

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

April 22, 1999 Hearing Room 357

1:00 p.m. Tapes 122 - 124

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 3431 - Public Hearing HB
2721 - Public Hearing & Work
Session**

**HB 3397 - Public Hearing HB
3432 - Public Hearing & Work
Session**

HB 3386 - Public Hearing HB 3361 Public Hearing

& Work Session HB 3284 - Public Hearing

HB 2998 - Public Hearing HB 3578 - Public Hearing

HB 2554 - Public Hearing HB 3245 - Public Hearing

HB 2912 - Public Hearing HB 2985 - 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 122, A		
006	Chair Shetterly	Calls meeting to order at 1:42 p.m.
<u>HB 3431 n PUBLIC HEARING</u>		
024	Counsel Felton	HB 3431 eliminates joint liability of tortfeasor.
027	Chair Shetterly	Closes public hearing.
<u>HB 3397 PUBLIC HEARING</u>		
030	Counsel Felton	HB 3397 exempts from public disclosure record of employee addresses submitted to special district to obtain assistance in promoting alternative to single occupant motor vehicle transportation.
037	Bernie Bottomly	Tri-County Metropolitan Transportation (Tri-Met), Portland Oregon Testifies and submits written testimony in support of HB 3397 (EXHIBIT A). Gives the background of HB 3397. Explains the computer based mapping for home addresses of employees in Portland to assist in carpooling which is not public record.
071	Sean Lane	First Consumers National Bank, Transportation Alternatives Group of Oregon (TAGO) Testifies and submits written testimony in support of HB 3397 and submits written testimony on behalf of Francis Royce (EXHIBITS B & C). States that the current public records law limits the ability of TAGO to motivate employees to submit addresses for carpooling matching which Tri-Met provides.
084	Chair Shetterly	Has there been a problem where requests for employees addresses have been denied?
086	Bottomly	Explains a circumstance when address requests can be released if a company's employee addresses are in possession at the same time of the request.

105	Bottomly	States that the Oregon Publishers Association supports SB 501 which relates to HB 3397.
118	Rep. Williams	Who would be requesting employee's addresses?
120	Bottomly	Explains who is requesting the list of employee's addresses from Tri-Met.
137	Chair Shetterly	Closes public hearing.
<u>HB 3386 n PUBLIC HEARING</u>		
150	Counsel Felton	HB 3386 eliminates statute of ultimate repose for civil action against manufacturer of extendable equipment for injury or other damage arising out of contact with power lines.
160	Chair Shetterly	Closes public hearing.
<u>HB 3386 n WORK SESSION</u>		
170	Rep. Uherbelau	MOTION: Moves HB 3386 to the floor with a DO PASS recommendation.
173	Rep. Edwards	Suggests the Senate put in a provision that would have the Law Commission look at HB 3386.
183	Rep. Wells	Expresses his opposition to HB 3386.
190	Chair Shetterly	States that the approach to the problem of the Statute of Ultimate Repose issue in HB 3386 could be addressed case by case.
205	Rep. Uherbelau	VOTE: 7-1 AYE: 7 - Backlund, Edwards, Lowe, Uherbelau, Walker, Williams, Shetterly NAY: 1 - Wells EXCUSED: 1 - Witt
	Chair Shetterly	The motion CARRIES.

