

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

April 21, 1999 Hearing Room 357

1:00 p.m. Tapes 119 - 120

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

MEMBER EXCUSED: Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2223 - Public Hearing

HB 2852 - Public Hearing

HB 2721 - Public Hearing

HB 3432 - Public Hearing

HB 3504 - 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.

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TAPE/#	Speaker	Comments
TAPE 119, A		
005	Chair Shetterly	Calls meeting to order at 1:08 p.m.
<u>HB 2223 & HB 2852 ñ PUBLIC HEARING</u>		
031	Rep. Floyd Prozanski	<p>State Representative, House District 40</p> <p>Testifies and submits written testimony in support of HB 2852 which prohibits courts from allowing Department of Justice to become party in action or to intervene in action solely by reason of allegation asserting claim to punitive damages. (EXHIBITS A & B). States that the intent of HB 2852 is not to impact the Criminal Injuries Compensation Account for the Department of Justice, Criminal Victims section.</p>
063	Joel DeVore	<p>Attorney, Eugene, Oregon</p> <p>Testifies in support of HB 2852 . Explains the ñ1 amendments relating to punitive damages (EXHIBIT C). Discusses the stateís policy for punitive damage awards in court cases. States that punitive damage cases take too long to settle because of state policy. Gives an example of a court case where the state intervened which resulted in a larger judgment. Explains the intent of HB 2852 regarding appropriate punitive damages. States that upon receipt of the verdict, the parties may not reallocate the juryís determination of compensatory and punitive damages in a judgment. Explains why HB 2852 should pass regarding stateís intervention in award of punitive damages.</p>
337	Chair Shetterly	Does ORS 18.504, sub section 4 relate to the allocation from the first dollar towards punitive damages?
353	DeVore	ORS 18.504, sub section 4 does not require the state to settle the award. Discusses the money priority for the state concerning allocation of the Criminal Injuries Compensation Account.
375	Rep. Walker	Does the DOJ get to actively intervene in a case and help decide the award?
390	DeVore	Yes.
395	Rep. Uherbelau	Why does our law allow punitive damages in the first place?
404	DeVore	It is a civil punishment for a crime done.
411	Rep. Uherbelau	Is it correct that the victim does not get all of the punitive damage award because a portion of that ward is given to the state?

418	DeVore	Correct.
433	Fred Boss	Department of Justice Testifies in opposition of HB 2852. Testifies in support of HB 2223 which requires that all verdicts, arbitration awards and judgements separately state amount of punitive damages awarded under verdict, award or judgment. HB 2223 modifies the current statute that clarifies arbitration awards and allows the courts to give notice to the DOJ as to the punitive award. Discusses why DOJ opposes HB 2852.
Tape 120, A		
035	Boss	Discusses what HB 2852 would allow regarding punitive damages. Section 2 of HB 2852 would cause chaos because of retroactively redoing settlements and judgments. States that 99% of the punitive cases settle out of court. Discusses the process of a settlement conference between the judge and the attorney for punitive damage awards.
121	Rep. Uherbelau	Does current law concerning damage awards discourage settlements in court?
155	Boss	Discusses why there haven't been any deterrents in the plaintiff collecting a punitive damage award.
177	Rep. Uherbelau	Doesn't it bother DOJ that a plaintiff does not receive all of the punitive damages that he is entitled to?
198	Boss	I disagree with the premise that the plaintiff does not receive adequate punitive damages.
212	Rep. Uherbelau	Asks about DOJ's policy of awarding punitive damages.
216	Boss	Explains why a plaintiff does not have to settle with DOJ.
237	Mary Ellen Johnson	Crime Victims Programs, Department of Justice Testifies and submits written testimony in opposition to HB 2852 (EXHIBIT D). Explains what the funds in the Criminal Injuries Compensation Account are used for. States that HB 2852 will negotiate victims out of their share of punitive damages that they so earnestly deserve and need. Relates a case regarding punitive damages that punishes the wrongdoers.
318	Chair Shetterly	Discusses presenting a fair process for allocating the Criminal Injuries Compensation Account funds.
322	Rep. Lowe	Explains the importance of damage award settlements. What are the arguments against the state getting a portion of the punitive damages?

