

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 28, 1997 Hearing Room 357

1: 00 PM Tapes 69 - 71

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

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 3188 - Work Session

HB 2967 - Work Session

HB 2985 - Work Session

HB 2865 - Work Session

HB 3082 - 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
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157	Holmes	demanded before they are allowed in court. A great deal of work is done by paralegals now.
186	Rep. Prozanski	Discusses specialties and board certification. Do you believe that paralegals should show a specialty?
197	Holmes	Regulation should demand passing a qualifying exams, indicating knowledge.
202	Rep. Prozanski	General knowledge or specific knowledge?
206	Holmes	There are, currently, national voluntary certification exams which cover general knowledge and specifics (e.g. probate, bankruptcy, etc.). One of our concerns is that the exams are not state specific. We would need something that is Oregon specific.
218	Rep. Prozanski	What would be best for Oregon?
222	Holmes	A combination of general and specialty exams.
228	Rep. Prozanski	What type of protections would be there for the consumer?
232	Holmes	At a minimum, professional liability insurance (at least to \$100,000 per instance and \$300,000, which the Oregon State Bar now requires).
238	Rep. Prozanski	Define legal services, which would be provided by an independent paralegal.
241	Holmes	I would have trouble doing that because my area is in litigation, and I would recommend an attorney for litigation. The simple procedures (i.e. bankruptcy, wills, etc.) can be done by a paralegal. Gives examples.
273	Rep. Prozanski	Who should decide what is simple or not simple, in any of these areas of law?
278	Holmes	I think it can be done by the independent paralegal, through self-guidelines. I would hesitate to recommend that the regulation itself do that. Perhaps, the regulating agency could provide some administrative rules to help address that.
285	Rep. Prozanski	Gives a scenario. Would it be your position that, if a paralegal were to represent someone, it would trigger the ability to allow the city or state to have their representation through the proper prosecutor.
295	Holmes	You have entered the realm of criminal law. I would hesitate to recommend that a lay person represent anyone in a criminal situation.
296	Rep. Prozanski	What about a traffic citation?
297	Holmes	I understand that you represent yourself, regarding traffic citations.
302	Rep. Uherbelau	What is the difference between legal assistants and paralegals?
319	Holmes	In Oregon, they are one in the same. The national associations do have philosophical differences.

348	Rep. Uherbelau	Are there other states, besides California, which have set up the type of regulation scheme you spoke of earlier?
361	Holmes	Gives an example of a model being used in Florida.
388	Rep. Lynn Snodgrass	District 10 Introduces Mick Wagner, a constituent.
420	Mick Wagner	Director of Paralegal Services, Pro-Per Legal Documents Submits and discusses written testimony in opposition to HB 3082 (EXHIBIT B).
TAPE 70, A		
001	Wagner	Continues testimony.
050	Wagner	Continues testimony.
098	Wagner	Continues testimony.
126	Rep. Uherbelau	You have distinguished yourself from Robin Smith, requester of the bill, who calls herself an "independent paralegal." What is the distinction?
129	Wagner	She has not been working as an independent paralegal for two years. Explains why.
138	Rep. Uherbelau	So, you don't distinguish with reference to what either of you do; it is because she hasn't been practicing.
140	Wagner	That is a large part of it. Two years out of the legal system is an eternity.
146	Rep. Prozanski	You gave some credentials, as to who you are associated with, and you named an institution. Would you please repeat that for me?
150	Wagner	It is the American Institute of Independent Paralegals, and it is a training institute set up to hold its first classes, this fall, in Long Beach, California.
153	Rep. Prozanski	So, it's not really in existence yet.
155	Holmes	We are currently involved in the enrollment process; the first classes will start in September.
156	Rep. Prozanski	Is that going to be an institute for training in the classroom, or will it be training through correspondence?
158	Holmes	It will be a classroom institution.
159	Rep. Prozanski	Discusses a similar school in Philadelphia, Pennsylvania. Are you familiar with that school?
160	Holmes	There may be other schools, but there are no others that deal solely with the training of independent paralegals. Probably about 80 percent of all independent paralegals are employed in Washington, Oregon, California, and Arizona.
165	Rep. Bowman	Discusses some of the types of services that paralegals perform. Would I come to you if I wanted to write a will?
172	Holmes	You might. Discusses the processes he goes through, regarding a client