		REP. SHETTERLY will lead discussion on the floor.
212	Chair Shetterly	Closes work session.
<u>HB 2998 n PUBLIC HEARING</u>		
215	Counsel Felton	HB 2998 prohibits certain public attorneys from striking.
241	Allison Hassler	Legal Counsel, Oregon American Federation of State-County & Municipal Employees 75 (AFSCME) Testifies and submits written testimony in support of HB 2998 (EXHIBIT D). Explains what HB 2998 would prohibit regarding publicly employed attorneys from going on strike. Gives some background on the relationship between Oregon Association of Justice Attorneys (OAJA) and the Department of Justice (DOJ). Discusses the binding formal opinion by the Ethics Committee concerning whether public attorneys could strike. States that public attorneys will not have to strike if HB 2998 becomes law.
344	Linda Guss	Oregon Association of Justice Attorneys (OAJA) Testifies and submits written testimony in support of HB 2998 (EXHIBIT E). Discusses the reasons why OAJA supports HB 2998 extending binding interest arbitration.
Tape 123, A		
014	Chair Shetterly	Is there a copy of the working draft of the binding formal opinion by the Ethics Committee concerning whether public attorneys could strike?
017	Guss	Would need to ask the Oregon State Bar if we can disclose the binding formal opinion. We could also provide a copy of the 1993 Ethics opinion concerning prohibiting attorneys from striking.
031	John Copic	Multnomah County Prosecutors Association (MCPA) Testifies and submits written testimony on behalf of James Hayden in support of HB 2998 (EXHIBIT F). Discusses the problems that would arise if certain attorneys would strike.
097	Rep. Edwards	Has the issue of striking public attorneys been previously brought before the legislature?
098	Guss	Not to my knowledge, but last session there was a bill similar to HB 2998, but there was no public hearing held.
104	Rep. Edwards	States that HB 2998 puts attorneys in the same category of striking as other

		public safety employees.
122	Paul Snyder	Association of Oregon Counties (AOC) Testifies in opposition to HB 2998. Explains why AOC is opposed to HB 2998 concerning public safety. Discusses the concerns of Deputy District Attorneys with relationship to HB 2998.
156	Rep. Wells	How would the circumstance of striking attorneys appeal to the general public?
161	Snyder	I do not know. States that striking civil attorneys would not put the public at risk.
194	Rep. Williams	Asks for explanation of conflict when attorneys are negotiating on behalf of management.
198	Snyder	Explains the lack of conflict when attorneys would represent management in labor negotiations.
208	Rep. Williams	Who represents the county management in labor negotiations?
211	Snyder	I am not sure, but it does vary from county to county.
216	Rep. Williams	Suggests that maybe counties would hire outside representation for labor negotiations.
220	Rep. Uherbelau	Asks what the problem is with striking public attorneys and why OAC opposes HB 2998.
245	Snyder	Explains why arbitration is more expensive than striking.
277	Hardy Myers	Attorney General, State of Oregon Testifies in opposition to HB 2998. Explains the essence of HB 2998 concerning the process of mandatory arbitration. Explains the reasons why the Attorney General's office opposes HB 2998.
445	Chair Shetterly	What is the time line for the Oregon State Bar's opinion that declares Assistant Attorney Generals may ethically strike?
449	Myers	The Oregon State Bar is shooting for sometime in May, 1999.
466	Chair Shetterly	Closes public hearing.

HB 2554 n PUBLIC HEARING

Tape 122, B

024	Counsel Felton	HB 2554 limits civil liability of health practitioner who provides medical services without compensation. Present the n6 amendments (EXHIBIT G).
040	Scott Gallant	Oregon Medical Association (OMA) Testifies in support of HB 2554. Explains the changes in the n6 amendments.
079	Rep. Edwards	What is an intentional tort?
083	Gallant	Explains what an intentional tort is concerning a provider who intentionally did harm to a patient.
089	Rep. Uherbelau	Why are we not using the term "gross negligence" instead of "intentional tort" in HB 2554?
100	Gallant	I agree that "gross negligence" would be more applicable.
103	Rep. Uherbelau	Asks about immunity for the health provider if the patient were unable to give conformed consent for treatment.
111	Gallant	Explains the importance of getting appropriate consent and who would provide that consent for the patient.
121	Rep. Uherbelau	Suggests making a reference in the -6 amendments for conformed consent.
129	Gallant	There would be no objection to add that language to HB 2554.
133	Rep. Uherbelau	Asks for fairness in reimbursing attorney fees for the plaintiff and defendant.
141	Gallant	Explains the intent of HB 2554 regarding attorney fees.
153	Rep. Uherbelau	Expresses concern for the standard of negligence.
164	Gallant	I understand the concern and will try to resolve the problem of language in HB 2554 regarding negligence.
170	Rep. Edwards	Are the practitioner's employees susceptible to lawsuits?

