

**SENATE COMMITTEE ON JUDICIARY**

**March 02, 1999 Hearing Room 343**

**3:00 p.m. Tapes 56-57**

**MEMBERS PRESENT: Sen. Bryant, Chair**

**Sen. Courtney, Vice-Chair**

**Sen. Brown**

**Sen. Burdick**

**Sen. Nelson**

**Sen. Tarno**

**MEMBER EXCUSED: Sen. Qutub**

**STAFF PRESENT: Anne Tweedt, Counsel**

**Judith Minnich, Administrative Support**

**MEASURE/ISSUES HEARD: Possible Measure Introduction**

**SB 493 Work Session**

**SB 177 Public Hearing and Work Session**

**SB 313A Public Hearing and Work Session**

**HB 2315 Public Hearing and Work Session**

**HB 2387 Public Hearing and 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 56, A**

002	Chair Bryant	Calls the meeting to order at 3:09 p.m.
005	Counsel Tweedt	Introduces: <ul style="list-style-type: none"><li>• LC 3935, relating to identity theft</li><li>• LC 3957, relating to criminal sentences; and providing for criminal sentence reduction that requires approval by a two-thirds majority.</li><li>• LC 3822, relating to genetic privacy.</li><li>• LC 3902, relating to civil commitment.</li><li>• LC 3900, relating to traffic offenses.</li><li>• LC 2613, relating to confidential personal information.</li><li>• LC 3901, relating to children.</li><li>• LC 4028, relating to the Self-Insurance Guaranty Fund; appropriating money; and declaring an emergency.</li><li>• LC 3977, relating to taxation.</li><li>• LC 4059, relating to insurance for public bodies.</li></ul>
037	Sen. Bryant	<b>MOTION: Moves LC's: 4059, 3977, 4028, 2613, 3901, 3900, 3902, 3957, 3822, 3953 BE INTRODUCED as committee bills.</b>
		<b>VOTE: 4-0</b> <b>EXCUSED: 3 - Nelson, Courtney, Qutub</b>
Chair		<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>HB 2387 PUBLIC HEARING</u></b>		
041	Rep. Lane Shetterly	<b>State Representative Oregon House District 34</b>  Testifies and submits-1 amendments in support of HB 2387 ( <b>EXHIBIT A</b> ). Submits a letter for the record from Dan Luna of the Hollywood Community Policing Office ( <b>EXHIBIT B</b> ). Indicates that the ñ1 amendments were drafted to address a question that surfaced during consideration of the bill. HB 2387 was drafted to deal with enforcement of current law with regard to nuisance properties. Discusses the history of the nuisance abatement process and the difficulty of providing timely relief from a nuisance property. HB 2387 provides a new venue for enforcing current law, allowing claims to be made in small claims court instead of circuit court. Indicates that consolidation of claims is specifically allowed under this bill in order that neighborhoods can pursue nuisance claims as a group in small claims court, however a separate judgement will be entered for each claim as is specified by the ñ1 amendments. Pursuing a nuisance property in this manner would lead to an injunction rather than an order of abatement assuring that the claim(s) would not exceed the small claims limit.

161	Chair Bryant	Asks if the defendant wanted, could the action be moved out of small claims court into circuit court?
165	Dave Heynderickx	<b>Legislative Counsel Office</b>  Indicates that small claims court could become circuit court based on the costs involved.
184	Chair Bryant	Discusses the potential financial damage that could be claimed by a defendant.
192	Rep. Shetterly	The ñ1 amendments are intended to clarify that neighbors of a nuisance property can consolidate cases for trial, but each financial claim must stand alone.
203	Chair Bryant	Could a group of irate tenants bring suit under this bill against their landlord?
206	Rep. Shetterly	Refers to the definition of nuisance property and indicates that the complaint would have to fall under that definition.
215	Sen. Tarno	Would complainants have to prove their allegations before they could file an action?
218	Rep. Shetterly	Under existing law, they would have to prove their charges to obtain either damages or an injunction. This doesn't create any new  liabilities; it just creates a new venue for pursuing remedies that already exist in the law.
238	<b>Gary Fisher</b>	<b>Salem Police Department</b>  Testifies in support of HB 2387. States he currently trains landlords on how to keep criminal activity out of rental units. The City of Salem has a nuisance property ordinance. Most problem cases can be solved easily. In a small number of cases the landlord doesn't respond to difficulties and then the nuisance property law is very useful.
282	<b>Bill Linden</b>	<b>Southland Corporation</b>  Testifies regarding suggested changes to bill. Believes that a new venue may well encourage more suits, frivolous in nature. Describes the possibilities for harassment by bringing suit. Believes that the defendant should be able to move the case into circuit court. Believes that the provision regarding attorney fees not being awarded to either party ought to be changed. If a defendant can have an attorney, costs should be available in order to discourage frivolous suits.
342	Chair Bryant	A nuisance property, as defined by statute, must be used for prostitution, gambling or drugs. How could a 7-11 store be effected?
361	Linden	Allegations could be made regarding activity in the parking lot.

