

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CRIMINAL LAW**

**April 18, 1997 Hearing Room 357**

**1:30 pm Tapes 90 - 91**

**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:**

**STAFF PRESENT:**

**Scott Lumsden, Counsel**

**Brian Higgins, Administrative Support**

**MEASURE/ISSUES HEARD:**

**Public Hearing - HB 3294, HB 2839**

**Public Hearing and Work Session - HB 2649**

**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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 90, A</b>		
003	Vice Chair Bowman	Calls subcommittee to order at 1:40 pm

<b>HB 2839 - PUBLIC HEARING</b>		
004	Vice Chair Bowman	Opens public hearing on HB 2839
008	Eldon Johnson	State Representative, District 51 >in support of the bill
012	Julie Brandis	Director, Oregon Retail Council and Legislative Representative, Associated Oregon Industries >submits and reads written testimony, <b>(EXHIBIT A)</b> >submits proposed amendments, <b>(EXHIBIT B)</b>
062		Continues testimony
081	Lisa Trussell	Legislative Representative, Associated Oregon Industries >submits and reads written testimony, <b>(EXHIBIT C)</b>
101	Rep. Bowman	Do these security guards detain people?
103	Brandis	Yes.
104	Rep. Bowman	Do they handcuff people while they are waiting for the police to come?
105	Brandis	Yes, they do.
106	Rep. Bowman	Do they prevent people from leaving these particular stores?
107	Brandis	That is correct.
108	Rep. Bowman	It sounds like a security guard to me.
109	Brandis	They are security guards trying to prevent loss prevention. The concern is not with the title but with the mandated curriculum provided by BPSST.
113	Rep. Shetterly	Asks for history of measure
115	Brandis	This was before the last Legislature, but we did not participate which is our fault. The Act does not take effect until June of this year.
119	Rep. Shetterly	So, none of this has been implemented today?
121	Brandis	That is correct. The rules are out for public review.
123	Rep. Shetterly	Who were the proponents of the legislation last session?

124	Brandis	I believe it was the Oregon Private Security Council.
128	Chair Minnis	I'm assuming if you have people making citizens arrest and do something inappropriate, the company could be held liable for it. If you train someone to do the job right, it may mitigate the damages.
136	Brandis	The truth of the matter is that retailers are held liable and that is why we have strong programs to deal with citizens arrests, because if they are not done correctly, the retailer is subject to the civil liability. We believe internal programs are better than state-mandated ones.
152	Rep. Shetterly	I think that is true because civil liabilities would rise from an incident or conduct and whether they were trained or not shouldn't have any bearing on the liability.
156	Chair Minnis	Generally, if you are outside the scope of your employment, there is a potential to hang yourself and the agency you work for.
167	Rep. Shetterly	I believe the employer is responsible within or without the scope of their duties.
175	Rep. Prozanski	We see this in grocery stores all of the time.
185	Chair Minnis	There is an issue of federal civil rights violations if the employer can indemnify the employee against any of those potential actions.
188	Rep. Bowman	You represent organizations of various sizes, correct?
190	Brandis	That is correct.
	Rep. Bowman	So the type of training of training they go through would vary depend on what particular location they worked at.
193	Brandis	That is correct.
194	Rep. Bowman	To have a standardized training program sounds like a good idea if you have various companies training people in different ways, so I have a hard time understanding as why your clients would not see this as a positive.
204	Brandis	That's a good point and something that has come from our members as a positive thing. However, the state has not shown to us that there is a need for consistency. For small stores, I would suggest that they put their employees through the state program.
222	Rep. Shetterly	On page 2 of your testimony you said there were parts of the state programs that were felt to be inappropriate. What are these parts?
227	Brandis	Some of our companies feel worry about being set up. The state's training materials have been offensive from a diversity perspective. They also do not accurately reflect state or federal laws nor retailer's policies regarding procedures on discrimination.
262	Rep. Prozanski	Have you seen a copy of the letter provided to the committee from Fred Meyer, Inc.?
264	Brandis	No, I have not.
	Rep.	

