

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

April 29, 1999 Hearing Room 357

1:00 p.m. Tapes 135 - ??

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

MEMBER EXCUSED:

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2256 - Work Session

HJR 52 - Work Session

HB 3504 - Work Session

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 135, A

004	Chair Shetterly	Calls meeting to order at 1:
<u>HB 2256 - WORK SESSION</u>		
034	Counsel Felton	HB 2256 prohibits court from waiving fees and court costs if inmate has or will have funds in inmate's trust account to pay fees and court costs.
041	David Schuman	Deputy Attorney General Explains the 1 amendments regarding the inmate trust accounts (EXHIBITS A).
066	Chair Shetterly	Discusses Judge Lipscomb's testimony in last hearing. Any subsequent changes?
	Schuman	
		-1 Rep. Wells
		Do Pass
103	Chair Shetterly	Recess
		Reconvened at 1:56 p.m.
<u>HJR 52 WORK SESSION</u>		
119	Counsel Felton	HJR 52 proposes amendment to Oregon Constitution to allow political subdivision to zone sexually oriented businesses. Presents the 7 amendments (EXHIBIT B)
133	Bill Lyndon	Free Coalition for Free Expression Explains the changes made to HJR 52 with the 7 amendments regarding continuous use of a building that would be nonconforming
168	Madaline Wessel	Attorney Explains
250	Rep. Rob Patridge	State Representative, House District 50

		Suggests
260	Dan Fedanque	American Civil Liberties Union (ACLU) Discusses how the ñ7 amendments takes away from the constitution.
329	Rep. Lowe	Move the ñ7 amend
341	Rep. Witt	Expresses his opposition to the ñ7 amendments.
	Rep. Williams	Explains why ñ7 amendments support the current law regarding zoning of existing businesses.
406	Wessel	Discusses
446	Rep. Williams	Asks about the objections to the ñ7 amendments.
453	Wessel	Explains the policy judgment whether it is appropriate to
470	Rep. Patridge	States that HJR 52 needs to be moved on.
Tape 136, A		
033	Chair Shetterly	States that this is a process vote to keep HJR 52 alive.
043	Rep. Edwards	Expresses his support to move ñ2 amendments and not move the ñ7 amendments.
050	Rep. Witt	Discusses why he opposed the ñ7 amendments to HJR 52 regarding policy decisions.
059	Rep. Backlund	Explains why the ñ2 amendments are better than the ñ7 amendments.
073	Rep. Walker	Expresses her serious concerns regarding ñ7 amendments taking out language from the constitution.
		Vote on ñ7 amend
094	Chair Shetterly	
		-2

		Do Pass
	Rep. Edwards	
	Rep. Patridge	November 1999.
120	Rep. Edwards	Expresses his support for HJR 52 as being
127	Rep. Witt	
129	Rep. Walker	Expresses thanks to Rep. Patridge for his work on HJR 52.
134	Rep. Lowe	Expresses her appreciation for Rep. Patridge's good work on HJR 52, but has reservations about the 7 amendments regarding zoning for existing businesses.
154	Chair Shetterly	States that HJR 52 will give authority to the local governments
159	Rep. Uherbelau	Asks about HJR 52 will eventually banning sexually oriented businesses.
173	Rep. Edwards	
		Closes work session.
<u>HB 3504 WORK SESSION</u>		
	Counsel Felton	HB 3504 authorizes active member of Oregon State Bar to bring action to enjoin unauthorized practice of law by another person.
	Tom Butler	State Representative, District 60 Discusses the purpose of HB 3504.
270	Bob Butler	Lawyer, Vale, Oregon Explains why HB 3504 was proposed
333	Bob Olsen	Oregon State Bar (OSB) Discusses the position of the Oregon State Bar on HB 3504. States that it would be helpful if there was a notice provision.

360	Chair Shetterly	
	Olsen	
	Chair Shetterly	
	Olsen	Preferable.
373	Rep. Uherbelau	Explains that with the passage of HB 3504 there would be lawsuits. States that the language
398	Rep. Witt	
421	Bob Butler	
426	Rep. Lowe	Reason why there is landmark lawyers is because some people do not have inexpensive access to lawyer representation. Make the courts and lawyers more accessible to people
463	Chair Shetterly	Asks about preparation of deeds that are related to HB 3504.
Tape 135, A		
	Bob Butler	Explains trust deeds that are made out improperly.
	Chair Shetterly	
043	Bob Butler	Explains
053	Rep. Uherbelau	Asks about attorney fees concerning frivolous lawsuits. Discusses how Paralegals give legal advise for free.
070	Chair Shetterly	Extension of time on HB 3504.
081	Rep. Butler	Explains why HB 3504 is ready to be voted on now.
109	Rep. Lowe	Explains why HB 3504 is not a full employment bill and all the cases not represented and the costs involved.
129	Rep. Butler	

136	Chair Shetterly	Closes work session.
		Adjourns meeting at 2:54 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A -

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

April 29, 1999 Hearing Room 357

6:30 p.m. Tapes ?Tape - ??