381	Sen. Tarno	I was concerned about these possibilities too, but proof of the nuisance must be made. Can one incident be declared as a nuisance?
393	Linden	Cost of defending a suit is an issue. We shouldn't make it too easy to file.
409	Chair Bryant	If this occurs in small claims court, a corporation may have an attorney represent them, but an individual may not?
422	Rep. Shetterly	Indicates that in small claims court attorneys may represent corporations but can't represent individuals. Indicates that it is unlikely that any court would declare one incident a nuisance.
439	Sen. Courtney	So, if something went on for several hours, is that a nuisance?
462	Rep. Shetterly	It would certainly depend on what the activity is, but implicit in the definition of nuisance property is the idea that the activity is an ongoing concern and not a one-time incident.
487	Chair Bryant	Introduces a letter from Selene Raffel in support of HB 2387 ( <b>EXHIBIT C</b> ).
<b>Tape 57, A</b>		
042	Chair Bryant	Closes public hearing on HB 2387 and opens public hearing on SB 177.
<b><u>SB 177 PUBLIC HEARING</u></b>		
058	<b>Jack Roberts</b>	<b>Bureau of Labor and Industries (BOLI)</b>  Testifies in support of SB 177. Considers it a housekeeping bill needed to address inadvertent changes in the Oregon Disabilities Law last session. The Oregon State Law Disability Law Section supports these changes ( <b>EXHIBIT D</b> ). In making these changes, we have allowed retroactivity for those people who have a cause for action that occurred during the time the law was inadvertently changed.
087	Chair Bryant	How does this effect the statute of limitations?
089	Roberts	I don't believe it will effect it. It would begin at the date of occurrence in any case.
099	<b>Dave Heynderickx</b>	<b>Office of the Legislative Counsel</b>  Indicates the proposed changes were complicated and carefully crafted to not change the statute of limitations in civil rights cases.

121	Chair Bryant	How many cases do you expect this to cover?
124	Roberts	I don't have those numbers, but not many. We don't get a large number of disability claims. We get about 2,100 claims per year and certainly fewer than 10% are disability claims and might be effected by this change.
133	Heynderickx	Indicates that Chapter 659 is very confusing and should probably be rewritten. Over the years sections have been added and deleted, resulting in a far too complicated statute which sometimes does the unintended. Ad hoc changes over time have built up. The Oregon Law Commission is considering rewriting this during the interim.
159	<b>Kevin Lafky</b>	<b>Attorney</b>  The most important issue is the retroactivity of SB 177. The mistake made two years ago was in the references made in the previous legislation. Discusses the potential problems with retroactivity and believes this is a much more difficult problem than is recognized. Believes that the party that didn't prevail, alleging that the ability to make state disability claims would have changed the outcome, may reopen many cases.
223	Chair Bryant	If we deleted Section 7 of SB 177, would that take care of the problems you see with retroactivity?
227	Lafky	I believe so, but I would defer to Commissioner Roberts.
228	Heynderickx	I believe that something needs to be said about retroactivity or you will create litigation. Not addressing the question leaves too many avenues for litigation open.
248	Sen. Burdick	Could we limit retroactivity to only those cases that were not filed at all?
250	Chair Bryant	Closes the public hearing on SB 177.
261	Counsel Tweedt	Introduces:  <ul style="list-style-type: none"> <li>• LC 2989, relating to political expenditures; creating new provisions; and amending ORS 260.083.</li> <li>• LC 3826, relating to Oregon Teachers Scholarship; appropriating money and declaring an emergency.</li> <li>• LC 402, relating to materials accounting system; creating new provisions; amending ORS 465.024; and declaring an emergency.</li> </ul>
<b>279</b>	<b>Sen. Bryant</b>	<b>MOTION: Moves LC's: 3826, 2989, 402 BE INTRODUCED as committee bills.</b>

