

**HOUSE COMMITTEE ON JUDICIARY - CIVIL LAW**

January 22, 1999 Hearing Room 357

1:00 PM Tapes 7 - 8

**MEMBERS PRESENT: Chair Shetterly, Chair**

**Rep. Williams, Vice-Chair**

**Rep. Backlund**

**Rep. Edwards**

**Rep. Lowe**

**Rep. Wells**

**Rep. Witt**

**MEMBER EXCUSED: Rep. Uherbelau, Vice-Chair**

**Rep. Walker**

**STAFF PRESENT: Aaron Felton, Counsel**

**Rachel Short, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2387**

**HB 2315**

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 7, SIDE A		

004	Chair Shetterly	Calls meeting to order at 1:05 p.m
026	Rep. Williams	Opens public hearing on HB 2387.
030	<b>Aaron Felton</b>	<b>Judiciary Counsel</b>  HB 2387 would modify the laws of abatement of nuisance suits. I would change the law so that the cases could go through small claims court if the damages claimed were less than \$750. It would allow people harmed by the nuisances to collect no economic damages.
042	<b>Rep. Lane Shetterly</b>	<b>State Representative, House District 34</b>  Defines a nuisance house. Discusses that under state law right now, drug houses, gambling houses and prostitute houses are subject to be abated. Discusses remedies for residents of neighborhoods with nuisance houses. Discusses an abatement action. Discusses the difficulty in getting the city's help on this. Discusses the amount of days that should pass before a hearing is scheduled. This bill allows for a filing of an action in a small claims court. Discusses whether a court can abate or shut the place down for a year. A jury process could slow this down which would defeat the point of this bill. This bill would allow the court to consolidate so each person could file his or her own complaint.
169	Rep. Edwards	Asks about the definition of emotional discomfort and inconvenience of certain situations. Are there limits to this?
192	Chair Shetterly	Refers to line 12, pg.1. This is limited to drugs, prostitution and gambling. It is a bit unclear as to whether a small claims court would grant any kind of economic damages. This bill enables neighbors to ask for damages in addition to just the injunction, although the amount they ask for would be limited by the small claims court.
219	Rep. Edwards	Asks for a more precise definition as to what you can make claims against.
230	Chair Shetterly	Refers to line 13 and 14 of HB 2387.
226	Rep. Lowe	Discusses certain neighborhoods in her district where residences have been interviewed about certain taverns and nuisance type activities. Asks about shutting down a place without a real hearing.
253	Chair Shetterly	The only commercial establishment that would be subject to this suit would be a commercial house of prostitution, a commercial house of illegal drug dealing and a commercial house of illegal gambling.
272	Rep. Lowe	Illegal activities sometimes happen in commercial establishments. Would neighbors of these establishments be able to bring an action to abate a nuisance in small claims court?

295	Chair Shetterly	Yes. However, this bill does not allow you to abate the business but to enjoin it. The law as it states right now allows you to enjoin this, but this bills provides a different venue to do this.
311	Rep. Lowe	So the venue cannot only be commercial, but residential as well.
314	Chair Shetterly	Refers to ORS 105.555.
319	Rep. Backlund	Did you anticipate anyone to oppose this?
327	Chair Shetterly	No.
332	Rep. Witt	Discusses a possible constitutional conflict.
344	<b>Dave Heynderickx</b>	<b>Legislative Counsel</b> Defines individual claims. Discusses the process of filling out a complaint.
361	Chair Shetterly	We are consolidating the proceeding, not the case. You would still have separate judgements entered on each claim.
366	Rep. Witt	This could be a joint job by the community to go after a certain establishment. Discusses the possible financial situation that could be caused by this bill.
376	Heynderickx	Discusses possible financial solutions as it relates to how this bill is working in California.
380	Rep. Witt	You are bypassing a jury trial.
388	Rep. Williams	Without the consolidation process the same result would be made if there was no consolidation for the court to hear this in all one proceeding. This makes the whole process much easier.
403	Rep. Witt	What if an attorney coordinates a community to go after a certain establishment?
416	Rep. Williams	That could happen today. The only difference is that it wouldn't all be handled in one proceeding, it would be handled in individual proceedings.
420	Heynderickx	Discusses the trial procedures that would most likely take place under this bill.
446	Rep. Wells	Discusses a farm meeting, which he attended, that showed concern over this same subject. Refers to ORS 20335 and 20365.

