

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 23, 1997 Hearing Room 357

1: 00 PM Tapes 66 - 67

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 2118 - Public Hearing HB 2961 - Public Hearing

HB 2653 - Public Hearing HB 2967 - Public Hearing

HB 2731 - Public Hearing HB 2985 - Public Hearing

HB 2825 - 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 66, A		
	Chair	

003	Shetterly	Calls the meeting to order at 1:07 p.m.
HB 2967 - PUBLIC HEARING		
015	Chair Shetterly	Opens a public hearing on HB 2967.
040	Bill Gaylord	Attorney from Portland, Oregon. Testifies in support of HB 2967 and presents written testimony (EXHIBIT A) .
093	Rep. Prozanski	Could you share information on how Oregon ranks in comparison with other states? Why should the legislature be looking at modifying the statute of repose for product liability in civil actions?
105	Gaylord	Refers to (EXHIBIT A) . Continues testimony.
113	Rep. Prozanski	So, Oregon is considered 47th or 48th in comparison with other states depending on how citizens' are able to have redress in a civil product liability action on this same product, a tractor and hay baler.
119	Chair Shetterly	Explains statute of ultimate repose.
121	Gaylord	Explains the difference between the statute of ultimate repose versus the statute of limitations.
128	Bill Manning	Attorney at Law from Minneapolis, Minnesota. Testifies in support of HB 2967. Shares the details of Steven Sharp's case. Mr. Sharp's claim was brought against the manufacturer for injuries received due to a defective tractor and hay baler which spontaneously self-started while Mr. Sharp was unclogging an augur.
178	Manning	Continues testimony.
185	Rep. Prozanski	Asks for clarity on how or why the manufacturer is arguing the 1992 case, where the incident happened. I assume the case fell under the statute of limitations.
190	Manning	The suit came in under the statute of limitations. The seventy series tractor was manufactured from 1969 until 1978. The tractor involved in Mr. Sharp's case was built in 1972. His accident occurred in 1992. Under ORS 30.905 a product liability civil action shall be commenced not later than eight years after the date on which the product was first purchased. Continues testimony on Steven Sharp's case.
221	Chair Shetterly	Is Mr. Sharp's case, then a choice of law issue in that Oregon's law should apply as opposed to Wisconsin's law?
		The manufacturer is trying to use Oregon's statutes in order to completely bar the case from being heard.

224	Manning	Continues testimony on Steven Sharp's case.
249	Steven Sharp	Private Citizen Testifies in support of HB 2967 and refers to his testimony on page 3 of (EXHIBIT A) .
301	Gaylord	Refers to Anne Kirkwood's testimony on page 4 of (EXHIBIT A) . There exists unfairness in Oregon law that needs to be fixed for foreseeable or unforeseeable categories of people to seek redress who are being excluded due to the 8 year limitation. Oregon law does not offer any legal remedy for people who have been injured by All Terrain Vehicles (ATV) as the product is older than eight years from original purchase.
345	Rep. Eighmey	We're not talking about the fact that HB 2967 doesn't allow a person to have a remedy, if in fact there was negligence.
355	Gaylord	The ultimate repose liability statute lies in ORS 30.905. Explains intent behind the statute.
364	Rep. Bowman	How long has the eight year limitation to product liability been in the Oregon laws?
367	Gaylord	This statute was adopted in 1977 during the reform of the Civil Justice system.
373	Chair Shetterly	There has been further augmentation to the statute since then, however. Gives examples of the special exceptions by the legislature to ORS 30.905: IUDs, side saddle fuel tanks, asbestos, and breast implants.
380	Rep. Wells	By changing this statute, how will this effect Steven Sharp's case?
382	Manning	It may have a positive effect on Mr. Sharp's case as the appellate brief before the Wisconsin court shows the leading argument by the manufacturers is Oregon's current law. Continues testimony over Steven Sharp's case.
404	Rep. Prozanski	Could you clarify why your proposing a statute with an ultimate repose versus creating a statute without the "useful life" language? Thirty-five other states have adopted no language of ultimate repose. Refers to (EXHIBIT A) .
411	Chair Shetterly	Why not consider an extension to the statute of ultimate repose instead?
414	Gaylord	I believe, a longer ultimate repose offers the greatest length of recovery. Having a longer ultimate repose with a fixed time limit could create some arbitrary applications. Thus an inflexible rule for some claimants. If the legislature decides to remove the statute of ultimate repose, for product liability, that would be okay.

