

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 7, 1997 Hearing Room 357

1:00 P.M. Tapes 78 - 79

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

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

HB 3075 Work Session HB 2320 Work Session

HB 3616 Work Session HB 2825 Work Session

HB 2835 Work Session HB 3407 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 78, A		
	Chair	

004	Shetterly	Opens the meeting at 1:17 p.m.
HB 3075 - WORK SESSION		
012	Chair Shetterly	Opens the work session on HB 3075.
013	Rep. Ben Westlund	State Representative, House District 55 >Submits written testimony and testifies in support of HB 3075 (EXHIBIT A). >need to give this bill every chance to become law >Government has the opportunity to be as creative as the engineers who create the crafts. >helps all Oregonians
047	Sen. Gene Derfler	State Senator, Senate District 16 >Liability insurance increases costs. >This bill would reduce the cost of airplanes to allow for the flight of pleasure.
073	Sen. Bill Fisher	State Senator, Senate District 23 >allows people to accept responsibility >product liability >dozens of examples of pilot error >It is hard to protect people when there is so much human error.
111	Rep. Uherbelau	I am concerned with the aircraft that carries less than 20 people. I don't know what you mean by "aviation lightcraft?"
125	Rep. Westlund	The general intent of the bill is for general aviation and non- commercial aircraft. If there is a specific commercial application, perhaps the committee can define that.
133	Sen. Fisher	It is the same problem as with defining a light truck and truck.
143	Rep. Wells	Where did this bill come from?
146	Sen. Derfler	I don't know.
149	Rep. Westlund	The bill originated in North Dakota.
154	Rep. Wells	Have you seen the paper by Legislative Counsel (LC) that addresses the potential legal issues?

158	Rep. Westlund	I don't see what you have.
159	Chair Shetterly	It is a letter dated April 10 that I received from you.
159	Rep. Westlund	Those issues have been addressed. We have a rewrite that we can give you.
162	Chair Shetterly	Is this letter reflected in a redrafted version of the bill?
164	Rep. Westlund	Correct.
164	Chair Shetterly	That answers my question. I understood that those were being incorporated.
168	Rep. Wells	You don't think that we will run into some of the legal issues.
173	Rep. Westlund	The committee's challenge is to write law which works for Oregon.
184	Rep. Uherbelau	I don't know how extensive the amendments are, but it would be difficult to relate testimony to something we don't have in front of us.
186	Chair Shetterly	Maybe what we can get know is an overview of the after market insurance concept.
191	Mike Dermond	Executive Director of the Aerospace Industry Association of Oregon >Submits testimony and testifies in support of HB 3075 (EXHIBIT B). >The general aviation industry has declined in the last 20 years.
217	Rep. Uherbelau	Do you have any empirical evidence which relates the onset of tort liability to that decrease?
220	Dermond	Yes. The president of Cessna has agreed to stop manufacturing some of their aircraft until the tort laws are changed.
230	Rep. Uherbelau	That was an industry decision. I'm talking about the loss under tort liability that would cause them to make that kind of decision.
233	Dermond	The loss has been millions of dollars.
235	Rep. Uherbelau	Do you have evidence to prove that?
220	Dermond	>I believe that when I bring the executives up, they will be able to provide that information for you. >Companies like Cessna are able to have level protection against older aircraft for competition with big names.
		Continues testimony. >North Dakota passed a bill which offers the purchaser and

		manufacturer a contract which will lower the cost of the plane.
270	Dermond	>A contract between the manufacturer and purchaser which lowers the cost of the plane in exchange for the buyer not suing for pain and suffering.
292	Chair Shetterly	"Non-economic damages?"
292	Dermond	Yes.
295	Rep. Uherbelau	Are these the amendments that have been passed around?
297	Bill Taylor	These were just handed to us by Rep. Westlund's office. I assume they are.
299	Rep. Uherbelau	Section 2 doesn't limit it to pain and suffering. Where do you see this as limiting?
306	Dermond	The contract's intent is to address pain and suffering.
319	Rep. Eighmey	Is it your intent to limit it to non-economic losses? There is more to non-economic losses than just pain and suffering.
		The intent was to go case by case which will lower the cost of the aircraft.
332	Dermond	>Aircraft is treated as real property. >You would, as the purchaser, see on the original bill of sale a lien on the sale.
383	Dermond	Continues testimony. >discusses the options which a purchaser would have
394	Chair Shetterly	What would the amount of the lien be?
396	Dermond	That would be up to the aircraft manufacturer.
399	Rep. Wells	How do I come to the conclusion that buying the insurance is a better deal?
407	Dermond	Currently there is not insurance for the manufacturer to buy. We have put that in there, because we think the industry is moving that way. There are two other options: agreeing not to sue or purchasing the insurance.
TAPE 79, A		
001	Rep. Wells	When I buy the plane, I am signing a waiver that says I won't sue them for any problems they may have with their plane, correct?
003	Dermond	Depending on the contract that is drawn up, different stipulations can be included in the contract.
009	Chair Shetterly	Are you talking about the first or subsequent purchaser?