265	Prozanski	Do you know of the Northwest Retail Loss Prevention Association?
267	Brandis	Yes, I have heard of them.
268	Rep. Prozanski	It has a substantial list of employers who are against the measure. I would like to get your perspective as to why these employers would be against this.
281	Brandis	Often when you are a member of an association, like the one you mentioned, you might not agree with every issue that they deal with.
299	Rep. Shetterly	In looking at the second to last sentence only suggests those who are likely to oppose the measure.
305	Chair Minnis	My office got the fax from Kmart saying they opposed it and another call from someone from their governmental relations department saying they supported it.
309	Brandis	I think part of the problem was that some of them are not sure that this statute passed last legislation and may require licensing. One of the interesting issues is the third-party contract officers.
334	Rep. Bowman	Reads Fred Meyer letter into the record, <b>(EXHIBIT D)</b>
390	Rep. Shetterly	I'm not impressed with that statement.
394	Rep. Bowman	What it is saying is these are the people who supported the original act.
396	Rep. Shetterly	The organization supported the act.
397	Rep. Bowman	Yes.
401	John McCulley	Oregon Fairs Association >concerned about overly broad inclusion of county fair personnel >We support the legislation.
435	Rep. Bowman	How does this legislation deal with fairs?
436	McCulley	Responds that under the definition of security officer it could be interpreted that groundskeepers and maintenance personnel have a responsibility for security which would cause these positions to fall under the act
<b>TAPE 91, A</b>		
013	Rep. Shetterly	I could see that on line 18 and line 30 where it defines security officers.
		Director of Government Affairs, Oregon Restaurant Association

022	Mike McCallum	>Our concerns are similar to those of the Oregon Fairs Association which is the overly broad nature of the legislation. >As we read it, the definition of security officers would include almost all restaurant employees. We don't think this was intended when this bill was passed last session.
049	Rep. Shetterly	It just occurred to me that teachers could fall under this act.
052	McCallum	Even if you were conducting class you might be.
057	D. Bridges	Boise Cascade >has concern that bill is overly broad, especially in regards to workman's compensation >Any employee, at any point in the day, might fall under this definition.
079	Rep. Sunseri	If you take one of your light-duty people that is not trained and you have them function in this capacity and they do something that is inappropriate, is Boise Cascade willing to be held liable?
082	Bridges	Yes.
095	James J. De Loretto	President and CEO, Starplex Corporation >submits and reads written testimony, <b>(EXHIBIT E)</b>
145		Continues testimony
195		Continues testimony
245		Continues testimony
265	Rep. Prozanski	You made a distinction between uniformed and non-uniformed, if they provide the same function, shouldn't they fall under the same standard?
270	De Loretto	If their primary function is as a security guard, yes.
271	Rep. Prozanski	Pro-guard security officers are uniformed?
273	De Loretto	Yes, and we support the licensing for those people.
277	Chair Minnis	You've given us the Washington statute which shows some direction as to define a crowd-management entity.
282	Rep. Shetterly	About the eighth page from the back of your testimony it looks like you have a training manual from BPSST?
291	De Loretto	That document came from the private security student training manual that is involved in the training program of the licensing requirements.
307	Rep. Shetterly	Comments on the manual.
311	De Loretto	This comes directly from the BPSST manual.
		Northwest Protective Service

330	Gary Gross	<p>&gt;We work in the private security industry, the previous testifiers do not.</p> <p>&gt;We teamed up with certain people from the industry to draft this legislation.</p> <p>&gt;We thought it important to have in there that every private security officer, in-house or contract, have a criminal history check done.</p> <p>&gt;We also wanted to have a basic basis for training.</p>
380		<p>Continues testimony</p> <p>&gt;clarifies who would and wouldn't be covered by Private Security Act</p>
414	Rep. Prozanski	How broad should the background checks be?
418	Gross	As far as the Private Security Act, those whose primary responsibility is private security should have a criminal check done.
429	Rep. Courtney	Would this be the fingerprinting check that goes to DC?
431	Gross	Absolutely
433	Rep. Bowman	You mentioned that this act wouldn't address Rep. Shetterly's example of the teacher acting as coach, but it isn't clear from looking at the bill that they aren't included.
<b>TAPE 90, B</b>		
011	Gross	The act was a framework which had to have some of the pieces filled in by administrative rule. One of the rules is contains a definition of security officer.
015	Rep. Bowman	So those examples would not be covered under the current bill.
018	Gross	These people are talking about those not in the security industry.
022	Chair Minnis	No one is arguing that, but these people are under the impression they are under the Act.
025	Gross	Some of the people testifying have people who are in-house and need to be covered.
030	Chair Minnis	But the AOI amendments change it, on line 18, to security being the primary responsibility of their job.
037	Steve Bennett	<p>Executive Director, Board of Public Safety Standards and Training</p> <p>&gt;We've been working with people in the industry to develop administrative rules, with exemptions, to address this issue.</p> <p>&gt;The definition of primary responsibility and the intermittent security</p>