		<b>VOTE: 5-0</b> <b>EXCUSED: 2 - Brown, Qutub</b>
	Chair Bryant	Hearing no objection, declares the motion <b>CARRIED</b> .
282	Chair Bryant	Opens work session on SB 493.
<b><u>SB 493 WORK SESSION</u></b>		
286	Counsel Tweedt	Discusses legislative history of SB 493 that revises the medical service lien law and brings it in line with the ambulance services lien law. Concerns were expressed that references to insurance in SB 493 did not include medical insurance policies. The -1 amendment accomplishes this as well as providing that a notice of a lien will be mailed to the last known address of the responsible party. The ñ1 amendment also stipulates that payment of attorneyís fees will be made from the award before the lien is satisfied.
307	Sen. Courtney	<b>MOTION: Moves to ADOPT SB 493--1 amendments dated 2/26/99.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Qutub</b>
	Chair Bryant	Hearing no objection, declares the motion <b>CARRIED</b> .
311	Sen. Courtney	<b>MOTION: Moves SB 493 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Qutub</b>
	Chair Bryant	Hearing no objection, declares the motion <b>CARRIED</b> .  <b>SEN. BRYANT will lead discussion on the floor.</b>

**SB 313A PUBLIC HEARING**

325	<b>John Chism</b>	<b>American Heart Association</b>  Submits written testimony and testifies in support of SB 313A ( <b>EXHIBIT F</b> ). SB 313A would provide immunity from liability for users of the Automated External Defibrillators (AED) the organizations that purchase and maintain the device.
362	<b>Diane McLean</b>	<b>Director, YMCA Cardiac Rehabilitation Program</b>  Submits written testimony and testifies in support of SB 313A ( <b>EXHIBIT G</b> ). Indicates that the AED is a life saving device and should be available in public places to use if needed. The YMCA has a unit and has used it successfully.

**Tape 56, B**

002	<b>Tim Thornberg</b>	<b>Medtronic/Physio-Control Corporation</b>  Discusses the ease of use of the device and indicates that although there are different manufacturers the devices are similar and if trained on one, you would be able to use any of them.
026	<b>Valerie Jahns</b>	<b>American Red Cross</b>  Submits written testimony and testifies in support of SB 313A ( <b>EXHIBIT H</b> ). Submits an AED training video for the record ( <b>EXHIBIT I</b> ).
058	Thornberg	Demonstrates the Automatic External Defibrillator unit for committee members.
116	Chair Bryant	Closes the public hearing and opens the work session on SB 313A.

**SB 313A WORK SESSION**

128	<b>Sen. Courtney</b>	<b>MOTION: Moves SB 313A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 5-0</b>  <b>EXCUSED: 2 - Nelson, Qutub</b>
<b>Chair Bryant</b>		<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. BROWN will lead discussion on the floor.</b>

