

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

January 27, 1997 Hearing Room 357

1:00 P.M. Tapes 6-7

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

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing HB 2264

HB 2327

HB 2326

HB 2314

HB 2298

Work Session

HB 2250

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
<u>TAPE 6, A</u>		
001	Chair Shetterly	Calls meeting to order at 1:03 p.m.
<u>HB 2264 - PUBLIC HEARING</u>		
028	Doug Bray	Deputy State Court Administrator Submits written testimony in favor of HB 2264 [EXHIBIT A] . Gives background. Requests to delete three sections (dealing with mediation) in order to focus on arbitration.
040	Rep. Prozanski	Asks whether Mr. Bray plans to deal with mediation in another bill.
045	Bray	Explains that the bill should be more focused and that mediation is something he would like to deal with, but elsewhere.
080	Rep. Uherbelau	Comments on concern about whether the sections will be deleted or not.
082	Bray	Reinforces that he is requesting deletion of the sections in question.
084	Rep. Uherbelau	Questions page 2, line 25, the section that is amending 36400, pointing out a mistake concerning district and circuit court.
		Discussion follows.
097	Bray	Explains why the amendments are there and discussion continues.
118	Chair Shetterly	Refers to page 4, lines 9-10, and questions the use of the word "certificate" and what exactly it means in that particular section.
128	Bray	Explains that language that had been deleted in 1995 is now being restored.
132	Rep. Eighmey	Comments that the usage of the word "certificate is common."
<u>HB 2264 - PUBLIC HEARING CLOSED</u>		
<u>HB 2327 - PUBLIC HEARING</u>		
165	Gregory A. Chaimov	Attorney-in-charge of Special Litigation Unit of Dept. of Justice Submits written testimony in favor of HB 2327 [EXHIBIT B] . Explains bill and gives background.
173	Rep. Uherbelau	Comments that she believes the bill would be more costly than the existing procedure and that she is not sure what the bill is attempting to correct.

180	Chaimov	Responds.
200	Rep. Prozanski	Comments on interpretation of "good faith" and would like to have a little more clarity and history.
214	Chaimov	Comments that the court would not have to do anything different than it is already doing, regarding the issue at hand.
237	Chair Shetterly	Comments that the conduct of the parties is already a factor that the court has to take into consideration on a discretionary basis. The bill would take the discretion away from the court and make it mandatory.
242	Chaimov	Responds that Chair Shetterly's understanding of the bill is "not exactly" right and explains.
256	Rep. Wells	Asks if Chaimov would explain what the current practice is and why, in some cases, the defendant cannot collect attorney fees, even if the plaintiff did not win the case.
269	Chaimov	Responds and explains.
		Discussion continues.
300	Rep. Eighmey	Comments and explains concerns he has regarding the bill.
323	Chaimov	Responds and discussion continues.
350	Rep. Uherbelau	Asks why Chaimov wants to restrict the idea to those times when attorney fees are authorized by statute instead of including such authorized by contract as well. Expresses concern over the mention of the one-line affidavit.
<u>TAPE 7, A</u>		
001	Chaimov	Responds and discussion continues.
018	Rep. Bowman	Asks if there could be some danger to the party making the call and whether the "good faith" concept could actually be used against a party in certain situations.
035	Chaimov	Responds and discussion continues.
060	Chair Shetterly	Questions the language in line 10.
064	Chaimov	Responds.
067	Chair Shetterly	Questions language of lines 12-13 and what to do in a case where the whereabouts of a party are unknown, thus making communication impossible.
075	Chaimov	Responds and discussion between Chair Shetterly and Chaimov continues.
084	Rep. Eighmey	Questions the addition of defendants and whether the same rules would apply.
094	Chaimov	Responds.
097	Rep. Prozanski	Asks what would happen if the relief originally sought changes in litigation.
100	Chaimov	Responds.

HB 2327 - PUBLIC HEARING CLOSED

HB 2326 - PUBLIC HEARING

120	Gregory A. Chaimov	Attorney-in-Charge of the Special Litigation Unit of Dept. of Justice Submits written testimony in favor of HB 2326 [EXHIBIT C]
132	Rep. Wells	Asks why the "winner" cannot recover his fees in most all cases.
150	Chaimov	Responds.
161	Rep. Beyer	Comments on concern when a state agency takes a citizen in to court and asks for clarification on what fees a citizen can or cannot collect when they win.
171	Chaimov	Responds.
180	Rep. Beyer	Asks if the bill deals only with the state when it is the defendant and not when it is the plaintiff.
187	Chaimov	Confirms that is so and the discussion between Rep. Beyer and Chaimov continues.
200	Chair Shetterly	Asks if the bill brings statutes into conformity with what is current case law on the subject.
203	Chaimov	Comments that is the intent.
205	Rep. Uherbelau	Asks if the bill would eliminate all together the ability of those who go in to defend or gain a right for the citizens in general to collect attorney's fees if they succeed.
220	Chaimov	Responds and discussion between Rep. Uherbelau and Chaimov continues.
237	Rep. Eighmey	Comments on the language of the bill, referring to court cases and asks if the Supreme Court has listed under what circumstances citizens are prohibited from receiving attorney's fees.
246	Chaimov	Responds.
257	Rep. Eighmey	Requests a list of cases and asks if the bill would just be codifying what the court is already doing.
265	Chaimov	Responds and lengthy discussion between Rep. Eighmey and Chaimov continues.
339	Bill Taylor	Clarifies confusion between Rep. Eighmey and Chaimov.