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

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Rep. Bill Witt

MEMBER EXCUSED:

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 3605 ñ WORK SESSION

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TAPE/#	Speaker	Comments
TAPE 137 Tape, A		

004	Chair Shetterly	Calls meeting to order at 6:39 p.m.
<u>HB 3605 - WORK SESSION</u>		
007	Counsel Felton	
012	Sen. Gene Derfler	State Senator, District 16
032	Dan Harmon	Hoffman Construction of Oregon Testifies and submits written testimony in support of HB 3605 (EXHIBIT A). Discusses the purpose of HB 3605 regarding limitation on non-economic damages and comparative negligence. Explains the history and purpose of the Employer Liability Law (ELA). Relates a court case where the worker was at fault, but sued the company under ELA. States that the legislature should not repeal the ELA because the historical basis for the ELA no longer exists. There is emphasis by companies to encourage sub-contractors to use safer standards. There should be reasonable conditions that hold the worker accountable for unsafe acts.
221	Rep. Walker	
223	Harmon	Yes. Gives a court case involving a worker that won 7 † million
247	Rep. Lowe	Explain the difference between economic and noneconomic damages?
250	Harmon	Economic damagesÖ..Noneconomic damages would be pain and suffering
259	Rep. Lowe	
	Harmon	Those would be economic damages.
264	Rep. Uherbelau	When was ELA created?
	Harmon	
272	Rep. Uherbelau	When did workeris compensation start?
275	Harmon	In 1913. In 1965, it was made mandatory in Oregon.
	Rep. Uherbelau	What is different now

284	Harmon	Explains why there are problems now with ELA cases.
300	Chair Shetterly	We didn't see any ELA cases until 12 years ago?
	Harmon	No.
307	Rep. Lowe	Declares a conflict.
317	Steve Frey	Morse Brothers Testifies in support of HB 3605. Relates a court case involving a company employee that filed a civil lawsuit under the provisions of the ELA. States that the unlimited damages available through the ELA circumvents the intent of the workers compensation program.
405	Rep. Uherbelau	Asks about the equity
415	Frey	Explains the inequity
Tape 138, A		
020	Rep. Uherbelau	We need to look at equity in a global manner.
038	Frey	Explains where the inequity is regarding
053	Harmon	Discusses how HB 3605 puts a cap on noneconomic tort actions.
072	Rep. Uherbelau	Asks about HB 3605 clarifying
078	Rep. Witt	Does the Employer Liability Law apply to a company employee who drives a company car.
090	Harmon	It involves anyone who is in risk or danger
098	Rep. Witt	Does the Workers Compensation Law
103	Chair Shetterly	Explains the safety standards involved with
121	Dan Dziuba	Testifies in opposition of HB 3605. Explains the Employer Liability Law. Discusses a court case regarding an injured worker that became disabled due to

		fault of the contractor. Explains how permanent disability awards are not enough to compensate the injury. States how the Employer Liability Law is a reality-based law regarding negligent claims.
344	Rep. Williams	Why is it appropriate for
350	Dziuba	Explains why injuries happen in unsafe conditions by contractors.
367	Rep. Edwards	Asks about how ELA works regarding capping damages under ELA.
391	Dziuba	Explains how the owner's control over the work helps eliminate injury.
413	Rep. Williams	
Tape 137, B		
	Dziuba	Discusses how courts are vigilance is taken in liability laws.
	Rep. Williams	Does ELA cause workers to be less diligence?
064	Dziuba	Explains how the owner takes responsibility for safety standards and does not follow through
075	Robert Neuberger	Testifies and submit written testimony in opposition of HB 3605 (EXHIBIT B). The injured worker in any situation can sue Explains double Discusses how the Employer Liability Law is a good policy for Oregon workers. Discusses what Senator Elihu Root said about worker's safety and the cost involved. States that you do not get serious injuries due in work places unless people are not enforcing good safety standards. Discusses how workers compensation works relating to insurance costs. Explains and gives examples why general contractors are given safety standard authority even if it is an out-of-state company. Gives some examples of death cases regarding lawsuits against construction companies where the worker did not follow a safety plan.
294	Rep. Williams	Asks about comparative fault injury cases. What has does Illinois and Pennsylvania have regarding safety laws.
315	Neuberger	Explains comparative fault cases. I do not know about Illinois and Pennsylvania and their safety laws.
	Rep. Backlund	

