

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CRIMINAL LAW

January 23, 2001
8:30 a.m.

Hearing Room 357
Tapes 3 - 4

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Robert Ackerman
 Rep. Jo Ann Bowman
 Rep. Lane Shetterly
 Rep. Wayne Krieger
 Rep. Vicki Walker
 Rep. Carl Wilson

STAFF PRESENT: **Bill Taylor, Counsel**
 Shannon Reed, Assistant

MEASURE/ISSUES HEARD: **HB 2344 Public Hearing**
 HB 2385 Public Hearing
 HB 2216 Public Hearing
 HB 2217 Public Hearing
 HB 2218 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 3, A		
003	Chair Williams	Opens the meeting at 8:33 a.m.
		<u>HB 2344, HB 2385 PUBLIC HEARING</u>
012	Rep. Lane Shetterly	House District 34 Submits testimony and testifies in support of HB2344 and HB 2385 (EXHIBIT A). Speaks to growing incidents of criminal activities against agriculture and timber industries. Explains that the existence of a pattern and practice of these crimes qualifies them for RICO status, thus elevating them to Class A Felony status.
132	Rep. Shetterly	Testifies that HB 2385 fills in the gap of HB 2344. Says we do not have a crime statute against interference with agricultural research. Mentions this will move these incidents into the RICO statutes. Says that they are after criminal activity, not persons involved in free and legal debate.
203	Rep. Bob Jenson	House District 57 Speaks on eco-terrorism in his district at agricultural experimental facilities.
270	Vice Chair Bowman	Comments on balance of good and bad aspects of information

gathering versus racketeering.

290	Rep. Shetterly	Says he is amenable to broadening language to reflect balance. Says that the purpose here is to catch criminals.
318	Vice Chair Krieger	Asks if these bills address destruction of private property?
322	Rep. Shetterly	Responds yes.
358	Chair Williams	Says we need to make sure “intent” is associated with the bill so as not to sweep others into the racketeering statute.
429	Terry Witt	Executive Director, Oregonians for Food and Shelter Submits testimony and testifies in support of HB 2344 and HB 2385 (EXHIBIT B) . Says that this destruction is designed to impede technological advancement and destroy personal property.
TAPE 4, A		
140	Michael Hicks	Logging Manager, Boise Cascade, Corp. Submits testimony and testifies in support of HB 2344 and HB 2385. Recounts experience with eco-terrorists (EXHIBIT C) .
242	Katie Cate	Oregon Cattlemen’s Association Testifies in support of HB 2344 and HB 2385. Addresses cattle rustling, and property destruction. Expresses concern for family safety in violent activity.
297	Chair Williams	Asks Mr. Witt about some recommendations and suggests with Rep. Shetterly and Counsel Taylor.
317	Dave Nelson	Oregon Seed Council Testifies in support of HB 2344 and HB 2385.
389	Marcia Keith	Oregon Veterinary Medical Association Testifies in support of HB 2344 (EXHIBIT D) .
404	Pete Test	Associate Director of Governmental Affairs, Oregon Farm Bureau Federation Testifies in support of HB 2385. Explains information gap.
465	Bill Houser	Oregon Criminal Defense Lawyers Association Testifies in support of HB 2385. Asks to work on language of that bill.
489	Byron Chatfield	Assistant Attorney General, Criminal Justice Division, Department of Justice. Testifies in support of HB 2344 and the concept of HB 2385. Comments on RICO---reflects on the continuing series of criminal conduct saying the pattern of activity is the key, along with a connection.
TAPE 3, B		
020	Vice Chair Bowman	Asks how this is different from the way we handle general crime now?
027	Chatfield	Responds that RICO is geared for those who are involved in greater detail, rather than the isolated incident.
039	Rep. Walker	Asks about the Oregon State University research facility, and wonders if they break in and copy evidence to expose a certain practice and they do it three times, is it a RICO offense?
058	Chatfield	Responds that as a prosecutor, he would try to determine intent.
077	Rep Walker	Asks if this allows for the organization to be prosecuted instead of individual.
087	Chatfield	Responds that with RICO there must be an enterprise and the

person must be seen as a participant in that enterprise, not just associated with the organization. In that case the organization can be prosecuted.