138	Counsel Tweedt	<p>Introduces:</p> <p>LC 2221, relating to gaming; amending ORS 167.117, 461.217 and 461.300.</p> <p>LC 3564, relating to insurance compliance audits.</p>
151	Sen. Bryant	<b>MOTION: Moves LC's: 2221, 3564 BE INTRODUCED as committee bills.</b>
		<p><b>VOTE: 5-0</b></p> <p><b>EXCUSED: 2 - Nelson, Qutub</b></p>
Chair Bryant		<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>HB 2315 PUBLIC HEARING</u></b>		
156	Jim Markee	<p><b>Oregon Collector's Association</b></p> <p>Submits written testimony and testifies in support of HB 2315. SB 2315 modifies the prohibition against execution on real property that is the home of the debtor to recover debt less than \$3000. Allows the creditor to recover on execution sale for debt less than \$3000 after sale by debtor or when residence is no longer the home of the debtor or his family. Collection agencies have found that certain property sales have taken place without the lien being executed and then the property is still owner occupied but not the original debtor and therefore can't be recovered.</p>
206	Chair Bryant	I thought when the property sold, the lien would have to be paid off.
214	Markee	Indicates that it's up to the buyer of the property to get clear title. There is nothing to stop a sale with the lien left on the property except the buyer's unwillingness to buy the property unless the title is clear. Indicates that when he wrote his testimony there was no known opposition, however there may be some opposition from Real Estate professionals, now.
240	Genoa Ingram	<p><b>Oregon Association of Realtors</b></p> <p>Testifies in opposition to HB 2315. Discusses their concerns if a lien remains on a property after sale and could be executed on the new owner. If such a lien goes unsatisfied, for any reason, the new owner could lose their home or would have to pay off the lien.</p>
273	Matt Farmer	<b>Attorney for the Oregon Association of Realtors</b>



		The law now has a process where the buyer can notice the lien claimant and have the lien removed. However, a small may go unnoticed and be a trap for an unsophisticated homeowner.
308	Chair Bryant	Discusses transfer of property without title insurance. Outlines his understanding of the bill. Indicates that any realtor representing the buyer would certainly recommend title insurance and document that recommendation. Current law specifies that anything under \$3000 can't be executed on an owner occupied home.
320	Farmer	There is the danger that the lien won't show up on a title report.
325	Chair Bryant	Then the title company would be at risk. HB 2315 is intended to correct a situation that was unintended. Clearly, if a lien under \$3000 is on a home that the owner then sells, the owner/debtor needs to pay off that loan or transfer the lien to other property that he owns.
370	Farmer	If these liens are missed then it becomes the problem of the buyer.
383	Chair Bryant	Once the home is sold, then title insurance is the remedy.
395	Farmer	Feels that a new owner should not be put at risk to lose their home for such a small amount.
421	Sen. Brown	Discusses her understanding of the bill.
<b>Tape 57, B</b>		
013	Chair Bryant	Discusses the safeguards in the laws that protect buyers from undetected liens on property.
017	Ingram	The concern is who would have to pay. It would be the new owner, and it's not their debt.
023	Chair Bryant	The new owner would have to pay and then they would be assigned the debt and could ask for payment from the previous owner.
038	Markee	Everything they say is true, these small liens will be treated the same as any other liens.
062	Ingram	Believes that a buyer should not be put in this situation for such a small amount of money.
065	Chair Bryant	Closes the public hearing and opens the work session on HB 2315.

**HB 2315 WORK SESSION**

069	Sen. Bryant	<b>MOTION: Moves HB 2315 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 5-1</b> <b>AYE: 5 - Burdick, Courtney, Nelson, Tarno, Bryant</b> <b>NAY: 1 - Brown</b> <b>EXCUSED: 1 - Qutub</b>
	Chair Bryant	<b>The motion CARRIES.</b>  <b>SEN. BRYANT will lead discussion on the floor.</b>
107	Chair Bryant	Adjourns the meeting at 4:45 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,  
Administrative Support Counsel

**EXHIBIT SUMMARY**

**A ñ HB 2387, -1 amendments to HB 2387 (LC 510), dated 3/2/99, 1 pp**

**B ñ HB 2387, letter from Dan Luna dated March 1, 1999, 1 pp**

**C ñ HB 2387, written testimony dated February 25, 1999, Selene Raffel, 2 pp**

**D ñ SB 177, written testimony from Kenneth Crowley, 1 pp**

**E ñ SB 493, -1 amendments to SB 493 (LC 1404), dated 2/26/99, 1 pp**

**F ñ SB 313A, written testimony dated March 2, 1999, John Chism, 1 pp**

**G ñ SB 313A, written testimony dated February 25, 1999, Diane McLean, 2 pp**

**H ñ SB 313A, written testimony dated March 2, 1999, Valerie Jahns, 2 pp**

**I ñ SB 313A, videotape titled "American Red Cross, Automated External Defibrillator Training Video, Introductory Segment", 1 tape**

**J ñ HB 2315, written testimony dated March 2, 1999, Jim Markee, 1 pp**