		Adding "useful life" language doesn't eliminate time considerations from the manufacturers stand point. It would allow, however, for flexibility in the law to bring forward a person's claim, so the person may have their case heard in court.
458	Manning	Responds by stating effect on Steven Sharp's case.
Tape 67, A		
030	Manning	Continues response. I, also, support the idea of not inserting the language as to the "useful life of a product" within the statute.
041	Rep. Prozanski	You testified that the government's rating for the tractor's expected useful life was about 20 plus years. If the legislature went to 15 years up from 8 years, Steven Sharp's civil action in Oregon could not commence.
045	Manning	Absolutely.
046	Rep. Prozanski	In regards to those states that have enacted a useful life statute, could you provide the existence of previous statute chronology before enacting this statute? Is enacting a useful life statute, a modern trend with these states? Refers to (EXHIBIT A) on page 2.
049	Manning	There is no trend towards tort reform. It is more accurate to say the trend is away from tort reform. I am unable to answer, whether those states which have enacted useful life statutes were in response to any trend.
058	Chair Shetterly	Were there any states that had enacted a useful life statute five years ago?
060	Gaylord	I don't know. Research could be done to determine that answer.
063	Rep. Prozanski	A historical perspective would aide in determining the subcommittee's direction with regards to this measure.
065	Gaylord	We'll be happy to look into and provide back the information to the subcommittee.
066	Rep. Uherbelau	If ORS 30.905 has no statute of ultimate repose, the fall back would be to ORS 12.140 which has a 10 year statute of liability.
070	Gaylord	Correct. If we just erased the statute of ultimate repose from Chapter 30, then we haven't meaningfully expanded the statute. Introduces Anne Kirkland's video tape.
076	Chair Shetterly	She was the plaintiff in "side-saddle" gas tanks case which was the subject of the 1995 legislation with regards to this statute.
081		Anne Kirkland's video presentation.
119	Rep. Beyer	How will this measure help your case? <u>Section 2</u> subsection (2) states that this Act will apply to only those actions after the effective date of the Act?
122	Manning	Explains the "choice of law" analysis as presented in Mr. Sharp's appellate brief.
		Shares comments over initiating Mr. Sharp's case, when the eight year

148	Rep. Wells	limitation for commencing a product liability civil action existed in Oregon law.
151	Manning	Responds by stating the reasons for bringing forth Mr. Sharp's civil action in Wisconsin.
168	Rep. Wells	Shares comments about the action taken in Mr. Sharp's instance when he was a resident of Oregon.
175	Manning	Provides further case proceedings in Mr. Sharp's product liability civil action.
197	Jay Perry	<p>Attorney from Eugene, Oregon.</p> <p>Testifies in support of HB 2967.</p> <p>>explains actions that can be taken under the Workers Compensation Act of 1913 from the perspective of employees and employers</p> <p>>when injury of an employee is caused by a product that is 8 years old or older, the Oregon employer loses the opportunity to recover its workers compensation costs</p> <p>>3 clients have lost or been limited to recovery by this statute in last 2 years</p>
247	Perry	<p>Continues testimony.</p> <p>>California adopted new standards for repetitive strain injuries which impose significant new costs on employers</p> <p>As employers seek to recover funds spent on workers compensation claims, more third party civil actions can be expected in the future.</p>
258	Rep. Beyer	Could you provide a definition as to the "concept of useful life of a product?" Will the "concept of useful life" be used by the courts as long as a product is being used?
262	Chair Shetterly	How is useful life determined? Is useful life a jury question of fact?
266	Gaylord	I believe, it is a jury question. Gives example of how a useful life concept maybe handled.
305	Rep. Beyer	Could a product that has not been upgraded by the manufacturer with known safety features still have a useful life on which a claim could be brought against?
316	Gaylord	When a product has aged, one issue that could be brought evolves from what is the standard at the time the product was designed. A design defect is something that is unreasonable to the standards at the time of concept. How well does the product comply with the state of the art at the time, could be a possible defense. This is a different question than that the product is too old to commence a suit before the courts.
		For instance, a case would not be brought forward for a design defect