105 Rep. Ringo Inquires as to how you tie the organization with activity of the individual.

120 Chatfield Explains that through investigation you should be able to tie enterprise and individual together.

156 Rep. Lowe Asks how thoroughly organized must the enterprise be. What if it is someone wanting to belong to the group, but acting independently?

164 Chatfield Answers that if there is a pattern of racketeering and if individuals are associated by the act, then the organization is not necessarily held responsible.

183 Rep. Shetterly Clarifies the implications of the group versus individual activities.

192 Rep. Ringo Comments on accountability of peaceful protest to qualify as a RICO felony.

214 Chatfield Responds that it depend on intent and actual activity.

243 Counsel Taylor Clarifies that activity cannot be on private property. However, on public property the RICO predicate acts portion would not apply.

264 Rep. Ackerman Asks if the crimes were misdemeanors, could they be elevated to the Class A RICO felonies.

276 Chatfield Answers yes, depending on the pattern and connection.

288 Rep. Wilson Closes public hearing on HB 2385 and HB 2344. Opens a public hearing on HB 2216, HB 2217, and HB 2218.

HB 2216, HB 2217, HB 2218 PUBLIC HEARING

294 **Andrew Aubertine** **Assistant Attorney General, Department of Justice**
 Submits testimony and testifies in support of HB 2216, HB 2217, and HB 2218 (**EXHIBIT E**). Testifies that settlements may be unfair to small businesses in Oregon versus large national companies currently covered in national anti-trust laws. States that courts have dismissed claims because Oregon anti-trust acts are limited to only activities within Oregon state borders. Explains that the statue is wrong and needs clarification.

471 Aubertine Discusses HB 2217 and HB 2218. Explains that they provide indirect purchasers with right to seek damages under anti-trust acts.

TAPE 4, B

036 Rep. Walker Asks if indirect purchaser has no standing under federal law to sue manufacturer or wholesaler.

049 Aubertine Answer that is correct. The only exposure is with the direct purchaser. Discusses the “Illinois Brick” repealer that allows indirect purchaser to bring a damages lawsuit.

092 Aubertine Explains that six major vitamin companies were sued for price fixing by federal anti-trust courts and won. Says the states with the repealer brought their own suits, and settled. Since Oregon doesn’t have a repealer, recovering monies from the federal settlement was considerably less than that recovered for states with repealer.

142 Vice-Chair Bowman Asks why we need to fix this and wonders if the state is now involved in more suits.

147	Aubertine	Answers yes. Explains that in a global market there is more exposure and we need to be able act in a multi-state case.
173	Aubertine	Supports HB 2218 to protect the indirect purchaser. Discusses the difference between disgorgement which forces wrong-doer to give up proceeds of unlawful activity, and restitution which makes sure that those who suffered be made whole again. Says that the bills are closely related, but one is a damages bill and the other is an equity bill.
244	Vice Chair Bowman	Asks if both bills will be consolidated.
246	Aubertine	Answers yes, they could be under anti-trust laws of Oregon and give the victim the choice of damages or restitution.
292	Chair Williams	Closes public hearing and adjourns meeting at 10:36 a.m.

Submitted By,

Reviewed By,

Shannon Reed,
Administrative Support

Bill Taylor,
Counsel

EXHIBIT SUMMARY

A- HB 2344 and HB 2385 testimony submitted by Rep. Lane Shetterly, dated 1-23-01, 21 pgs.

B- HB 2344 and HB 2385 testimony submitted by Terry Witt, Executive Director, Oregonians for Food and Shelter, dated 1-23-01, 23 pgs.

C- HB 2344 and HB 2385 testimony submitted by Michael Hicks, Logging Manager, Boise Cascade, Corp., dated 1-23-01, 4 pgs.

D- HB 2344, testimony submitted by Marcia Keith, Oregon Veterinary Medical Association, dated 1-23-01, 1pg.

E- HB 2216, HB 2217, HB 2218, testimony submitted by Andrew Aubertine, Assistant Attorney General, dated 1-23-01, 44 pgs.