

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 21, 1997 Hearing Room 357

1:00 P.M. Tapes 90 - 91

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judith Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

SB 267A Public Hearing and Work Session

SB 528 Public Hearing

SB 811A Public Hearing and Work Session

HB 2731 Public Hearing

SB 275A 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 90, A		
004	Vice-Chair Uherbelau	Opens the meeting at 1:10 p.m.
SB 528 - PUBLIC HEARING		
016	Vice-Chair Uherbelau	Opens the public hearing on SB 528.
022	Betsy Earls	Associated Oregon Industries (AOI) >Submits testimony and testifies in support of SB 528 (EXHIBIT A) . >refers to -3 amendments (EXHIBIT B) >prevent recognition in Oregon of the tort of self publication >giving and getting references are affected
067	Rep. Wells	Can you clarify this more? Can't the employee deny what is said?
075	Earls	"X" never told the prospective employer why he was fired.
084	Rep. Wells	How can a prospective employer force an employee to tell an untruth?
085	Earls	The employee is not being forced to tell anything except why the employer fired him.
095	Rep. Wells	I would tell my side of the story.
099	Earls	Some states have provided more protection for employers as to why employees are fired.
105	Chair Shetterly	How can you have a tort of self compelled defamation? There is a potential for this.
113	Rep. Bowman	Are you responsible for the -1 and -2 amendments?
116	Rep. Eighmey	You can ignore those sets of amendments. We are going to discuss the -3 amendments.
120	Chair Shetterly	The -3 amendments replace the whole bill.
120	Rep. Eighmey	Correct.
122	Rep. Uherbelau	I don't read it to say anything but that the Supreme Court ignored the issue.
130	Earls	I apologize for not making my testimony clearer.
135	Chair Shetterly	Reads portion of letter from Lory Kraut (EXHIBIT C) .
144	Rep. Uherbelau	What I am hearing is the -3 amendments are someone else's. What is your position on these?
148	Earls	We worked them out with Rep. Eighmey and support them.

154	Committee and Earls	Discuss page 3, lines 5-7 and state that those need to be deleted.
159	Earls	We intended to take that out, but it was put back in.
160	Rep. Bowman, Chair Shetterly	Discuss the intended deletion.
162	Rep. Eighmey	There are two people who were going to testify on that issue.
164	Chair Shetterly	Let's see if they still want to testify.
165	Rep. Uherbelau	I am glad to see the -3 amendments. It seems to be in plainer language.
171	Rep. Prozanski	I don't know why we need to broaden this as much as we are. Referring to page 2, line 6, why are we opening the door any further?
184	Rep. Eighmey	Direct your attention to page 2, line 6. Sections 4-5 state that an employer is not totally immune.
194	Rep. Prozanski	What if the employer releases more information?
198	Earls	The protections for the employers are first and then the limitations are stated in the amendment.
204	Chair Shetterly	The employee would still have recourse if there is false information in his records.
207	Rep. Prozanski	Why do we need to go with the -3 amendments?
211	Earls	Employers don't feel that they are provided enough feedback.
223	Rep. Uherbelau	There may be documents that employees aren't aware of. There is no liability for disclosing these records. They may not even know what they are releasing.
240	Earls	There is a provision in the law which says employees can look into their records.
247	Rep. Uherbelau	Most don't know about that law. Perhaps a safeguard would be that employees can see any record which employers may have.
263	Earls	Our intention is to address the employer's ability to communicate with each other.
269	Rep. Prozanski	I would like it if we tightened up what the employee asks for. This would make it a duty for employers to review the files.
283	Earls	That would be a good idea.
299	Elizabeth McKanna	Attorney at Law, Portland >very few lawsuits involving defamation >The law seems to be working well.
		Continues testimony.

349	McKanna	>invitation to disclose almost anything >section 7 refers to the Civil Rights statute and worker compensation
399	McKanna	Continues testimony. >absenteeism problems >dates of employment >concept of trying to let an employee go to another job >protect the employee
449	McKanna	Continues testimony. >We have a good law now that protects both the employee and the employer.
Tape 91, A		
007	Rep. Eighmey	You did point out an error. Section 6 needs to be deleted.
015	Chair Shetterly, Rep. Eighmey, McKanna	Discuss what needs to be deleted and what doesn't. The retroactivity portion is still in the original bill.
037	Alice Dale	Oregon Public Employees Union (OPEU) >Submits testimony and testifies in opposition to SB 528 (EXHIBIT D) . >area which is not contested very much >appreciate the amendments which make an effort to address categories of information >needs to be a standard in place
073	Chair Shetterly	Referring to subsection 5, this isn't a blanket for immunity.
082	Rep. Uherbelau	There are some things in here that bother me. Section 5 will not get you out of negligence.
096	Rep. Eighmey	It doesn't give you immunity from negligence.
097	Chair Shetterly, Rep. Uherbelau, Rep. Eighmey	Discusses immunity.
101	McKanna	I am not sure there would be a cause of action for negligence.
104	Chair Shetterly	This only applies immunity in defamation actions.
110	Dale	Within that law of defamation, there is a high standard. Holding an employer to some standard is important.