173	Gallant	That is possible.
182	Rep. Edwards	Why wouldn't we include a practitioner's employee?
186	Gallant	HB 2554 focuses on the actual provision of medical services and those that provide the medical services directly.
198	Chair Shetterly	States that HB 2554 focuses on the volunteer medical provider and not for the entities that receive a salary for their medical services.
208	Rep. Edwards	Why doesn't HB 2554 protect the employee of the non-compensated medical provider?
241	Chair Shetterly	States that there would be no employees if the volunteer team was NW Medical Team.
250	Rep. Uherbelau	HB 2554 protects medical volunteers in a community hospital who do not keep up their insurance.
260	Gallant	States that HB 2554 is designed to encourage volunteer medical workers.
269	Rep. Uherbelau	States that the non-compensated medical providers are volunteers.
275	Chair Shetterly	Is there any fiscal impact for the establishment of the registration program for the medical providers?
264	Gallant	If there is anything, it is miniscule.
295	Kathleen Dailey	Practice & Procedure Committee (P&PC), Oregon State Bar Testifies in opposition to HB 2554. Discusses the concerns of the P&PC for HB 2554 which would create two different standards of medical care, two different informed consent laws, and would require a "good Samaritan" to register or there would be no protection.
327	Chair Shetterly	Asks for explanation of the tort claim issue in HB 2554.
330	Terry Weiner	Practice & Procedure Committee (P&PC), Oregon State Bar Testifies in opposition to HB 2554. Explains the tort claim issue.
355	Chair Shetterly	Closes public hearing.

HB 2721 - PUBLIC HEARING

364	Counsel Felton	HB 2721 requires court to grant motion for summary judgment if adverse party fails to support essential element of case. Presents the -1 amendments.
368	Chair Shetterly	Closes public hearing.

HB 2721 - WORK SESSION

371	Rep. Williams	MOTION: Moves to ADOPT HB 2721-1 amendments dated 04/21/99.
		VOTE: 8-0 EXCUSED: 1 - Rep. Witt
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
379	Rep. Williams	MOTION: Moves HB 2721-1 to the floor with a DO PASS AS AMENDED recommendation.
383	Rep. Uherbelau	Explains the concern with the provision in the -1 amendments regarding burden of producing evidence. Expresses her opposition to HB 3432.
416	Rep. Edwards	Expresses support to HB 3432.
422	Chair Shetterly	States that it is significant that the Dean of the Practice & Procedure Committee is in support of HB 3432.
		VOTE: 5-3 AYE: 5 - Backlund, Edwards, Wells, Williams, Shetterly NAY: 3 - Lowe, Uherbelau, Walker EXCUSED: 1 - Witt
	Chair Shetterly	The motion CARRIES. REP. WILLIAMS will lead discussion on the floor.

HB 3432 n PUBLIC HEARING

469	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 constitution.
480	Chair Shetterly	Closes public hearing.

HB 3432 n WORK SESSION

484	Rep. Williams	Explains the Attorney General's opinion regarding the Oregon Government Standards and Practices Commission.
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Tape 123, B

038	Rep. Williams	Discusses the rules for conflict of interest that have been prepared by the Legislative Counsel.
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050	Rep. Williams	MOTION: Moves HB 3432 to the floor with a DO PASS recommendation.
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	Rep. Williams	VOTE: 8-0 AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly EXCUSED: 1 - Witt
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	Chair Shetterly	The motion CARRIES. REP. WILLIAMS will lead discussion on the floor.
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060	Chair Shetterly	Closes public hearing.
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HB 3361 n PUBLIC HEARING