		activity are things that are in the OAR.
051	Chair Minnis	I prefer that we write the statute as clearly as possible and not leave very much to administrative rule.
060	Bennett	Much of this debate went on in the last session and BPSST didn't create this requirement, the professions did. I think what you're seeing is some confusion before the administrative rules are implemented.
082	Chair Minnis	How do you get the money to do this?
083	Bennett	Licensing fees cover the program costs. This was a way to ensure that people getting into the industry met some employment standards.
096	Chair Minnis	Have you licensed anyone yet?
097	Gross	Yes.
097	Chair Minnis	How many have you licensed?
098	Gross	Almost 2000
099	Chair Minnis	What is the fee?
099	Gross	The fee is \$39 for the FBI check and it is \$25 per year for the two-year license.
102	Rep. Sunseri	How much is the training?
103	Gross	The training can be delivered different ways. In my company, it is provided for free.
107	Rep. Prozanski	Does BPSST actually offer this training?
108	Bennett	We offer the training for the trainers.
113	Rep. Prozanski	Your training is to the people who are going into the business?
118	Bennett	That's correct.
126	Rep. Prozanski	How many people have been trained as instructors by BPSST?
129	Bennett	Defers to Theresa Martin
143	Chair Minnis	Who pays the \$40?
142	Bennett	That could be the individual or a company.
147	Theresa Martin	<p>Program Manager, Private Security Licensing and Certification, BPSST</p> <p>&gt;There is a category for a state-certified trainer in the program and those fees are \$80 for a two year certification.</p> <p>&gt;The purpose is to empower the companies to do their own training.</p>

158	Rep. Wells	In AOI's testimony it says there is a state-approved program costing \$89 per employee. Where did that number come from?
161	Martin	They are referring to the \$50 certification fee and the additional \$39 FBI check.
165	Rep. Wells	Now we have \$50, a while ago we had \$80 and now I am confused.
168	Martin	That fee for a two-year certification is \$50.
178	Chair Minnis	So, the \$80 applies to the trainer.
181	Martin	Most companies do not charge their employees for the training.
184	Rep. Shetterly	The criminal background check is a one-time check, is that correct?
187	Martin	The fee is a one-time fee but there is a continual monitoring of private security personnel by OSP so that if they are arrested of a crime, we are notified at the academy with in 48 hours.
200	Rep. Shetterly	Does it pick up arrests by OSP?
201	Martin	Responds that it is by all agencies within the state
203	Rep. Shetterly	One of you testified that you certified 2000 security guards, but I also understand that the administrative rules are still being drafted, so are these people self-defining or are they going off of the statutory definition? How do they decide they need the training?
213	Martin	The people are identified through their own job descriptions.
218	Rep. Shetterly	It's self-definition at this point, then.
221	Rep. Wells	Asks for clarification on fees
225	Martin	It's always a two-year certification.
227	Rep. Wells	Apparently the fee schedule I have in front of me is incorrect.
231	Martin	That should be reflected as a two-year certification fee.
234	Rep. Wells	So, every two years I have to renew at \$50. It seems like those who work part-time crowd control, this would be pretty expensive.
240	Martin	Again, the issue is that the intent of the statute is to cover those who provide security and are placing themselves in the public trust.
245	Rep. Prozanski	You're telling us that crowd management people would be subject to this definition.
251	Bennett	It is safe to say that those whose primary duty is to provide security services would fall under the language.
256	Rep. Prozanski	For an individual providing ticket service, would it be interpreted that this person be required to go through this process.
261	Bennett	No.
265	Martin	The page of the curriculum referred to in Rep. Shetterly's earlier comment, is taken out of the state curriculum and is in the section of