118	Chair Shetterly	Are you suggesting that there is not a basis for negligence in releasing information that is wrong?
122	Dale	I don't think that there is a defamation action or relating tort action.
123	Chair Shetterly	This bill is neutral isn't it? This bill doesn't create an action.
128	McKanna	There may be a cause of action for negligent misrepresentation. This broader sense of security may be a problem for some and not for others. I don't think it gets employers or employees where they want to be in unfair situations.
144	Dale	Continues testimony. >Discusses concerns with federal laws. >Rep. Prozanski's ideas might solve some of the problems. >Civil rights are in the current law.
164	Mike Tedesco	Oregon Schools Employees Association >I came to talk with you about the retroactivity, but you have already dealt with it.
178	Chair Shetterly	We do that to get people here.
181	Chair Shetterly	Closes the public hearing on SB 528.
<u>SB 267A - PUBLIC HEARING</u>		
185	Chair Shetterly	Opens the public hearing on SB 267A.
193	Don Douglas	Oregon State Bar (OSB) >Submits testimony in support of SB 267A (EXHIBIT E). >This is the consensus bill of the OSB and the Oregon Trial Lawyers Association (OTLA). >Discusses vicarious liability. >modernizes the Professional Corporation Statute
232	Chair Shetterly	Where did the -A2 amendments come from? They are in your packet.
234	Chair Shetterly, Rep. Uherbelau, Rep. Eighmey, Rep. Bowman, Douglas	Discuss where the -A1, -A2, and -A3 amendments came from.
		The Oregon Medical Association (OMA) is determined to

244	Douglas	keep the status quo. Each regulatory board can determine whether to implement the provisions.
272	Chair Shetterly	Maybe you can look at the other amendments while the others are testifying.
278	Douglas	We worked with the OMA to make the amendments acceptable.
283	Robert Winger	Oregon State Bar (OSB) >make the rules as consistent as possible
305	Douglas	We tried to make it neutral between all three of the entities.
309	Winger	Continues testimony. >Proposes amendments to SB 267A (EXHIBIT F).
318	Chair Shetterly	Do you have amendments to propose to this bill as well as those already proposed?
320	Winger	Yes. These governing provisions, which we are putting in this bill, were taken out by the Senate. It deals with the timing of the legislature.
342	Chair Shetterly	Have you dealt with staff or LC in the drafting of this amendment?
344	Winger	We have sent the first two points down to LC.
354	Jane Meyers	Oregon Dental Association (ODA), submits -A3 amendments to SB 267A (EXHIBIT G). >complex area of the law >keep the status quo
377	Chair Shetterly	All the shareholders would have to be dentists?
381	Meyers	Yes.
385	Bill Taylor	Does this mean that a lawyer can practice his profession with someone who isn't a lawyer?
389	Douglas	Yes.
391	Winger	For dentist and lawyer associations, shareholders must be licensed in their respectable professions.
404	Chair Shetterly	Is there any reason why the bar would need an amendment similar to the one proposed by the ODA?
407	Douglas	No.
417	Meyers	The reasoning behind requiring this is to make sure that corporate bottom line doesn't take over.
435	Chair Shetterly	Closes the public hearing on SB 267A.
Tape 90, B		
SB 267A -		

WORK SESSION		
001	Chair Shetterly	Opens the work session on SB 267A.
002	Chair Shetterly, Rep. Eighmey, Rep. Uherbelau	Discuss whether or not there are -A1 amendments.
006	Rep. Eighmey	MOTION: Moves to ADOPT SB 267A-2 amendments dated 3/24/97.
009		VOTE: 8-0
009	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
009	Rep. Eighmey	MOTION: Moves to ADOPT SB 267A-3 amendments dated 5/2/97.
011		VOTE: 8-0
011	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
012	Rep. Eighmey	MOTION: Moves to ADOPT the amendments offered by the Oregon State Bar as stated in EXHIBIT E to SB 267A.
017	Rep. Bowman	What do these say in English?
020	Douglas	Talks about limited liability partnerships. This amendment takes out the ambiguous language in the limited liability company act.
057	Bill Taylor	This is a conflict amendment. You want to make sure that SB 267A and SB 811A don't cancel each other out?
060	Douglas	Correct.
065		VOTE: 8-0
066	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
069	Jeff Watkins	Oregon Trial Lawyers Association (OTLA) >I think these amendments will be okay.
074	Bill Taylor	Your concerns are over vicarious liability. We created a cap on this liability. The amendments don't address the issue of vicarious liability.
085	Douglas	No, they don't. We coordinated with the OTLA concerning the amendments.
096	Chair Shetterly	I will entertain a motion to move this out of committee, but I will have it held before going to the full committee. If the OTLA has any problems, we can bring it back next week.
101		VOTE: 8-0

