

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

March 03, 1999 Hearing Room 357

1:00 p.m. Tapes 52 - 53

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2417

HB 2706

HB 2717

HB 2863

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 52, A		

004	Chair Shetterly	Calls meeting to order at 1:32 p.m.
<u>HB 2417 - PUBLIC HEARING</u>		
017	Greg Mowe	Practice & Procedure Committee, Oregon State Bar Testifies against HB 2417. Discusses their primary concerns with HB 2417 regarding the common law rights of uninsured drivers and intoxicated drivers.
054	Rep. Wells	Have you seen the amendment to HB 2417?
055	Mowe	States that he did see the amendment and they were an improvement, but there is still a concern regarding the rights of the innocent party to collect damages in a claim.
065	Chair Shetterly	Asks Mr. Mowe about his law practice.
067	Mowe	Explains his practice is primarily real estate litigation and does not include vehicle accidents.
081	Chair Shetterly	Closes public hearing.
<u>HB 2863 - PUBLIC HEARING</u>		
088	Rep. Roger Byer	State Representative, House District 28 Discusses the similarities between HB 2863 and HB 2961 and the history of HB 2961.
111	Greg Mowe	Practice & Procedures Committee, Oregon State Bar Testifies and submits written testimony in support of HB 2863 (EXHIBIT A). Discusses the similarities between HB 2863 and SB 266 and relates the history of SB 266.
144	Chair Shetterly	Closes public hearing .
<u>HB 2417 - PUBLIC HEARING</u>		
148	Counsel Felton	HB 2417 bars recovery of non-economic damages in civil action for injury or death arising out of operation of motor vehicle if plaintiff was driving while under the influence of intoxicants or driving uninsured at time of accident.
190	Luis Martinez	Citizen, Salem, Oregon

		Testifies and submits written testimony against HB 2417 (EXHIBIT B). Discusses and gives examples of his concerns regarding HB 2417 and that it limits citizen's rights in vehicle accident cases. Discusses changes to HB 2417 regarding the uninsured driver.
266	Rep. Witt	Asks if there should be consequences for an uninsured driver because he is driving without insurance which is against the law.
275	Martinez	States that there are consequences for driving uninsured.
280	Rep. Witt	Discusses that the philosophy of HB 2417 is that if you do not pay for insurance, you shouldn't receive any benefits of insurance. Do you think there is something inequitable in terms of denying full benefits of the system to someone who is not paying their fair share of insurance?
290	Martinez	States that if a person pays for insurance and never uses the insurance for any losses, he is not entitled to receive that paid insurance back. There is no insurance pool to hold those insurance payments.
304	Rep. Witt	States that there is a pool that pays for losses accrued by insured drivers and if you do not pay for insurance, you do not receive the benefits of the insurance system.
317	Martinez	States that if a driver is negligent in an accident against an uninsured driver, it does not relieve the insured driver of his responsibilities just because the other driver is uninsured. Having insurance has no impact on driving skills.
339	Rep. Witt	Asks that if someone is driving uninsured and causes an accident which results in loss of life and the insured driver did not have uninsured insurance coverage, would it be fair for the insured driver to suffer a monetary loss because the uninsured driver cannot cover the losses. If the uninsured driver was involved in an accident caused by the insured driver, the uninsured driver shouldn't receive recovery of losses either.
361	Martinez	States that Oregon laws requires uninsured coverage. Discusses and gives examples of uninsured drivers involved in accidents. Uninsured drivers should not be grouped into one category, but looked at as a different individual cases.
400	Chair Shetterly	Explains the example used in Mr. Martinez's testimony regarding a friend who borrowed another friend's uninsured car, resulting in an accident that was not his fault and receiving no monetary damages. States that the driver could use his own car insurance to cover his own losses.
413	Martinez	In the State of Oregon motor vehicle laws, the primary insurance coverage would come from the vehicle's insurance. Secondary insurance coverage would come from the driver of the vehicle.
427	Chair Shetterly	Closes the public hearing

HB 2706 n PUBLIC HEARING

Tape 53, A

004	Mark Simmons	State Representative, House District 58 Testifies and submits written testimony in support of HB 2706 (EXHIBIT C). Discusses the history of HB 2706. Gives an example of a circuit court case which resulted in HB 2706. States that ORS 87.142, page 2, line 15, paragraph 16, timbers means saw logs or felled logs. ORS 87.222, section 2 reads, "to include a person who hires or permits another person to go on his land to cut timbers."
089	Rep. Wells	What is the difference in saw logs and felled logs?
095	Rep. Simmons	I do not know.
099	Rep. Wells	Asks why HB 2706 is taking on the new words, "saw logs or felled logs".
114	Rep. Uherbelau	Were the language changes a result of questioned issues in the supreme court case that was related to in testimony?
116	Rep. Simmons	The change was the result of questioned issues in a circuit court case.
118	Rep. Uherbelau	States that the court case did not seem to relate to any of the language changes in HB 2706.
134	Vice Chair Williams	Explains the situation where a copy of the court opinion from the circuit court case was taken to the Legislative Counsel and asked to create a bill to fix the problem resulting from that opinion.
142	Rep. Simmons	States that the court case opinion could open up a broad interpretation regarding timber liens.
152	Vice Chair Williams	Asks if the Small Wood lot Owners Association has taken a position on this bill.
157	Rep. Simmons	I have not heard from them.
159	Vice Chair Williams	Closes the public hearing.