**Tape 8, Side A**

043	Heynderickx	Discusses the process in deciding what would be "nuisance activities".
057	Rep. Wells	Under what authority do the cities have to expand this list?
060	Heynderickx	Explains that this law does not tell local governments that they cannot have any other laws regarding nuisance abatement.
075	Rep. Wells	How would this bill effect the new county ordinance that we have? Would they be able to move to small claims or is it just available for individuals?
079	Heynderickx	This bill should not have any effect on this ordinance.
086	Rep. Wells	Discusses Sec. 6 of HB 2387.
090	Heynderickx	Discusses the necessity to look at this ordinance.
107	Rep. Witt	Is this the first time by statute that Oregon has contemplated authorizing small claims departments to be involved in abatement actions?
112	Heynderickx	Discusses the statute as it relates to people bringing certain actions to the small claims department.
132	Rep. Witt	Asks about the provisions in finding of economic damages.
136	Heynderickx	Discusses what it means to have a nuisance abatement action.
151	Rep. Witt	Has there ever been a study done in Oregon to try to make a qualitative assessment of the effectiveness and the quality of justice that is provided in small claims compared to circuit courts?
148	Heynderickx	I donit know of any such study.
164	Rep. Witt	Do you feel the lack of formal requirement provides additional protections?
169	Heynderickx	Discusses the rules of evidence and procedure as they relate to small claims proceedings.
182	Rep. Williams	Explains that it seems to him that the judges of small claims courts make an extra extension of effort to ensure that justice is done. Discusses the policies dealing with small claims courts.

199	Rep. Witt	Feels that the quality of justice is low in small claims courts. Discusses how he feels that this bill would extend more authority to small claim courts. Asks about the steps a person would take if they did have an abatement action.
215	Heynderickx	The law has always provided for temporary proceedings in situations where the defendant of the action continues with the action after the judge had asked them to stop. Discusses the difference between civil and criminal action. Discusses the use of pro tem judges.
266	Rep. Lowe	Feels that the quality of justice has been excellent in small claims court. Discusses line 7, pg.1 of HB 2387. Asks about the broadness in the access to who can decide what a nuisance is.
313	Heynderickx	For purposes of stopping the activity, anyone from the county can file a complaint.
328	Rep. Lowe	Is it the contemplation that there needs to be a direct injury to the person bringing in the claim?
336	Heynderickx	Yes, especially if they are collecting damages.
347	Rep. Lowe	It is not the intention of this bill that we would be giving private persons law enforcement authority to punish or stop criminal activity from a given business.
342	Heynderickx	No. The ability to abate is an ancient common law of remedy that has been available for a long time.
375	Rep. Williams	Close public hearing and opens work session.
<b><u>HB 2387 n WORK SESSION</u></b>		
391	Rep. Edwards	<b>MOTION: Moves HB 2387 to the floor with a DO PASS recommendation.</b>
413		<b>VOTE: 6-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 3 - Shetterly, Uherbelau, Walker</b>
	Chair Williams	<b>The motion CARRIES.</b>

		<b>REP. LANE SHETTERLY will lead discussion on the floor.</b>
371	Rep. Williams	Moved to the floor with a do pass recommendation with Chair Shetterly as carrier. Opens public hearing to HB 2315.
424	Felton	Reviews HB 2315 and explains that it was filed by the Oregon Collectorís Association.
<b>Tape 7, Side B</b>		
011	<b>Jim Markee</b>	<b>Oregon Collectorís Association</b> Testifies and submits written testimony on HB 2315 ( <b>EXHIBIT A</b> ).
045	Rep. Wells	I have a problem with some of the figures in this statute.
054	Markee	I agree. I think they should be lowered too.
057	Rep. Williams	Reminds the committee members that the OSB has shown some concerns about this bill. They are not able to be present today. Closes the public hearing. No action taken. Adjourns hearing at 2:04 p.m.

Submitted By, Reviewed By,

Rachel Short, Aaron Felton,

Administrative Support Counsel

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**EXHIBIT SUMMARY**

**A ñ Testimony on HB 2315, Jim Markee ñ 1 pg.**