010	Dermond	We are talking about the first purchaser right now.
011	Bill Taylor	Why can't you do this by contract now?
013	Dermond	The answer has to do with exporting Oregon law and the contract to other states.
019	Bill Taylor	How is a subsequent purchaser to know there is a first purchaser?
022	Dermond	The Federal Aviation Agency (FAA) has to support state statutes in the bill of sale.
030	Rep. Eighmey	Why couldn't this be done like Covenants, Conditions, and Restrictions (CC&R) in property? If this is a transfer of property, you could place on the face of the registry a notice that the craft is subject to the restrictions placed on it by the original owner.
039	Dermond	I don't know how to answer that.
054	Richard Van Grunsvand	<p>Van's Aircraft, North Plains</p> <ul style="list-style-type: none"> >industry has changed over the years >reduction of traditional aircraft >higher demand for light aircraft >reduction in insurance costs will benefit industry >create larger industry
098	Rep. Uherbelau	What aircraft do you see this bill covering?
103	Van Grunsvand	Personally, I see it covering personal use aircraft and the lower end of business use aircraft. Any craft with an excess of six seats would be a rarity under this bill.
117	Dermond	This is an optional contract. If someone wanted the discount, the aircraft would most likely be for personal use.
124	Chair Shetterly	If the purchaser is a business, who is protected and who isn't?
133	Dermond	If the employee decides to sue on his own, the court would have to decide if the employee is part of the company or part of the purchaser.
140	Mark Cahill	<p>Executive Vice President and Chief Financial Officer, TQM</p> <ul style="list-style-type: none"> >Our aircraft would be a good model for this measure. >get more people flying and flying safer >make aircraft more accessible to the average person
		Continues testimony.

188	Cahill	>can't get around product liability >puts the responsibility where it needs to be
221	Rep. Wells	What has changed with the newer aircraft and the statute of repose?
231	Cahill	There are numerous new technologies available to us. We don't have product liability tail.
249	Rep. Wells	What has changed as far as Cessna?
251	Cahill	The product liability tail got shortened.
254	Rep. Wells	I understand that the product liability is for planes over 18 years old. What about the newer planes?
256	Dermond	No longer are there lawsuits involving aircraft older than 18 years. They are able to take the money they would have spent on litigation and use it for research.
269	Rep. Wells	They are still going to be eligible for tort claims against them as long as their planes are not over 18.
271	Dermond	Absolutely.
272	Rep. Wells	You are putting together a bill that will give you a market advantage when there is a level playing field now.
276	Dermond	Yes. This can entice companies to move to Oregon and give them an advantage over those like Cessna.
282	Bill Taylor	We are talking about the ultimate statute of repose. Oregon has an 8 year repose. Some states use the "useful life of a product" statute.
293	Dermond	This takes it from the courts and brings it to the market.
303	Rep. Uherbelau	In most of the planes, you will have a passenger who doesn't own the plane. What would this type of after market insurance do to premiums?
318	Dermond	We have no answer to this, because we haven't taken this step yet.
327	Cahill	The idea is to limit the risk up front so we can reduce the risk.
333	Rep. Uherbelau	There must be information from the insurers in North Dakota. Have they reduced their product liability? If so, to what extent?
340	Dermond	There is no track record available yet. An aircraft is scrutinized by the FAA before it can be sold as a complete aircraft.
370	Rep. Uherbelau	I would hope the scrutiny by the FAA is better with your industry than with the commercial planes.
375	Cahill	Gives an example of the commercial statistics.
397	Rep. Bowman	My understanding is that this bill takes the responsibility off your companies and puts it on the purchaser.
395	Dermond	It is a choice that the purchaser is making to buy a plane, read a contract, and know that they can't sue.
TAPE 78, B		
001	Rep.	I am still troubled. There are no safeguards for the purchaser and

