE: 4 - Backlund, Lowe, Shetterly, Walker C
NAY: 1 - Ringo

283 Chair Walker **The motion CARRIES.**

291 Chair Walker Closes the work session on HB 2009 and opens a work session on HB 2687.

HB 2687 WORK SESSION

303 Counsel Shartel Introduces HB 2687 that prohibits discrimination by public bodies against persons with disabilities and discusses –2 amendments (**EXHIBIT H**).

318 Rep. Shetterly Says that he missed this hearing and was concerned about the breadth of this bill. Asks what the reach of public body is.

342 **Christy Monson** **League of Oregon Cities**

Testifies in support of HB 2687. Says that they would not have any objection in tying the definition of public body into the Oregon Law Commission’s definition.

345 **Hasina Squires** **Special Districts Association**

Testifies in support of HB 2687.

372 Rep. Shetterly States that they need to work on an amendment.

392 Chair Walker Closes the work session on HB 2687 and opens a public hearing on HB 2917.

HB 2917 PUBLIC HEARING

415 **Rep. Jeff Merkley** **House District 16**

Submits testimony and testifies in support of HB 2917 that prohibits use of genetic information by insurer (**EXHIBIT I**).

TAPE 66, B

002 Rep. Merkley Continues testimony in support of HB 2917.

029 Rep. Ringo Says that if the point is not to compel genetic testing then why not ask the individual for genetic testing rather than banning it outright.

033 Rep. Merkley Answers that genetic discrimination is parallel to racial discrimination. Says that those that would choose privacy would be left paying more for insurance and therefore being discriminated against.

085 **Sean Stevens** **Oregon Genetic Privacy Advisory Committee**

Testifies on HB 2917 and submits testimony from Theodore Falk (**EXHIBIT J**).

190 **Rep. Alan Bates** **House District 52, Physician**

250	Counsel Odell	Testifies in support of HB 2917. Asks if anyone has ever identified a gene that's associated with a good trait.
255	Rep. Bates	Answers that the genes identified focus on illnesses, although they may have identified one for athletics. Says that this becomes an ethics question.
273	Rep. Lowe	Wonders if it's possible that if we make the prohibition against insurance companies then the next step may be that employers will require testing.
283	Rep. Bates	Answers that, to the best of his knowledge, that would be clearly within the realm of possibility.
283	Rep. Lowe	Remarks that what he is saying that he fears that going too far down this path will lead us from natural selection to unnatural selection.
296	Rep. Bates	Answers that he doesn't mean that, but that he wants to prevent people from being discriminated against because of genetic background.
324	Chair Walker	Comments that the mortality tables have always been based on the unknowns of the gene pools.
355	Rep. Bates	Says that this is true, but a big problem is that insurance companies have become very selective to protect their assets and are dropping people to cut down their risk pool. Adds that the change here is exponential and we are in the infancy stage. Says protecting the individual is highly important and he strongly supports this bill.
408	Rep. Lowe	Wants to know what prevents an insurance company from requiring test results.
421	Rep. Bates	Answers that there are no absolute safeguards, but if a patient does not want information released, then they don't have to allow it.
TAPE 67, A 010	Steve Dixon	Oregon State Public Interest Research Group (OSPIRG), Consumer Associate Testifies in support of HB 2917 and submits testimony (EXHIBIT K) .
153	Lou Beres	Christian Coalition
194	Chair Walker	Testifies in support of HB 2917. Closes the public hearing on HB 2917 and adjourns the meeting at 10:21 a.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

A – HB 2597, written testimony submitted by Norman Cobb, 1 p.

B – HB 3264, written testimony submitted by J. L. Wilson, dated 4/9/01, 1 p.
C – HB 3264, written testimony submitted by Robert Neuberger, dated 4/9/01, 1 p.
D – HB 2389, written testimony submitted by Christy Monson, 1 p.
E – HB 2686, -2 amendments, submitted by staff, dated 4/5/01, 1 p.
F – HB 2686, written testimony submitted by Andrea Bushnell, dated 4/9/01, 2 pgs.
G – HB 2009, -2 amendments, submitted by staff, dated 4/5/01, 1 p.
H – HB 2687, -2 amendments, submitted by staff, dated 4/6/01, 1 p.
I - HB 2917, written testimony submitted by Rep. Merkey, dated 4/9/01, 2 pgs.
J – HB 2917, written testimony of Theodore Falk, submitted by Sean Stevens, dated 4/9/01, 7 pgs.
K – HB 2917, written testimony submitted by Steve Dixon, OSPIRG, dated 4/9/01, 2 pgs.
L – HB 2389, written testimony of Dan Hartman, Department of Administrative Services, submitted by staff, dated 4/9/01, 1 p.
M – HB 2917, Register-Guard news article, submitted by staff, dated 3/27/01, 1 p.
N – HB 2389, written testimony of John Gray, Yamhill County, submitted by staff, dated 4/9/01, 2 pgs.