

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CRIMINAL LAW

June 2, 1997
3:15 P.M.

Hearing Room 357
Tapes 134 - 135

MEMBERS PRESENT:

Rep. John Minnis, Chair
Rep. Jo Ann Bowman, Vice-Chair
Rep. Peter Courtney
Rep. Floyd Prozanski
Rep. Lane Shetterly
Rep. Ron Sunseri
Rep. Larry Wells

MEMBER EXCUSED:

None

STAFF PRESENT:

Scott Lumsden, Counsel
Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

HB 2383 Work Session
HB 2726 Work Session
HB 3009 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 134, A		
003	Chair Minnis	Opens the meeting at 4:07 p.m.
<u>HB 3009 - WORK SESSION</u>		
005	Chair Minnis	Opens work session, HB 3009. Discusses -1 (EXHIBIT A) and -3 amendments (EXHIBIT B).
014	Brenda Rocklin	Department of Justice. States that the original bill would still need, -1 amendments, -3 amendments. Need two minor amendments to -3 amendments to make consistent with -1 amendments..
019	Chair Minnis	Asks to start with -1 amendments.
020	John Nichols	Department of Justice. States -1 amendments are Department's reaction to original printed bill with regulatory additions.

- 027 Rep. Prozanski **MOTION: Moves to ADOPT HB 3009-1 amendments dated 4/7/97 (EXHIBIT A).**
- 030 Chair Minnis **VOTE: Hearing no objection, declares the motion CARRIED.**
- 031 Chair Minnis States -3 amendments from Governor's office. Asks if gut and stuff bill.
- 035 Rocklin States -3 amendments come from HB 2195. States that with the two changes it will be consistent with -1 amendments: Page 3, line 13 of -3 amendments, reference to 464.420 needs to be restored. Page 5, line 26-30 of -3 amendments, needs to be deleted.
- 061 Rep. Prozanski **MOTION: Moves to ADOPT HB 2195-3 amendments, with conceptual amendments on page 3, line 13, restoring "464.420" and on page 5, deleting lines 26-30, dated 5/29/97 (EXHIBIT B).**
- 069 Rocklin States -3 amendments would make two major criminal law changes: Creates crime of cheating a Class 3 Felony, makes cheating a RICO predicate; redefines crimes of First Degree and Second Degree Unlawful Gambling.
- 079 Chair Minnis **VOTE: Hearing no objection, declares the motion CARRIED.**
- 080 Rep. Prozanski **MOTION: Moves HB 3009 to the full committee with a DO PASS AS AMENDED recommendation.**
- 086 **VOTE: In a roll call vote, all members present vote AYE.**
- 089 Chair Minnis **The motion CARRIES.**
Rep. Prozanski will lead discussion with the committee. Closes work session, HB 3009.

HB 2726 - WORK SESSION

- 103 Chair Minnis Opens the work session on HB 2726. Discusses -8 amendments (EXHIBIT C).
- 111 Jeff Ross Oregon State Police, testifies in support of HB 2726 and -8 amendments. Discusses .08 percent breath alcohol concentration being legally under influence.
- 150 Rep. Courtney Discusses needing to point out other types of evidence being brought in equally.
- 160 Jason Carlisle Linn County District Attorney, testifies in support of HB 2726. Asks if breathalyzer test should be able to get evidence of blood test and physical symptoms. Discusses subsection 4, page 10 of -8 amendments.
- 192 Rep. Shetterly Asks what test does an intoxilizer give.
- 194 Ross Replies scientific instrument measuring breath alcohol concentration.
- 198 Rep. Shetterly Questions breath alcohol or blood alcohol readout.
- 201 Ross Responds.
- 223 Rep. Prozanski Asks if this passes, it will not overturn the Ross decision as to an officer.
- 232 Carlisle States want to make sure language not carried too far.

