

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

March 28, 1991Hearing Room 357 1:45 p.m.Tapes 61 - 64

MEMBERS PRESENT:Rep. Ray Baum, Chair Rep. Marie Bell Rep. Judy Bauman Rep. Tom Brian Rep. Kelly Clark Rep. Rod Johnson Rep. Kevin Mannix Rep. Randy Miller

MEMBER EXCUSED: Rep. Jim Edmunson

STAFF PRESENT: Greg Chaimov, Committee Counsel Mary Walling, Committee Assistant

MEASURES HB 2650 PH (Equine Activities)
CONSIDERED: HB 2989 PH (Sports Official's Liability) HB 3052
PH (Admission to the Oregon Bar) HB 3407 PH (Exemption from Bar Exam)

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TAPE 61, SIDE A

003 CHAIR BAUM: Calls the meeting to order at 1:45 p.m.

(Tape A, Side A) HB 2650 Equine Activities, Public Hearing
Witnesses: Stan Blank, Executive Director, Oregon Thoroughbred Breeders' Association Carol Niccoli Helen Dalton Lee Kersten Tex Shively John Lamers, Tennessee Walking Horse Breeders and Exhibitors of Oregon and Oregon Horsemen's Association Rod Harney, Oregon Farriers' Association and American Farriers' Association Kerrill Knaus, H.O.R.S.E.S. for the Physically Challenged Charlie Williamson, Oregon Trial Lawyers' Association Timothy Vanagas, Oregon Trial Lawyers' Association Lee Vasquez, Oregon State Sheriffs' Association Sally Kuhl, Oregon Draft Horse Breeders Michelle Hawkins, President, Arabian Horse Breeders' Association Jay Stewart, Veterinarian Linda Young, Horse Council of Oregon Lorna Chang, Executive Director, Oregon Riders Unlimited Ted Bunnell, Western Drafters Diane Edgington, Oregon Horsemen's Association Dan Applebaker, Oregon Equestrian Trails, Backcountry Horse Men of America

Submitted testimony for the record: Glenna Matson (EXHIBIT I), Dick Bauman (EXHIBIT J), Kris Anderson, (EXHIBIT K) and Al Willett (EXHIBIT L).

18GREG CHAIMOV introduces the bill.

>Recognizes that being on or around horses is a dangerous activity.

>Unless someone acts with conscious or reckless disregard to the risks involved, there is no liability for injuries caused by horses and other similar animals.

041 STAN BLANK, EXECUTIVE DIRECTOR OF THE OREGON THOROUGHBRED BREEDERS' ASSOCIATION: Submits and summarizes testimony in favor of HB 2650.

>Submitted testimony is a survey done by Oregon State University regarding comparisons of the cash flow of the race horse industry for a period of ten years.

>Oregon is comparable to Kentucky as a state in which to breed and raise horses.

>Inquiries from all over the country about purchasing property in Oregon for breeding and raising horses. The most desirable area is around Bend.

>The number one complaint of people looking at Oregon to invest in property to breed and raise horses is that Oregon does not have any protection under the present statutes.

>This bill is vitally important to horse breeding industry. If bill becomes law, new businesses will be coming to Oregon and investing in property.

105 CAROL NICCOLI, MEMBER OF SEVERAL HORSE ORGANIZATIONS: licensed insurance agent and horse owner and testified in favor of HB 2650.

Similar legislation has been passed in other states and rates have been reduced.

>Insurance quotes for one day events vary from \$250 to \$1500 for a 4-H show or trail ride. It is impossible for small groups to pay these premiums.

>Most preferred insurance companies will not insure horse operations and people have to seek specialty insurance at a higher rate.

>Oregon Horsemen's Association conducted a survey. The survey showed that 63 percent of those answering the survey had to close down because of the cost of insurance and 83 percent were conducting business with no insurance.

130 HELEN DALTON: Submitted and read testimony in favor of HB 2650 for Bruce Rumpf who was unable to attend (EXHIBIT B).

151 LEE KERSTEN, HORSE OWNER AND LAWYER: Major impact of the high insurance costs is the squeezing out of the small operator. The large horse farm owners will be able to afford their insurance.

>Legal system is clogged with a number of small dollar volume cases where liability is slim or none and the complaint is primarily related to kicking and biting. Kicking and biting by horses is not preventable.

>People who are injured around horses are usually there voluntarily.

>Advises clients not to participate in parades and other civic activities because of the insurance and liability risk.

211 TEX SHIVELY: Testified in favor of HB 2650.

>Tried for many years to get this legislation passed. Needed now more than ever.

236 REP. MILLER: Received as much mail regarding this bill as has on any legislation.

240 JOHN LAMERS, TENNESSEE WALKING HORSE BREEDERS AND EXHIBITORS OF OREGON AND OREGON HORSEMEN'S ASSOCIATION: Testified in support of HB 2650.

276 ROD HARNEY, OREGON FARRIERS' ASSOCIATION AND AMERICAN FARRIERS' ASSOCIATION: Oregon Farriers' Association has had to curtail some of its educational activities due to the high cost of insurance.

>The equine industry is a very diverse and viable industry with an estimated 166,000 horses in Oregon that require the support of many suppliers and manufacturers for items such as feed, medication, clothing, equipment, etc. Also require services of boarding facilities, trainers, veterinarians, and farriers.

>This industry generates an estimated fifty million dollars in Oregon.

>Professionals who board, train, or shoe horses run the constant risk of devastating law suits.

>Inherent risk is a byword that all of us who make our living in direct contact with these animals know and understand. It is time this concept of inherent risk to be given legal recognition for the health of the equine industry.