	Bowman	other people who may be injured by your product.
007	Dermond	We can't legislate a contract for a third party. Only the purchaser doesn't have recourse if an accident occurs.
014	Rep. Bowman	Is it not true that this would require the original purchaser to continue the insurance?
016	Dermond	>You have all the recourse you want by paying the difference to the manufacturer. In essence, you pay full price. >You can sign the same contract the original purchaser did. >You can purchase insurance indemnifying the manufacturer and collect from your insurance company.
031	Rep. Wells	That value is based on the original discount even though we're buying an used aircraft?
035	Dermond	Legislative Counsel left this vague enough that contracts could be written up on a case by case basis.
042	Rep. Bowman	Have you spent any time with the insurance agents to find out how this can be beneficial to the general public?
045	Dermond	We contacted the people in North Dakota who worked on this legislation. We have received nothing negative from them.
052	Rep. Bowman	Have you received anything back from them at all?
053	Dermond	We have talked on the phone, and it has been positive.
058	Richard Giles	AkroTech Aviation, President >concerned with what this will do to the marketplace >The premium is about 20% of the cost of the plane when compared with product liability.
104	Giles	Continues testimony. >The purchaser has a choice on whether to pay the full price or pay a reduced cost in exchange for a reduced liability.
118	Chair Shetterly	In terms of breakdown, how many purchasers would be businesses and how many would be individuals?
122	Dermond	About 99.9% would be recreational.
129	Cahill	About 60% of what we sell is the lower end of recreation.
133	Chair Shetterly	Closes the work session on HB 3075.
<u>HB 2320 - WORK SESSION</u>		
	Chair	

144	Shetterly	Opens the work session on HB 2320.
148	Bill Taylor	Committee Counsel >Explains the provisions of HB 2320. >-1 amendments (EXHIBIT C)
163	Amy Veranth	Assistant Attorney General, Department of Justice >Submits testimony in support of HB 2320 (EXHIBIT D). >The amendments delete the provision which requires the Attorney General to approve agency notice rules. >Informal disposition of contested cases is now required, and, with the amendments, this would be clarified.
192	Chair Shetterly	Referring to page 2, line 13, asks about informal disposition by default.
196	Veranth	It is anyone's guess what it is. We chose not to do anything with that section, because we wanted to make the bill as clear as possible. >Discusses subpoenas and depositions. >The amendments would allow agencies to adopt alternative dispute resolutions rules by reference.
236	Chair Shetterly	We have the bill as it was introduced, the -1 amendments, the proposed amendment just given to us, and a hand-engrossed version of the bill.
244	Veranth	You can throw away the last two you mentioned.
249	Chair Shetterly	So the -1 amendments and the bill are the only relevant materials which we need.
250	Veranth	Yes.
252	Chair Shetterly	Is this housekeeping?
254	Veranth	Yes.
262	Rep. Wells	Referring to section 4, asks how major of a change is that when agencies can issue their own subpoenas?
267	Veranth	It depends upon on what agencies and changes you're talking about.
275	Chair Shetterly	We don't have a court decision on that.
275	Veranth	No.
280	Chair Shetterly	We are in work session. I would entertain a motion unless you would like to spend some time with the -1 amendments.
284	Rep. Beyer	I'm not comfortable with this.

285	Chair Shetterly	I will close the work session on this and reschedule it for Friday. I think this is fairly simple.
308	Rep. Wells	Maybe we need to go through what we're looking at.
313	Chair Shetterly	We will look at the original bill and the -1 amendments.
315	Veranth	The -1 amendments incorporate the other amendments.
316	Committee	Discusses what is needed for Friday's meeting.
319	Chair Shetterly	This looks to me like a housekeeping bill.
325	Chair Shetterly	Closes the work session on HB 2320.
<u>HB 2320 - WORK SESSION</u>		
326	Chair Shetterly	Reopens the work session on HB 2320.
327	Chair Shetterly	Is there any opposition on the bill?
328	Veranth	No there is none.
338	Chair Shetterly	Closes the work session on HB 2320.
339	Rep. Prozanski	We are scheduled to meet at 1:00 p.m. on Friday. Can counsel tell us what is scheduled for 3:15 p.m.?
343	Bill Taylor	I don't know of anything.
<u>HB 3616 & HB 2825 - WORK SESSION</u>		
348	Chair Shetterly	Opens the work session on HB 3616 and HB 2825.
352	John Gervey	Oregon Justice of the Peace Association >The current language wipes out the Justice of the Peace courts. >This bill would exempt the areas where this would occur.
373	Rep. Prozanski	HB 3616 has two additional sections that are not in HB 2825. >housecleaning of HB 2825
397	Chair Shetterly	HB 3616 is more comprehensive.
397	Rep. Prozanski	It takes care of some housecleaning which is not in HB 2825.
	Chair	The effect is to grandfather in the Justice of the Peace courts in these