- 234 Rep. Courtney **MOTION: Moves to ADOPT HB 2726-8 amendments dated 5/29/97 (EXHIBIT C).**
- 236 Chair Minnis Discusses effect of -8 amendments.
- 252 Rep. Sunseri Refers to -8 amendments, page 1, line 12. Asks if now moving toward conviction based on alcohol on breath instead of alcohol in blood.
- 259 Chair Minnis States answer in Section 11, Sub 4.
- 273 Rep. Shetterly Question being convicted because of .08 breath alcohol. Discusses alternative definition under Section 4, -8 amendments.
- 289 Chair Sunseri Asks if you are going to be convicted as a result of what your breathalyzer test is.
- 296 Chair Minnis Responds correct. Reality based on behavior of individuals.
- 314 Rep. Courtney Discusses other disputing evidence.
- 317 Chair Minnis Discusses issue being presumptive level of intoxication.
- 338 Carlisle States this will come out in court; jury will know of rebuttal evidence.
- 344 Rep. Shetterly States jury will be instructed .08 is sufficient for conviction.
- 356 Dale Penn Marion County District Attorney. Discusses jury or judge making up minds of what evidence is most compelling.
- 377 Rep. Shetterly Discusses prosecution able to convict three ways.
- 393 Rep. Sunseri Asks if major departure from what we presently do in Oregon.
- 396 Penn Discusses not being a "major departure," aligning with federal standards. Allows use as breath alcohol rather than blood alcohol.
- 420 Rep. Shetterly Refers to page 10, line 34. Asks what if put in "rebut" and take out "disprove."
- 437 Penn States that would be fine.
- 450 Rep. Bowman Asks if you can be legally drunk and not breathe an .08?
- 459 Ross Discusses answer of yes.
- TAPE 135, A**
- 004 Rep. Bowman Question about technical terms.
- 016 Chair Minnis Discusses Rep. Shetterly's conceptual amendment, where it is going.
- 030 Rep. Prozanski Discusses what officers can do.
- 043 Chair Sunseri Asks about deleting lines 12-14, page 1, -8 amendments.
- 061 Chair Minnis States essence of amendments.
- 071 Penn States if deleted, will need to insert "breath or blood" into line 10.
- 074 Rep. Courtney Comments on not being wise, and may be trouble with conversions.
- 080 Rep. Wells Asks how first page ties in with SB 780.
- 091 Chair Minnis Discusses deleting on page 10, line 24, deleting "disprove" and inserting "rebut the presumption."
- 101 Carlisle States there is no "presumption" in the DUII statute. Recommends delete "disprove" and put in word "rebut."

- 106 David Fidanque ACLU of Oregon. States does not have presumption here. If you have proved one step, you have proved the crime. Discusses language in lines 20-25 being ambiguous.
- 149 Chair Minnis Comments thinks it means whatever the judge and jury think it means.
- 156 Rep. Shetterly States at this point, evidence of .08 blood alcohol has been sufficient to convict. We may be opening the door to an affirmative defense.
- 182 Rep. Prozanski Refers to page 10, line 20, asks about taking out "otherwise admissible."
- 188 Carlisle Responds.
- 201 Rep. Wells Asks what is the most important part of this bill.
- 209 Rep. Courtney Discusses work group's accomplishments.
- 220 Rep. Shetterly Refers to page 10, line 24. Asks about adding "to prove or disprove that a chemical analysis of the breath or blood of the person was accurate."
- 234 Carlisle Asks for clarification.
- 239 Chair Minnis Discusses accuracy of test. Discusses liking amendment like is with "rebut."
- 261 **VOTE: 4-3**
AYE: 4-Bowman, Courtney, Shetterly, Minnis
NAY: 3-Prozanski, Sunseri, Wells
- 280 **Chair Minnis** **The motion CARRIES.**
Discusses -6 amendments.
- 304 Rep. Prozanski States -6 amendments need to be conceptually changed. Delete lines 8-10 so would not conflict with -8 amendments. Discusses effect of amendments. Discusses question on page 3, not releasing to someone related to person convicted. Discusses individual having access to vehicle.
- 350 Rep. Prozanski Discusses conceptual amendment by Bankers Association, page 4, line 3, after word "of" before word "any" inserting "any towing or storage fees,". Discusses line 4, page 5, impounding agency.
- 367 Rep. Bowman States would like to see money go to community based alcohol and drug treatment programs.
- 373 Rep. Prozanski Asks how you would get to community based groups?
- 388 Rep. Bowman Discusses need to have receiving government agency.
- 405 Chair Minnis Goes over amendment.
- 420 Rep. Sunseri Asks about charging someone more for same crime. States feels constitutional problem.
- 450 Rep. Wells Asks how it would work regarding drug forfeiture.
- 459 Rep. Prozanski Discusses proportionality, being balancing test.
- TAPE 134, B**
- 004 Chair Minnis Comments to him that it is the same as confiscating a gun.