106	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
110	Chair Shetterly	Closes the work session on SB 267A.
<u>HB 2731 - PUBLIC HEARING</u>		
111	Chair Shetterly	Opens the public hearing on HB 2731.
115	Rep. Dan Gardner	State Representative, House District 13 >-1 amendments (EXHIBIT H) >Penalties would be reduced by the -1 amendments. >The charge for photocopying can't exceed that established by the Bureau of Labor and Industries.
145	Rep. Eighmey	Referring to page 2, you have made a substantial change in rewarding attorney fees. Is it your intention to eliminate a meritorious claim?
157	Gardner	That is not the intent. "May" would be a more accurate term.
160	Chair Shetterly	What is the remedy now?
161	Rep. Gardner	You would have to get a court order to get the records.
169	Rep. Eighmey	We passed legislation this morning which changed this. New penalties were included in today's bill.
181	Chair Shetterly	Do we want to add another civil remedy?
189	Rep. Eighmey	That is why it should be "may" instead of "shall."
193	Rep. Uherbelau	Why do you say "actual damages" or "\$5,000?"
207	Rep. Gardner	The penalty is more than sufficient incentive to release those records. That is the intent of the bill.
216	Chair Shetterly	Closes the public hearing on HB 2731.
<u>SB 811A - PUBLIC HEARING</u>		
222	Chair Shetterly	Opens the public hearing on SB 811A.
233	Don Douglas	Oregon State Bar >Submits testimony and testifies in support of SB 811A (EXHIBIT I). >perpetual like a corporation >allows family businesses flexibility

286	Chair Shetterly	Aren't we moving to the point that Limited Liability Companies are the entity of choice?
293	Douglas	Yes.
299	Chair Shetterly	Closes the public hearing on SB 811A.
<u>SB 811A - WORK SESSION</u>		
301	Chair Shetterly	Opens the work session on SB 811A.
302	Rep. Eighmey	MOTION: Moves SB 811A to the full committee with a BE ADOPTED recommendation.
305		VOTE: 8-0
305	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
309	Chair Shetterly	Closes the work session on SB 811A.
<u>SB 275A - PUBLIC HEARING</u>		
312	Chair Shetterly	Opens the public hearing on SB 275A.
331	Jim Nass	Oregon Supreme Court/Court of Appeals >Submits and reads testimony on SB 275A (EXHIBIT J). > worker's compensation >criminal cases
381	Nass	Continues testimony. >record on appeal
TAPE 91, B		
004	Nass	Continues testimony. >amend the statute >infraction and violation cases >appellate settlement
030	Vice-Chair Uherbelau	Closes the public hearing on SB 275A.
<u>SB 275A - WORK SESSION</u>		
030	Vice-Chair Uherbelau	Opens the work session on SB 275A.
		MOTION: Moves SB 275A to the full committee with a

031	Rep. Eighmey	DO PASS recommendation.
034		VOTE: 6-0-2 EXCUSED: 2 - Prozanski, Shetterly
034	Vice-Chair Uherbelau	Hearing no objection, declares the motion CARRIED. REP. EIGHMEY will lead discussion on the floor.
037	Vice-Chair Uherbelau	Closes the work session on SB 275A.
038	Vice-Chair Uherbelau	Closes the meeting at 2:35 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 528, written testimony, Betsy Earls, 2 pp.

B - SB 528, proposed -3 amendments (dated 5/21/97), staff, 3 pp.

C - SB 528, written materials, staff, 4 pp.

D - SB 528, written testimony, Alice Dale, 1 p.

E - SB 267A, written materials, Don Douglas, 1 p.

F - SB 267A, written materials, Robert Winger, 1 p.

G - SB 267A, proposed -A3 amendments (dated 5/2/97), Jane Meyers, 2 pp.

H - HB 2731, proposed -1 amendments (dated 5/9/97), staff, 1 p.

I - SB 811A, written materials, Don Douglas, 1 p.

J - SB 275A, written testimony, Jim Nass, 11 pp.

K - SB 528, proposed -1 amendments (dated 4/23/97), staff, 3 pp.

L - SB 528, proposed -2 amendments (dated 5/15/97), staff, 1 p.