		who wants to prepare a will.
179	Rep. Bowman	So, you would sit down with me and go through what you could do for me and what you would recommend I get an attorney for.
183	Holmes	It is your determination, whether or not you want me to help you. Gives example.
191	Rep. Bowman	What is "intellectual property?"
192	Holmes	Things like patents and copyrights. Under Oregon law, they must be probated.
198	Kevin Anselm	Department of Consumer and Business Affairs (DCBA) Submits and discusses written testimony (EXHIBIT C). Comments that a fiscal impact has been submitted to the Legislative Fiscal Office, and the committee should receive it soon.
237	Mike Campbell	Owner of Heilen Paralegal Services Testifies in support of HB 3082. I support the bill for three reasons: (1) the adversary relationship between the state bar and paralegals, (2) regulation under the DCBA, which is an elegant solution, and (3) public choice to access paralegals or attorneys.
287	Campbell	Continues testimony. Comments that many cannot afford legal assistance and that the public has choices in almost every other level of social interaction but law.
302	Rep. Bowman	How long have you been practicing as an independent paralegal?
304	Campbell	I've been practicing independently for three years and before that, I was a traditional paralegal for a number of years.
306	Rep. Bowman	Is your practice very similar to Mr. Wagner's?
307	Campbell	It is similar, but my specialty is different.
317	Rep. Bowman	How can one person be charged, with operating without a license, while another has not?
329	Campbell	The situation between the Oregon State Bar (OSB) and independent paralegals is adversarial. Discusses the current situation.
354	Dave Henderson	Independent paralegal Comments about his fear that the "unlawful practice hammer" could come down on him. Discusses the categorization of the "poor man's attorney." Discusses options given by OSB.
404	Henderson	Continues testimony. Discusses pro bono work. I do not consider myself as competition for attorneys. I often recommend clients to attorneys.
TAPE 69,B		
001	Henderson	Continues testimony.
043	Laura Culbertson	Oregon State Public Interest Research Group (OSPIRG) Submits and discusses written testimony in support of HB 3082 (EXHIBIT D).

204	Chair Shetterly	Closes Work Session on HB 3188.
<u>OPENS WORK SESSION ON HB 2967</u>		
204	Taylor	Discusses HB 2967.
216	Betsy Earle	Associated Oregon Industries (AOI) Submits and reads aloud written testimony in opposition to HB 2967 (EXHIBIT F).
244	Rep. Prozanski	Would the AOI prefer to have what 35 other states have, which is no statute of ultimate repose?
248	Earle	We would prefer to have the current statute of repose, which is eight years.
249	Rep. Prozanski	So, you think it is fair that consumers, in this state, cannot bring litigation that they would be able to, if they lived in adjacent states.
262	Earle	There are always individual cases, in which that may not be fair, but it is our position that the statute of repose, that Oregon has worked out, is the best compromise.
267	Rep. Wells	Do we ever have a case where it involves only the original owner?
272	Chair Shetterly	Certainly, not here in Oregon.
273	Earle	I don't think I'm qualified to speak to that.
277	Rep. Uherbelau	I noticed that you commented that this would be harmful to Oregon's business climate. We heard testimony last week that said Oregon is the third most restrictive in the nation. Why would you say it would be harmful?
287	Earle	I didn't hear the testimony last week, and I'm not sure what you mean by "restrictive." Do you mean more restrictive on plaintiffs or defendants?
289	Rep. Uherbelau	Thirty-five states have no ultimate repose statute at all. Obviously, they are more restrictive to plaintiffs, but this doesn't seem to have that big of an impact climate throughout the US.
301	Earle	Every little thing like this chips away at the business climate. You could make the argument that one bill isn't going to make that much of a difference, but if you go on and on like this, you're eventually going to make a dent.
307	Chair Shetterly	Just for clarification, we have a tolling of the statute until the age of maturity.
317	Mike Crew	Attorney, representing Oregon Medical Association (OMA) Testifies in opposition to HB 2967, as presently written. We are fearful that physicians will be brought into the provisions of the bill, as sellers or buyers of products.