	Neuberger	Explains how the jury decides
352	Rep. Witt	How frequently does the Workers Compensation
358	Neuberger	Discusses the formula for distributing injury awards.
	Rep. Uherbelau	States that Workers Compensation board works side by side in injury on the job cases.
	Neuberger	
	Rep. Backlund	What is a realistic cap for injury awards?
	Neuberger	Injury money award caps should be left up to the juries.
427	Chair Shetterly	
	Neuberger	It comes out of the entire award. A cap on injury award damages might not be adequate compensation.
		Tape 138, B
034	Cindy Cato	Oregon ñ Columbia Chapter (AGC) Testifies and submits written testimony in support of HB 3605 (EXHIBIT C). Explains the relationship between HB 3605 and the Employersí Liability Act.
	Rep. Uherbelau	
	Catto	We believe ÖÖ
120	Patrick OíBrien	OTKM Construction Incorporated Testifies and submit written testimony in support of HB 3605 (EXHIBIT D). Explains how Workers Compensation Law and the ELA were not crafted with the subcontractor in mind. States the owners and general contractors alike have installed "Hold Harmless" clauses in construction contracts to protect themselves against third party claims. Discusses how the general contractor distances himself from the safety activities of his subcontractors. Explains how current law allows unlimited damage awards that wipe out small businesses in Oregon. States that HB 3605 does not fix the problem of high injury awards, but it is a step in the right direction.

245	Rep. Walker	
	O'Brien	It is a cost issue.
	Rep. Walker	
	O'Brien	
	Rep. Uherbelau	
	O'Brien	No, that is not our premium. Our premium was just under \$100,000.
	Rep. Uherbelau	What was your dividend back from Workers Compensation?
	O'Brien	It was . Explains how Workers Compensation
284	David Andersen	Andersen Construction Co, Inc. Testifies and submits written testimony in support of HB 3605 (EXHIBIT E). Explains Andersen Construction Company's safety standards. Gives an example of a negligent worker's injury that involved the general contractor because they should have been watching him. Explains and gives an example of when the indemnity clause does not protect the employer. States that ELA claims go to whoever has the deepest pockets.
431	Rep. Edwards	Asks about a situation where a general contractor assists a sub-contractor.
451	O'Brien	
Tape 139, A		
038	Rep. Walker	HB 3605 just caps the limit of the injury award.
044	Andersen	
051	Rep. Walker	Does the general contractor have an important role regarding safety standards in the work place?
057	Bob Shipraek	Union Construction Workers of Oregon (UCWO) Testifies in opposition of HB 3605. Discusses the effect of HB 3605 in regards to the general conditions at the job site. States that UCWO does not represent unsafe workers. Discusses the problem in construction with unsafe workers with

		other subcontractors at the job site. Explains weekly safety meetings at the construction site. Discusses a proposed statute that involves drug testing at job sites. States that you cannot stop people from suing.
145	Rep. Uherbelau	
	Shipraek	
	Rep. Uherbelau	We should
	Shipraek	
161	Ray Thomas	Lawyer, Portland, Oregon Testifies and submits a video, "ÖÖÖÖ" in opposition to HB 3605 (EXHIBIT F). Explains court cases he defended which resulted in large awards. Discusses what lawsuits that ELA would effect and how ELA does not forces general contractors to distance them from safety. Discusses what the responsibility of the general contractor has for safety standards on the job site. Discusses that if HB 3605 passes non-economic damages are not paid separately using the formula for award damages.
328	David Schaerer	Sedgwick of Oregon, Inc. Testifies and submits written testimony in support of HB 3605 (EXHIBIT G).
	Rep. Witt	..
	Schaerer	Yes.
430	Richard Kuwalski	Sedgwick of Oregon, Inc. Testifies in support of HB 3605. Explains the reasons why risk of the insurance carrier cannot rate the risk and they withdraw.
468	Rep. Uherbelau	Does
	Kuwalski	We represent insurance companies that write workers compensation insurance.
		Tape 140, A
	Rep. Uherbelau	
036	Schaerer	Will not have an effect on

041	Rep. Uherbelau	
	Schaerer	Workers comp is a huge market place.
	Chair Shetterly	Adjourns meeting at 9:00 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

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