387	Chair Shetterly	Explains that after the judges verdict, the parties may not reallocate the jury's determination of compensatory and punitive damages.
397	Boss	Asks about the state not having an objection to the terms of the settlement.
455	Steve Lippold	Oregon Procedure and Practice Committee (OP & P), Oregon State Bar Testifies and submits written testimony on behalf of Stacy Hankin in opposition to HB 2852 and HB 2332 (EXHIBITS E & F). Discusses what parties should have control of any damage award settlement. State the DOJ's involvement in the punitive damage award would hinder a settlement.
Tape 119, B		
048	David Nebel	Oregon Coalition Against Domestic and Sexual Violence, Oregon Law Center Testifies in opposition of HB 2852 and submits written testimony on behalf of Phyllis Barkhurst (EXHIBIT G). Discusses why Sexual Assault Support Services is opposed to HB 2852.
066	Chair Shetterly	Asks about the process of allocating funds for the Criminal Injuries Compensation Account.
069	Nebel	I do not know.
075	Rep. Uherbelau	Asks about the injustice of a crime victim receiving money from the Criminal Injuries Compensation Account when the victim has no involvement to the parties that pay into the fund.
096	Nebel	I do not know the process of the allocation of funds from the Criminal Injuries Compensation Account.
114	Chair Shetterly	Closes public hearing.
<u>HB 2721 n PUBLIC HEARING</u>		
117	Counsel Felton	HB 2721 requires court to grant motion for summary judgment if adverse party fails to support essential element of case.
127	Rep. Williams	Explains the n1 amendments (EXHIBIT H). Explains burden shifting regarding evidence in summary judgments. Discusses the purpose and the background of HB 2721 concerning changing Oregon's summary judgment rule (EXHIBIT I). States that HB 2721 as amended by the -1 amendments brings state law in line with the federal court's interpretation of the summary judgment rule.

224	Chair Shetterly	Do we have -1 and ñ2 amendments?
226	Rep. Williams	No. Explains why the ñ2 amendments will not be considered.
242	Chair Shetterly	Would you give us an example of a summary judgment issue?
244	Rep. Williams	Gives an example of a summary judgment.
264	Chair Shetterly	States that the court can enter into a judgment without the necessity of a trial.
269	Rep. Williams	Explains why HB 2721 is necessary in Oregon for changing current law regarding summary judgments.
291	Rep. Walker	Is it always necessary for judges to grant summary judgements?
300	Rep. Williams	Explains why judges grant summary judgments when not necessary.
334	Rep. Lowe	What percent of summary judgements are granted in federal courts?
348	Rep. Williams	I do not know.
365	Rep. Lowe	Does HB 2721 shift the burden of evidence?
370	Rep. Williams	Yes. Explains why HB 2721 shifts the burden of evidence in regards to a summary judgment.
394	Rep. Lowe	Why is it a good public policy to pass HB 2721?
396	Rep. Williams	Summary judgements are a good pre-trial method of deposing portions of a case when an opposing party has no basis upon which to resist whatever that case is. Summary judgments have worked well in federal courts.
417	Rep. Lowe	What is the downside of HB 2721?
419	Rep. Williams	There are some parties that would not like to see portions of the case deposed and would like to take the case to a jury level.
438	Maury Holland	Citizen, Eugene, Oregon Testifies in support of HB 2721. Explains the purpose of the Oregon Rules Procedure.