HB 2326 - PUBLIC HEARING CLOSED

HB 2314 - PUBLIC HEARING

390	Mary Ellen Johnson	Director of Crime Victim Assistance Section of the Dept. of Justice Submits written testimony in support of HB 2314 [EXHIBIT D] .
396	Chair Shetterly	Asks if Ms. Johnson could explain how the state gets into the punitive damages issue in the first place.
400	Johnson	Responds.
410	Rep. Wells	Asks about the percentage break-down of punitive damages.
<u>TAPE 6, B</u>		
002	Johnson	Responds.
015	Rep. Bowman	Expresses concern that this would create an "added burden" for certain individuals.
020	Johnson	Responds.
034	Chair Shetterly	Asks if notice has to be given for a simple filing of a complaint seeking punitive damages and questions the use of "Salem" within the document.
040	Johnson	Responds.
<u>HB 2314 - PUBLIC HEARING CLOSED</u>		
<u>HB 2298 - PUBLIC HEARING</u>		
060	Pete Shepard and Richard Withnell	Attorney-in-charge of the Financial Fraud Section of the Oregon Dept. of Justice and Small Business Owner in Salem Submit testimony in favor of 2298 [EXHIBIT E] .
082	Rep. Prozanski	Asks if "B2" is an ad or request for a business to purchase.
090	Shepherd	Responds.
119	Rep. Uherbealu	Asks if there is some other way to prove and questions the presumptions.
137	Shepherd	Responds.
157	Rep. Bowman	Questions why the bill is not directed to consumers as well and asks if the language in section 3 means that companies will not get money and that the money will go into a fund for another purpose.
171	Shepherd	Responds.
187	Rep. Wells	Comments that businesses are easier to "scam" than individuals.
212	Rep. Eighmey	Comments on personal experiences with invoices (simulated) and asks if he would be protected at home.
224	Shepherd	Responds.
234	Chair Shetterly	Asks if this could be an alternative remedy for a consumer to an already existing remedy.

244	Shepherd	Responds.
247	Rep. Eighmey	Asks if the specific example he gave would be covered.
248	Shepherd	Responds.
254	Rep. Beyer	Comments on "yellow page solicitations" and questions if they will be included under the bill.
258	Shepherd	Comments that that is the kind of scam they are hoping to address and notes that US West is in support of the bill.
266	Rep. Prozanski	Asks if an amendment can be made to require that would require people advertising in this type of capacity to put in bold print that this is not a bill this is a solicitation, or something of that nature.
283	Shepherd	Responds.
290	Chair Shetterly	Asks if there is a difference between "any resonable recipient" on line 12 and "a resonable recipient" line 20.
323	Shepherd	Comments a difference was not intended.
336	Chair Shetterly	Questions language of line 18 where the presumptions are intended to be rebuttable.
340	Shepherd	Responds and goes on to explain the effect of the presumption.
342	Rep. Eighmey	Asks if it is not necessary to say "the following rebuttable presumptions apply".
369	Chair Shetterly	Asks if Mr. Shepherd could you take him through the hypothetical in lines 21-24.
378	Shepherd	Responds and explains.
382	Rep. Uherbelau	Questions some of the language.
<u>TAPE 7, B</u>		
012	Shepherd	Responds.
015	Whithnell	Comments that the existing law is inadequate and voices support for the bill.
<u>HB 2298 - PUBLIC HEARING CLOSED</u>		
<u>HB 2250 - WORK SESSION</u>		
042	Bill Taylor	Explains and summarizes HB 2250.
056	Rep. Prozanski	Moves to move HB 2250 to the full committee with a do pass recommendation.
065	Chair Shetterly	Asks for objections. Vote is 8-0. Carrier is Rep. Eighmey.
<u>MEETING ADJOURNED AT</u>		

2:30 P.M.

Submitted By, Reviewed By,

Lisa Fritz, Bill Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2264, written testimony, Douglas M. Bray, 2 pp.

B - HB 2327, written testimony, Gregory A. Chaimov, 1 p.

C - HB 2326, written testimony, Gregory A. Chaimov, 1 p.

D - HB 2314, written testimony, Mary Ellen Johnson, 1 p.

E - HB 2298, written testimony, Peter D. Shepherd, 14 pp.