342	Chair Shetterly	You're talking about products such as pacemakers, heart valves, etc.
345	Crew	All of that can be brought in. If this legislation is passed, as written, physicians will be getting sued right and left, well beyond the ultimate statute of repose.
357	Chair Shetterly	I would guess that the same would hold true for any seller of a product. Wouldn't it? Gives an example. Is there a qualitative difference between the OMA and a "seller off the shelf?"
360	Crew	I don't see one, except that a physician isn't necessarily involved with all the decisions regarding the products he/she is using. Gives an example.
372	Rep. Eighmey	Discusses certain parties responsibilities, involved with a product. Gives an example. A physician is not going to be liable for a product, unless he/she has tinkered with it in some way.
407	Crew	I can't argue with what you just said, except that, as presently written, the malpractice premiums, in this state, are premised on the liability physicians might have in this product situation. We would suggest that this would cause a rise in malpractice rates.
TAPE 70, B		
005	Rep. Prozanski	I'm not ready to let you off the hook, regarding amendments. I plan to make a motion to move this in the future, so I would suggest that you bring amendments forward. Discusses liability for a physician. Would you agree that, if a physician had knowledge of a defective product and used it anyway, they should be held somewhat liable?
015	Crew	I would agree with that, if the physician had knowledge that the product was defective.
017	Rep. Uherbelau	Do you have any information that says that physicians, in states who don't have repose statutes or states that have longer repose, have run into problems?
024	Crew	I don't have any information about that. All I can tell you is that malpractice rates in Oregon have dropped dramatically over the past 10 years because of the tort reform that was enacted in 1987.
028	Rep. Uherbelau	Do you any information about what malpractice insurance costs in these states?
029	Crew	No.
031	Rep. Beyer	Cites section two and subsection two of HB 2967. Discusses concerns about retroactivity and constitutionality.
041	Taylor	This is not, I don't think, in the nature of a contract. This is a tort action, where someone claims that they have been injured due to the faulty product of another. Discusses relating statutes.
050	Rep. Shetterly	Discusses differences between tort action and contracts. Gives example.

062	Rep. Eighmey	Further discusses contracts and tort claims.
069	Taylor	I just want to clarify that the statement I made does not mean that it is automatically constitutional.
077	Chair Shetterly	I will hold back this bill until amendments are drafted.
081	Rep. Starr	Discusses defective products, relating to the bill. I could not support this legislation, as drafted.
107	Rep. Wells	I will be supporting this legislation.
120	Chair Shetterly	We'll bring this bill back.
123	Rep. Prozanski	I would like this bill to improve upon what we are currently doing. I don't think it's sufficient for consumers right now. I understand the concerns that were expressed today. I'm also not ready to push it out today.
130	Chair Shetterly	Closes work session on HB 2967.
<u>OPENS WORK SESSION ON HB 2985</u>		
143	Rep. Prozanski	Discusses intent and purpose of HB 2985. Discusses limitation of employees (regarding lines five and 14) and suggests a conceptual amendment.
180	Chair Shetterly	Cites section two, line nine, of HB 2985. I have some concerns, regarding an individuals ability to be productive and contributing to their place of employment.
192	Rep. Eighmey	If it does have substantial impact on the business, you can develop restrictions.
203	Rep. Bowman	Would you be required to resign from your job?
211	Chair Shetterly	Is "reasonable accommodation" in here?
213	Rep. Prozanski	I thought we decided that that wasn't a significant concern. Discusses how concerns have been addressed (page two of the bill).
230	Chair Shetterly	What's the current law?
233	Taylor	I believe this relates to employment rights of legislators for the purpose or intent of the legislative assembly, which was enacted the last session or the session before. Reads aloud portions of the statute to illustrate.