337	Chair Shetterly	when the vehicle was not designed to have seat belts. The vehicle still has a useful life, but at the time of the design not having seat belts was not considered a design defect.
342	Gaylord	Correct. The product, in your example, would not have failed the test of a reasonable consumer.
345	William E. Taylor	Counsel A product's useful life depends on the facts and the type of products. So, defining "useful life" within the statute would not be something easily done by the legislature, as each product may differ.
350	Gaylord	Correct.
353	Chair Shetterly	Closes the hearing on HB 2967.
<u>HB 2731 - PUBLIC HEARING</u>		
365	Chair Shetterly	Opens the public hearing on HB 2731.
372	Rep. Dan Gardner	District 13. Testifies in support and presents written testimony on HB 2731 (EXHIBIT B) .
413	Rep. Eighmey	A similar measure to HB 2731 will be coming before this subcommittee, which also addresses personnel records, and could be merged with HB 2731.
426	Chair Shetterly	For the record, I identify receipt of written testimony from Marc Abrams (EXHIBIT C) . Closes the public hearing on HB 2731.
<u>HB 2118 - PUBLIC HEARING</u>		
433	Chair Shetterly	Opens a public hearing on HB 2118.
470	Donna Silverberg	Acting Director of Oregon Dispute Resolution Commission Testifies in support of HB 2118 and presents written testimony (EXHIBIT D) .
<u>Tape 65, B</u>		
038	Silverberg	Continues testimony.
063	Chair	The subcommittee is in receipt of -1 amendments dated 04/09/97 (EXHIBIT E) . Is it likely, based on your discussions, that there will be

	Shetterly	new amendments proposed?
066	Silverberg	Yes. There is consideration of merging this measure with SB 276.
073	DeEtt Wald Beghtol	Mediator Testifies in support of HB 2118 and presents written testimony (EXHIBIT F) .
116	Chair Shetterly	Closes the public hearing on HB 2118.
<u>HB 2653 - PUBLIC HEARING</u>		
126	Chair Shetterly	Opens a public hearing on HB 2653. Closes the public hearing on HB 2653.
<u>HB 2825 - PUBLIC HEARING</u>		
135	Chair Shetterly	Opens a public hearing on HB 2825.
137	Rep. Floyd Prozanski	District # 40. Testifies in support of HB 2825.
156	Chair Shetterly	Closes the public hearing on HB 2825.
<u>HB 2961 - PUBLIC HEARING</u>		
161	Chair Shetterly	Opens a public hearing on HB 2961. Closes the public hearing on HB 2961.
<u>HB 2985 - PUBLIC HEARING</u>		
175	Chair Shetterly	Opens a public hearing on HB 2985.
177	Rep. Floyd Prozanski	District # 40. Testifies in support of HB 2985. >provides comments from 1995 session over this issue Gives examples of acts of discrimination for engaging or participating in political activities.
		Closes the public hearing on HB 2985.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2967, written testimony, Bill Gaylord/Steven Sharp/Anne Kirkwood, 4 pages.

B - HB 2731, written testimony, Rep. Dan Gardner, 1 page.

C - HB 2731, written testimony, Marc Abrams, 2 pages.

D - HB 2118, written testimony, Donna Silverberg, 13 pages.

E - HB 2118, -1 amendments date 04/09/97, 2 pages.

F - HB 2118, written testimony, DeEtte Wald Beghtol, 2 pages.