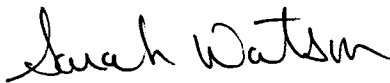
006 Committee Discussion.
018 Chair Minnis Discusses deleting the forfeiture portion, to move through process.
Recesses committee 5:10 p.m.; reconvenes 5:13 p.m.
029 Committee Discussion of conceptual amendments.
058 Chair Minnis States four strikes you are out. Discusses presumptive prison sentence
not getting into bill. Comments on not needing notice requirements.
064 Rep. Bowman States defeating purpose of work session.
075 Committee Discussion of fourth crime being felony.
079 Rep. Courtney Discusses problem of needing deterrents.
082 Chair Minnis States policy statement now because eliminated impoundment,
forfeiture. Discusses amending bill conceptually, "scratching" -6
amendments - third conviction Class C felony - within ten years.
088 Rep. Courtney **MOTION: Moves to ADOPT conceptual amendments to HB 2726
by inserting "third conviction Class C felon" within ten years.**
090 Chair Minnis **VOTE: Hearing no objection, declares the motion CARRIED.**
093 Rep. Courtney **MOTION: Moves HB 2726 to the full committee with a DO PASS
AS AMENDED recommendation.**
095 **VOTE: 7-0**
AYE: In a roll call vote, all members present vote Aye.
099 Chair Minnis **The motion CARRIES.**
Rep. Courtney will lead discussion with the full committee.
Closes work session, HB 2726.

HB 2383 - WORK SESSION

106 Chair Minnis Opens work session, HB 2383.
112 Rep. Shetterly Explains -3 amendments (EXHIBIT D).
122 Rep. Shetterly **MOTION: Moves to ADOPT HB 2383-3 amendments dated
5/13/97 (EXHIBIT D).**
127 Rep. Bowman States objects until have more details.
130 Scott Lumsden Committee Counsel. Outlines HB 2383 with -3 amendments.
147 Rep. Bowman Asks why do we need this bill?
149 Rep. Prozanski Responds would bring uniformity, would set standards.
166 Rep. Bowman Comments on bill.
171 Rep. Wells Comments about private investigators having access to DMV records.
179 Dale Penn Marion County District Attorney. States District Attorneys
Association supports bill. Gives testimony in support of HB 2383.
Discusses private investigators working for lawyers. States allows for
control.
218 **VOTE: 6-1**
AYE: 6-Courtney, Prozanski, Shetterly, Sunseri, Wells, Minnis
NAY: 1-Bowman

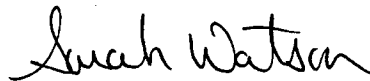
223 Chair Minnis The motion CARRIES.
225 Rep. Shetterly MOTION: Moves to send HB 2383 to the full committee with a
DO PASS AS AMENDED recommendation.
229 VOTE: 6-1
AYE: 6-Courtney, Prozanski, Shetterly, Sunseri, Wells, Minnis
NAY: 1-Bowman
236 Chair Minnis The motion is CARRIED.
Rep. Corcoran will lead discussion with the committee. Adjourns
meeting at 5:29 p.m.
Submitted into record: HB 2383-2 amendments submitted by staff
(EXHIBIT E); written testimony of Philip E. Agrue, regarding HB
2382 (EXHIBIT F); written testimony of Fred E. Avera, regarding HB
2383 (EXHIBIT G); written testimony of John Brumfield, regarding
HB 2383 (EXHIBIT H); written testimony of Steven Copple
regarding HB 2383 (EXHIBIT I); written testimony of Van
Langingham Investigations regarding HB 2383 (EXHIBIT J).

Submitted By,



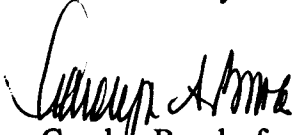
Sarah Watson for Gina Cross
Administrative Support

Reviewed By,



Sarah Watson,
Office Manager

Transcribed by



Carolyn Brooks for Shirley Spental
Administrative Support

EXHIBIT SUMMARY

- A - HB 3009, -1 Amendments, staff, 2 pg.
- B - HB 3009, -3 Amendments, staff, 13 pg.
- C - HB 2726, -8 Amendments, staff, 19 pg.
- D - HB 2383, -3 Amendments, staff, 14 pg.
- E - HB 2383, -2 Amendments, staff, 14 pg.
- F - HB 2383, Written Testimony, Philip Agrue, 2 pg.
- G - HB 2383, Written Testimony, Dale Penn, 2 pg.
- H - HB 2383, Written Testimony, John Brumfield, 2 pg.
- I - HB 2383, Written Testimony, Steven J. Copple, 2 pg.
- J - HB 2383, Written Testimony, Van Langingham, 1 pg.