243	Rep. Prozanski	I believe the bill would allow an individual to enter into a political arena, if that's what they choose to do, but they may have to suffer the consequences, on the employment side, if the fact that they have entered into that arena has affected their ability to do their job.
255	Chair Shetterly	This doesn't require an employer to give an employee paid time off.
262	Rep. Prozanski	That's right.
267	Chair Shetterly	Cites subsection two. Gives an example. Could that be construed as a violation of subsection two?
282	Rep. Eighmey	What are ORS 260.432 and ORS 260.665?
285	Chair Shetterly	Where do you see those references?
286	Rep. Eighmey	At the bottom of page one, lines 27 and 28.
289	Taylor	ORS 260.665 is undue influence to register to vote, and ORS 260.432 is solicitation of public employees.
291	Rep. Prozanski	This bill is designed to prohibit discrimination for someone that's outside of employment. The point may come up that, if you are employed 24 hours a day, seven days a week, you may not be qualified to run for office.
300	Rep. Eighmey	Page two, lines one through three, does give some restriction. Reads aloud the citation. Discusses similar concerns dealt with in the 1995 legislative session.
325	Rep. Prozanski	Discusses examples given last session.
338	Rep. Eighmey	Discusses an issue of the previous session, as it relates to the bill.
351	Rep. Prozanski	The bottom line is to protect everyone, no matter where they are on the issue, and people should have the ability to participate in the process without fearing conviction.
359	Chair Shetterly	Did you want to move conceptual amendments?
360	Rep. Prozanski	MOTION: Moves to AMEND HB 2985 on page one, lines five and six and 13-14, delete "who employs ___ or more employees".
370	Chair Shetterly	Reads aloud the language, as it would read with the amendments.
387	Rep. Beyer	I want to object to the amendments. I think people need to get along in the work place. If there are no exemptions for small businesses, I can't support them.

403	Chair Shetterly	Will a "small business" amendment be made, likely, on the Senate side?
406	Rep. Prozanski	It's possible.
409	Rep. Starr	My understanding was that this rendering was amended into the bill and it was part of the bill when it went over to the Senate side last session.
410	Rep. Prozanski	No, it was not. It was amended in the Senate Judiciary last session.
TAPE 71, A		
007	Rep. Uherbelau	Could you reiterate the history of this bill last session? What happened?
009	Rep. Prozanski	We had, I believe, two hearings in Judiciary. It passed out of the House, and I believe these changes were made on the Senate side. I believe it passed out of the House with 50 some votes, and then it got "hung up" on the Senate side. I don't think it was ever voted on, on the Senate floor, due to constitutional problems with the numbers.
020	Rep. Eighmey	I think that the "time crunch" also had something to do with it.
021	Rep. Wells	So, when was this small employer part put in here?
022	Rep. Prozanski	I believe that it was made while in Judiciary, on the Senate side.
023	Rep. Wells	Why did you make the decision to take it out now?
024	Rep. Prozanski	Because that's how it passed out of the House two years ago.
025	Rep. Wells	If the Senate put it in last time, there must have been a pretty good reason.
026	Rep. Shetterly	What number would you have in mind?
032	Rep. Prozanski	I would be opposed to anything over five. The testimony clearly showed that businesses, in this state, employ six or less.
035	Rep. Eighmey	If any numbers are to be passed out, I think we should be consistent with the bill that passed out of the House last session and use "six or more."
041	Rep. Bowman	This bill does not deal with political activities on the job. This is about activities after hours, outside of the workplace, not in the company of the employer. We are giving people the ability to follow their own political leanings, after work, when they're not being paid, off the property. I don't see why there is a need to put a number in there, when this has nothing to do with the employer and everything to do with the person's free speech and rights.
		We have a motion. Do you want to go with that? How do you feel about