090	Counsel Felton	HB 3361 requires that child support amount be offset by child's social security benefits received as result of obligor's disability.
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099	Rep. Kathy Lowe	State Representative, House District 26
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		Testifies in support of HB 3361. Rep. Lowe is filling in for Rep. Witt to speak for HB 3361.
116	John Roach	Citizen, State of Oregon Testifies and submits written testimony on behalf of Holly Sanborn and Thomas Ruedy in support of HB 3361 (EXHIBITS I & J). Relates his personal story concerning his disability and inability to pay child support.
281	Ronelle Shankle	Department of Justice, Support Enforcement Division Testifies and submits written testimony in neutrality of HB 3361 (EXHIBIT K & L). Explains the concern of SED with HB 3361.
299	Rep. Uherbelau	Asks about the arrearages in child support when a person is disabled.
314	Shankle	Explains the SED request to draft rules for credit against arrears in child support.
325	Michael Briggett	Citizen, State of Oregon Testifies in support of HB 3361. Explains the inequity of social security money and earned money paid toward child support.
369	Carl Stecker	Oregon District Attorneys Association Testifies in neutrality to HB 3361. Explains the procedure of the child's income paying the obligor
402	Rep. Uherbelau	Expresses the concern with the process of looking at the child's income and not looking at the non-disabled obligor's income.
417	Stecker	Discusses the unfairness of treating an intact family the same as an un-intact family concerning income.
435	Rep. Uherbelau	Explains the difference with an intact family and an un-intact family with a disabled parent regarding child support contributions.
443	Rep. Lowe	Explains how Washington, Idaho, and Alaska handle the income crediting process with the child support scheme.
458	Rep. Wells	Is there any difference in the way social security disability payments and regular social security payments are handled in the child support process?
Tape 124, A		

035	Stecker	Explains the process of crediting any payments to income.
045	Chair Shetterly	Closes public hearing.
<u>HB 3284 n PUBLIC HEARING</u>		
053	Counsel Felton	HB 3284 requires hearing officer in contested case hearing to award reasonable attorney fees and reasonable expenses to party other than agency if hearing officer finds in favor of party and also finds that agency did not have reasonable basis in fact or in law.
056	Chair Shetterly	Closes public hearing.
<u>HB 3578 n PUBLIC HEARING</u>		
057	Counsel Felton	HB 3578 establishes exclusive means of judicial review for state and local government action.
059	Chair Shetterly	Closes public hearing.
<u>HB 3245 n PUBLIC HEARING</u>		
060	Counsel Felton	HB 3245 establishes rules for civil actions arising out of computer date failures.
<u>HB 2985 n PUBLIC HEARING.</u>		
063	Counsel Felton	HB 2985 reinstates doctrine of implied assumption of risk in tort actions.
065	Chair Shetterly	Closes public hearing.
		Adjourns meeting at 3:40 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,

EXHIBIT SUMMARY

A - HB 3397, Written testimony, Bernie Bottomly, p. 6

B - HB 3397, Written testimony, Sean Lane, p. 1

C - HB 3397, Written testimony, Francis Royce, p. 1

D - HB 2998, Written testimony, Allison Hassler, p. 1

E - HB 2998, Written testimony, Linda Guss, p. 4

F - HB 2998, Written testimony, James Hayden, p. 1

G - HB 2554, Proposed -6 amendments, Counsel, p. 3

H - HB 2721, Proposed -1 amendments, Counsel, p. 1

I - HB 3361, Written testimony, Holly Sanborn, p. 1

J - HB 3361, Written testimony, Thomas Ruedy, p. 1

K - HB 3361, Written testimony, Ronelle Shankle, p. 4

L - HB 3361, Written testimony, Ronelle Shankle, p. 2

M - HB 3397, Written testimony, Linda Lynch, p. 2

N - HB 2554, Written testimony, Jane Myers, p. 1

O - HB 3397, Written testimony, Kim Yong-Joo, p. 1

P - HB 3397, Written testimony, Mark Reed, p. 2