402	Shetterly	counties.
405	Gervey	There will be no increase in the number of courts. This will protect those already in existence.
409	Chair Shetterly	This was probably an inadvertent consequence of the court consolidation.
411	Rep. Prozanski	With the consolidation there is conflict with the geographic setting. This is a safeguard for the rural areas.
422	Rep. Prozanski	MOTION: Moves HB 3616 to the full committee with a DO PASS recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Eighmey
428	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
TAPE 79, B		
<u>HB 2835 -</u> <u>WORK</u> <u>SESSION</u>		
003	Chair Shetterly	Opens the work session on HB 2835.
005	Bill Taylor	Committee Counsel >Submits -4 amendments (EXHIBIT E). >Discusses the original bill with amendments.
024	Rep. Prozanski	Are we limiting ourselves to the -4 amendments?
025	Chair Shetterly	I think the -4 amendments replace the previous amendments.
027	Carl Meyers	Oregon Juvenile Department Directors Association >The original bill would allow facility staff to administer medication. >The bill lets rural counties with staffing problems to administer medications.
056	Rep. Bowman	I am concerned with the -4 amendments. It doesn't safeguard who needs this information. If I were to pass out information which isn't accurate, there is no liability.
076	Chair Shetterly	You're talking about the -4 amendments.
077	Rep. Bowman	Yes.

078	Rep. Uherbelau	This can be a dangerous bill. Psychotropic drugs can have bad side effects. There are federal laws dealing with controlled substances. I don't know that these people are covered by federal laws.
099	Meyers	I am not sure that I can address your concerns today. We are talking about a doctor or nurse delegating to the staff.
113	Rep. Uherbelau	You are talking about the rules governing nurses. I don't think that the rules would cover these psychotropic drugs.
119	Rep. Prozanski	I request that we postpone any further deliberation until Friday.
123	Chair Shetterly	That sounds like a good idea.
126	Rep. Uherbelau	I would like to have a medical person here.
132	Chair Shetterly	I have asked for Ozzie Rose to be here on Friday.
139	Rep. Starr	Part of the function is to provide notice to the school district so that they can provide the education.
141	Chair Shetterly	I am concerned with a safety standard in policing students.
145	Chair Shetterly	Closes the work session on HB 2835.
<u>HB 3407 - WORK SESSION</u>		
155	Chair Shetterly	Opens the work session on HB 3407.
156	Chair Shetterly	I have received a copy of a Supreme Court decision from Mr. Taylor on this matter. >-1 amendments (EXHIBIT F)
166	Rep. Uherbelau	We are limiting this to someone making an in person solicitation when most are made over the phone.
170	Rep. Wells	I thought that is what they are getting at. You get a call from someone who has been contracted out by the organization, and they don't belong to the organization.
180	Rep. Bowman	What if you are actually on staff? Do you say that you are being paid every time you meet someone?
188	Rep. Wells	I don't like seeing professionals hired to solicit funds.
199	Chair Shetterly	Closes the work session on HB 3407.
<u>HB 3616 - WORK SESSION</u>		

201	Chair Shetterly	Reopens the work session on HB 3616.
201	Chair Shetterly	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. EIGHMEY to BE RECORDED as voting AYE on the motion to send HB 3616 to the full committee with a DO PASS recommendation .
206	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
206	Chair Shetterly	Closes the meeting at 2:58 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 3075, written material, staff, 3 pp.

B - HB 3075, written material, Mike Dermond, 34 pp.

C - HB 2320, -1 amendments (dated 5/7/97), staff, 3 pp.

D - HB 2320, written materials, Amy Veranth, 4 pp.

E - HB 2835, -4 amendments (dated 5/7/97), staff, 2 pp.

F - HB 3407, -1 amendments (dated 5/5/97), staff, 1 p.

G - HB 3075, -4 amendments (dated 5/7/97), staff, 3 pp.