051	Chair Shetterly	going back to "six or more?" I think it would be good to include something exempting small business, especially if it is going to get it through both Houses.
055	Rep. Prozanski	My thought was since it went through the House, with such a high passage rate, if that exemption needs to be added, we can address that on the Senate side.
058	Rep. Uherbelau	This is off-the-job activity. I have a real problem, for instance, if I am working for someone, that employer somehow has power over me to tell me what I can and can't do. That's a tremendous amount of power. If we put a number in there, we are saying that the power exists for those employers with "six or more" employees. Why would it be important for an employer to control aspects of my life that are "off-the-job?"
076	Rep. Wells	I've never seen a time yet, when a person can completely divorce who he is from the job, whether he is on or off the job. In a small business, employees work more closely with the employer. In large business, employees are more of a "number" and more immune to personal conflicts. In small business, if an employee is pushing their own cause, it may begin to wear on the employer.
089	Rep. Bowman	That's not the employer's business. I don't know how any employer can decide what you should think when you are not on the job.
093	Rep. Wells	If I have people working for me and I have to hear, day in and day out, about their personal agendas, I may decide that it is not worth it to have those employees around because I don't agree with them.
096	Rep. Bowman	I agree with that. If an employee is involved in political activity, on the job, you have a right, as an employer, to tell that employee to limit that activity until after work. You do not have the right, as an employer, to tell someone how to think and what to do when they are on their own time, not on the clock, and they're doing what they believe is the right thing for them to do. You are absolutely within your right to say, "Not during nine to five, at 5:05, you go for it."
101	Rep. Wells	I guess I agree with you, but in the "real world" it isn't that way. We usually don't separate ourselves and our personalities that quickly, as soon as we walk on the job or walk off.
104	Chair Shetterly	Discusses a scenario. That could have substantial effect on a person's business.
115	Rep. Uherbelau	I don't think it's as tough as you think it is. Discusses her own personal experiences, within the workplace.
133	Rep. Starr	I agree very strongly with Rep. Starr and Rep. Wells. Discusses personal expression, as it relates to small business. If we cannot exclude small business, this is bad legislation.
158	Rep. Eighmey	I understand both sides, but I don't think we should tolerate discrimination. I think we should vote on the amendment, and if it doesn't make it, go from there.

		<p>VOTE: 4 - 4 - 0</p> <p>AYE: 4 - Rep. Bowman, Rep. Eighmey, Rep. Prozanski, Vice-Chair Uherbelau</p> <p>NAY: 4 - Rep. Beyer, Rep. Starr, Rep. Wells, Chair Shetterly</p>
176	Chair Shetterly	The motion Fails.
180	Rep. Eighmey	MOTION: Moves to AMEND HB 2985, on lines 6 and 13, by inserting "6" in place of the "___".
		<p>VOTE: 6 - 2 - 0</p> <p>AYE: 6 - Rep. Bowman, Rep. Eighmey, Rep. Prozanski, Rep. Wells, Vice-Chair Uherbelau, Chair Shetterly</p> <p>NAY: 2 - Rep. Beyer, Rep. Starr</p>
188	Chair Shetterly	The motion Carries.
190	Rep. Prozanski	MOTION: Moves HB 2985 to the full committee with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 6 - 2 - 0</p> <p>AYE: 6 - Rep. Bowman, Rep. Eighmey, Rep. Prozanski, Rep. Wells, Vice-Chair Uherbelau, Chair Shetterly</p> <p>NAY: 2 - Rep. Beyer, Rep. Starr</p>
195	Chair Shetterly	<p>The motion Carries.</p> <p>REP. PROZANSKI will lead discussion on the floor.</p>
197	Chair Shetterly	Adjourns at 3:11 p.m.
		*Testimony submitted for the record concerning HB 2967 (EXHIBIT G) and HB 3082 (EXHIBIT H).

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 3082, written testimony, Thomas Holmes, President of the Oregon Paralegal Association, 4 pages.

B - HB 3082, written testimony, Mick Wagner, Independent Paralegal and Director of paralegal Services for the Pro-Per Legal Documents offices, 2 pages.

C - HB 3082, written testimony, Kevin Anselm, Department of Consumer and Business Affairs, 2 pages.

D - HB 3082, written testimony, Laura Culbertson, Consumer Advocate for the Oregon State Public Interest Research Group, 3 pages.

E - HB 3188, proposed amendments (-2), Legislative Counsel, 1 page.

F - HB 2967, written testimony, Betsy Earle, Associated Oregon Industries, 1 page.

G - HB 2967, written testimony, William Gaylord, Attorney at Law, 2 pages.

H - HB 3082, written testimony, Michael and Caroline Neunzert, citizens of Oregon, 1 page.