		department and ethics.
285	Rep. Wells	Have you adopted the administrative rules yet?
288	Gross	They have been voted on and are in the process of going to public hearing.
290	Rep. Wells	What I was reading from is from your proposed fee schedule in the administrative rules.
295	Martin	That needs to be changed to reflect the two-year certification.
300	Gross	Clearly, you all need a copy of the Administrative Rules.
308	Jo Bell	Oregon Association of Hospitals and Health Systems >Today I am representing the Oregon Society for Healthcare Engineering and their support for HB 2839. >Some facilities want to provide their own internal training.
358		Continues testimony >Security incidents are approached differently in hospitals.
379	Brandis	Introduces the -1 amendments and their intent
389	Chair Minnis	Where are these amendments from?
390	Brandis	They are from AOI.
394	Chair Minnis	I would like to see some narrowing language come out of a workgroup with the interested parties along with Rep. Prozanski and Rep. Shetterly. >closes public hearing on HB 2839
<b><u>HB 2649 - PUBLIC HEARING</u></b>		
415	Chair Minnis	Opens public hearing on HB 2649
436	Rod Harder	National Rifle Association >I will defer to Rep. Luke and Rep. Westlund to comment on the bill. I do believe that everyone is in agreement on the -6 amendments.
452	Chair Minnis	Closes public hearing on HB 2649
<b>TAPE 91, B</b>		

<u><b>HB 3294 - PUBLIC HEARING</b></u>		
012	Chair Minnis	<p>Opens public hearing on HB 3294</p> <p>&gt;This bill would allow an officer who is part of a multi-disciplinary team to obtain a restraining order against a family member of a child abuse victim.</p> <p>&gt;explains -2 amendments which eliminates Child Abuse Training Board concept, <b>(EXHIBIT F)</b></p>
041	Rep. Bowman	It seems to put the officer in a difficult situation. Normally, restraining orders are issued for those people who feel they need protection. How is the police officer going to really be able to protect the child?
048	Chair Minnis	<p>Line 8 says, "this particular investigator would have to be a member of a local multi-disciplinary team." The purpose of these teams is to investigate child abuse situations.</p> <p>&gt;gives example of how restraining order applies in child abuse cases</p>
073	Rep. Shetterly	Lines 9-10 have a condition that the police officer must have probable cause, but isn't this also the cause for arrest? Can't you make an arrest and make the restraining order a condition of his release?
078	Chair Minnis	<p>You're right, but you may not want to. Explains.</p> <p>&gt;closes public hearing on HB 3294</p>
<u><b>HB 2649 - PUBLIC HEARING</b></u>		
092	Chair Minnis	Opens public hearing on HB 2649
094	Dennis Luke	State Representative, District 54
096	Ben Westlund	State Representative, District 55
097	Rep. Luke	<p>During the special session of the last legislature, a bill was passed regarding the control of firearms, but one of the unintended consequences was that it omitted a Deschutes County ordinance that had been carefully crafted with all of the interested parties involved.</p> <p>&gt;The original sponsors of the legislation have been consulted and they do not object to this bill.</p>

		>submits -6 amendments, ( <b>EXHIBIT G</b> )
118	Chair Minnis	Closes public hearing on HB 2649
<b><u>HB 2649 - WORK SESSION</u></b>		
119	Chair Minnis	Opens work session on HB 2649
120	Rep. Sunseri	<b>MOTION: Moves to ADOPT HB 2649-6 amendments dated 04/17/97.</b>
127		<b>VOTE: 7-0-0</b>
	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
128	Rep. Sunseri	<b>MOTION: Moves HB 2649 to the full committee with a DO PASS AS AMENDED recommendation.</b>
139		<b>VOTE: 7-0-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Minnis	<b>The motion CARRIES.</b> <b>REP. LUKE will lead discussion on the floor.</b>
169	Chair Minnis	Declares subcommittee adjourned

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 2839, Written testimony, Julie Brandis, AOI, 5 pp.**

**B - HB 2839, Proposed amendments (-1 dated 3/27/97), Julie Brandis, AOI, 4 pp.**

**C - HB 2839, Written testimony, Lisa Trussell, AOI, 1 p.**

**D - HB 2839, Letter from Fred Meyer, Inc., Rep. Bowman, 2 pp.**

**E - HB 2839, Written testimony, James De Loretto, Starplex Corporation, 55 pp.**

**F -HB 3294, Proposed amendments (-2 dated 4/18/97), Staff, 1 p.**

**G - HB 2649, Proposed amendments (-6 dated 4/17/97, Staff, 1 p.**