Tape 120, B

035	Holland	Explains Civil Action Forms which would contain absolute facts for the case. Discusses the difference in federal summary judgments and state summary judgments and why the state should not follow the federal model of granting summary judgments. Discusses the general public policy regarding summary judgments. Gives an example of a cases regarding shifting the burden of evidence with a summary judgment.
162	Chair Shetterly	Would you see HB 2721 as a revolutionary change in state courts?
165	Holland	HB 2721 would be incremental in court proceedings and would require no language change in procedural rules.
181	Mitch Rohse	Department of Land Conservation (DLCD) Testifies in support of HB 2721. Discusses the Strategic Lawsuits Against Public Participation (SLAPP) issue and how it relieves the burden on the citizens who want to testify against public bodies. Explains why HB 2805 concerning SLAPP suits compliments HB 2721.
220	Harry Auerbach	Deputy City Attorney, City of Portland Testifies and submits written testimony in opposition to HB 2721 (EXHIBIT J). States that opposition to HB 2721 was changed to a support of HB 2721 because of the ñ1 amendments. Discusses the concerns with HB 2721 regarding summary judgment procedures. Discusses the concerns with the ñ1 amendments in reference to language that says a summary judgement is not a discovery procedure.
298	Robert Neuberger	Attorney, City of Portland Testifies and submits written testimony in opposition to HB 2721 (EXHIBIT K). Discusses the Procedure and Practice Committeeís concern with SB 608 that is similar to HB 2721. Discusses why Oregon trial judges are afraid to grant summary judgments. Discusses why there were reversible decisions on summary judgments. Explains what current Oregon law says regarding summary judgments.

Tape 121, A

040	Neuberger	Discusses filed cases regarding summary judgments that take court and staff time. Explains why Oregon does not need to follow the example of the federal summary judgment procedures. Gives an example of a court case regarding federal judgeís summary judgment in comparison with current Oregon law.
136	Rep. Uherbelau	Asks what HB 2721 does in regards to proving a signature is a forgery without a trial.

157	Neuberger	Explains why a defendant can prove the validity of a signature by using an affidavit to bring in someone to testify that the signature is valid.
176	Rep. Uherbelau	Asks for the necessity of HB 2721 concerning summary judgements.
188	Rohse	Explains why you need to identify what the issue is in a summary judgment. Explains the Sanction Rule that is designed to keep people that are involved in a case from cheating with the evidence.
223	Steve Larsen	Oregon Practice and Procedure Committee (OPPC) Testifies in neutrality of HB 2721. Explains why the committee OPPC changes the opposition to HB 2721 to neutrality because of the amendments concerning the burden shifting.
258	Chair Shetterly	Closes public hearing.
<u>HB 3432 n PUBLIC HEARING</u>		
263	Counsel Felton	HB 3432 directs Oregon Government Standards and Practices Commission to determine prior to beginning investigation whether alleged violation of ethics laws by member of Legislative Assembly is protected under speech and debate clause of the Oregon Constitution.
276	Chair Shetterly	Closes public hearing.
<u>HB 3504 n PUBLIC HEARING</u>		
282	Counsel Felton	HB 3504 authorizes active member of Oregon State Bar to bring action to enjoin unauthorized practice of law by another person.
294	Matt Farmer	Oregon Association of Realtors Testifies in opposition of HB 3504. Explains why the OAR opposes HB 3504 concerning different views of law between attorneys and realtors.
334	Henry Tilghman	Oregon State Bar Unlawful Practice & Law Committee (OSBUPL) Testifies in neutrality of HB 3504. States that the OSBUPL would like to participate in any future amendments to HB 3504 concerning the Oregon State Bar bringing filing a suit in the name of the Bar. States that HB 3504 is not necessary because the process of action described in HB 3504 currently exists in law.
365	Chair Shetterly	Closes public hearing.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,

Administrative Support Counsel

EXHIBIT SUMMARY

- A - HB 2852, Written testimony, Rep. Prozanski, p. 2**
- B - HB 2852, Written testimony, Rep. Prozanski, p. 3**
- C - HB 2223, Proposed -1 amendments, Joel Devore, p. 1**
- D - HB 2852, Written testimony, Mary Johnson, p. 1**
- E - HB 2852, Written testimony, Stacy Hankin, p. 1**
- F - HB 2223, Written testimony, Stacy Hankin, p. 1**
- G - HB 2852 & HB 2223, Written testimony, Phyllis Barkhurst, p. 1**
- H - HB 2721, Proposed -1 amendments, Rep. Williams, p. 1**
- I - HB 2721, Written testimony, Rep. Williams, p. 31**
- J - HB 2721, Written testimony, Harry Auerbach, p. 3**
- K - HB 2721, Written testimony, Robert Neuberger, p. 4**