HB 2717 - PUBLIC HEARING

178	Pat Egan	Oregon Association of Broadcasters (OAB)
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		Testifies and submits written testimony in support of HB 2717 (EXHIBIT D). Discusses the language of HB 2717 and how it protects broadcasters from lawsuits who are involved in a political campaign from lawsuits by just being a messenger for political advertising. Discusses the process for airing political campaign advertisements by broadcasters. Explains the proposed amendments and how they will discourage politically motivated lawsuits. States that these proposed amendments will protect newspaper publishers and cable system operators as well as broadcasters.
291	Rep. Uherbelau	Would the New York Times Standard apply to the broadcasters referred to in HB 2717?
301	Dominic Monahan	Oregon Association of Broadcasters (OAB) Testifies in support of HB 2717. Yes, the New York Times Standard does apply to HB 2717.
305	Egan	Discusses OAB's intent regarding HB 2717 and the broadcaster's immunity from lawsuits.
315	Rep. Witt	Asks for clarification regarding the OAB testimony on page 2, line 1 that says, "the ballot measure sponsor could not seek relief from the political action committee placing the ad until after the election".
323	Egan	Discusses the situation of a ballot measure sponsor who could not sue the opposing campaign until after the election.
334	Pat McCormick	Oregon Association of Broadcasters (OAB) Discusses the court case that led to the creation of HB 2717.
370	Rep. Uherbelau	Why did the broadcasters have to wait until after the election to stop the slanderous political campaign ad?
377	McCormick	I do not know.
383	Rep. Witt	States that you can bring action during a campaign. Discusses the court case and how it was brought against the broadcaster and not necessarily to stop the ad.
393	McCormick	Agrees to the fact that the case was brought about to stop the ad which could not immediately be pulled of the air. Discusses the broadcasters involvement in campaign advertisements according to the law.
410	Rep. Lowe	Discusses the two different remedies that would stop the campaign ads.
420	McCormick	After an election there are other kinds of damages that could be sought by a defendant who was proved to deliver misleading information in a campaign.

432	Egan	Describes a case where the plaintiffs did sue each individual broadcaster for money damages.
446	Rep. Lowe	Discusses how the restraining order, or injunction relief, can immediately stop a slanderous campaign advertisement.
469	McCormick	States that most courts would not stop the television station from airing the slanderous advertisement.
Tape 52, B		
040	Monahan	Discusses the federal statute, section 16 of the Federal Communications Act, that gives immunity to all broadcasters from any liability for an advertisement involving a federal or state candidate. Discusses the amount of campaign advertisements during the last two weeks of an election campaign and the responsibility of the broadcasters to monitor these ads.
095	Rep. Lowe	Would HB 2717 keep the candidate from getting a temporary restraining order requiring an ad to be pulled?
102	Monahan	States that HB 2717 does not preclude a candidate or a backer of a particular ballot measure from seeking injunctive action against the proponent.
107	Rep. Edwards	Expresses his concern about not being able to immediately pull a slanderous advertisement from airing. Does HB 2717 promote more campaign ads?
157	Egan	Discusses the case lawis clarity regarding the broadcasteris responsibility of airing the ad. Discusses the amount of threatening lawsuits toward the broadcasters during a campaign and the responsibility of the broadcasters airing the campaign ads.
189	Rep. Edwards	If HB 2660 was passed, would there be more campaign advertisements?
197	Egan	States that in regards to his conversations with broadcasters, they would not air any ballot measure advertisements.
234	Rep. Witt	States that advertisers do proff-read ads. Discusses a way to protect the broadcaster from attorney fees, but still let the slanderous ads be pulled.
261	Monahan	Discusses the recovery of attorney fees for broadcasters. Discusses the hidden revenue losses concerning pulling campaign advertisements.
308	Chair Shetterly	Closes public hearing.

HB 2863 - PUBLIC HEARING

320	Jim Griffin	Trial Division, Department of Justice (DOJ) Testifies and submits written testimony against HB 2863 (EXHIBIT F). Discusses and gives examples of the three procedural concerns of the trial division regarding the language of HB 2863.
Tape 53, B		
040	Griffin	Discusses and explains the three procedural concerns of the trial division. Discusses the implication of Risk Management Division regarding HB 2863.
112	Dan Hartman	Risk Management Division, State of Oregon Testifies and submits written testimony against HB 2863 (EXHIBIT G). Reiterates the division's opposition to HB 2863.
133	Rep. Uherbelau	Discusses the effect of HB 2863 regarding tort claim notices.
146	Chair Shetterly	Closes public hearing.
157	Chair Shetterly	Adjourns meeting at 3:05 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

- A - HB 2863, Written testimony, Greg Mowe, p. 5**
- B - HB 2417, Written testimony, Luis Martinez, p. 2**
- C - HB 2417, Written testimony, Rep. Simmons, p. 9**
- D - HB 2717, Written testimony, Pat Egan, p. 3**
- E - HB 2717-1, Proposed Amendments, p. 1**
- F - HB 2863, Written testimony, Jim Griffin, p. 2**
- G - HB 2863, Written testimony, Dan Hartman, p. 1**