340 KERRILL KNAUS, H.O.R.S.E.S. FOR THE PHYSICALLY CHALLENGED: Submits and summarizes testimony in support of HB 2650)EXHIBIT C).

>Organizations such as this provide therapy and recreation for individuals on horseback. Horseback riding can provide a tremendous benefit to people with physical disabilities.

>Cost of insurance makes it very difficult for nonprofit organization to survive. Seven programs have closed in the last five years because they were not able to generate the funds to operate unless they charged such high prices their disabled riders could not participate.

400 CHAIR BAUM: The Oregon Professional Insurance Agents Association also supports HB 2650.

415 REP. CLARK: What other activities under Oregon law that are inherently dangerous get this kind of limited liability treatment?

424 CHAIMOV: Skiing. A copy of that statute is in your materials.

REP. CLARK: Structure of skiing statute appears to be substantially different. Is that a difference in approach or is the scope different?

CHAIMOV: Both.

440 REP. MANNIX: One reason for the difference in format is probably because the ski activities are generally carried on in terms of large operations and established operations. HB 265 0 is dealing with a

variety of people who may or may not have a big ranch operation. May be just a couple people going horseback riding. The potential for activity is much greater than for the organized ski lift.

452 REP. JOHNSON: Also statutes that limit the ability of passengers in an airplane and a boat to sue the operator for anything but gross negligence.

>Courts will allow people to limit their liability for negligence only to a certain limit. Gross negligence is the common law way of drawing that line.

466 CHAIR BAUM: Gross negligence or intentional misconduct.

TAPE 62, SIDE B

040 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS' ASSOCIATION: Would like to have committee's permission to work with the Department of Insurance and Finance exactly what the situation is and what might be done to address the availability of insurance at a reasonable price.

>When the tort system is changed, it deprives the people of some very basic rights and ones that have been in existence for hundreds of years.

>Agree with testimony that no one should be able to collect damages from another person simply because they were hurt on a horse on someone else's property. That is already the law.

>The bill goes quite a bit further and makes a negligent horse owner exempt from any liability for damages they do because of their negligence. A person can be grossly negligent and have no liability as long as it was just caused by somebody falling off a horse.

080 REP. CLARK: Put in some language regarding gross negligence, could you compare what that bill would look like to existing statutes regarding skiing statutes? Draw some distinctions?

WILLIAMSON: Law like this passed in Washington. It sets down specific standards of care for horse owners.

>Washington Trial Lawyers Association cooperated with the horseowners associations and put on some seminars after the session to tell people what to watch out for.

>Like to have some time to solve problem without unnecessarily sacrificing rights of injured people.

>Heard only one example of the tort system inflicting any problem on people and that was the \$8,000 verdict in Eugene.

>Insurance that is available is about \$800 to \$1000 per horse per year.

145 TIMOTHY VANAGAS, OREGON TRIAL LAWYERS' ASSOCIATION: There are reasons why the tort laws were adopted and changing the laws may not be the most viable option.

>Tort laws have the effect of causing individuals to moderate their conduct to engage in safer activities than they might otherwise.

>There is the potential if the law is passed for some commercial

organizations to simply engage in a lower standard of care than they do presently.

>A person who knowingly puts themselves in a dangerous situation and does not exercise due care can be rendered unable to make a claim for equine activities where an injury results.

>Comparing the proposed law to the ski law in Oregon as well as the Washington law on equine activities, there are significant differences. The Oregon law as proposed includes spectators. Neither the ski law or the Washington State law include spectators.

>Believes that at the Portland Rose Parade should someone with a stallion act negligently and let the animal get out of control and there is injury to a spectator that person could be precluded from making a claim under the bill as it is written.

>The suggestion that a notice of some sort be posted that being around equine activities is inherently dangerous is a meaningless proposal. There is no penalty for not posting a sign; there need be only one sign at a conspicuous location.

>The legislature has to decide if there is sufficient state interest involved in wanting to offer immunity to a select group. The state would have to identify what the state interest is and the state would have to conclude that the benefits to be derived by this immunity bill outweigh the consequences of injured people suffering injury and having no legal redress.

>Other activities that could be considered inherently dangerous: river rafting, sail boarding, charter fishing, motorcycle and snowmobile riding. Legislation wants to establish a precedent by wanting to exempt out activities that are inherently dangerous and provide immunity, then there are a whole lot more activities other than this issue.

331 REP. BELL: With the ability to sue that people have, they put no responsibility on individuals and parents to maintain safety.

>In Europe at all major attraction, like the leaning tower of Pisa, they don't barricade people. They assume that it is your problem if you are dumb enough to lean over and fall off.

>Not sure agree with the system that allows people to not be responsible for their own actions and their own safety.

365 LEE VASQUEZ, OREGON STATE SHERIFFS' ASSOCIATION: Supports HB 265 0. Bill has equal responsibility on both sides.

415 REP. MILLER: Definition of spectator and participant. Example, father takes daughter to ride horse and is walking by the side of horse and is kicked. Is that person a participant or a spectator.

TAPE 61, SIDE B

015 SALLY KUHL, OREGON DRAFT HORSE BREEDERS: Submits and summarizes testimony in support of HB 2650.

>People opposed said that there was nothing in the testimony that showed abuses of tort system.

>Many years ago a friend's daughter was invited to stay and ride horse. She was kicked by a horse and her ankle broken. A year later, after ankle healed and she had resumed all activities, her parents sued on the advise of a young lawyer. They collected enough money to go out and buy a new car.

041 MICHELLE HAWKINS, PRESIDENT OF ARABIAN HORSE BREEDERS' ASSOCIATION: Testifies in support of HB 2650.

050 JAY STEWART, VETERNARIAN: Dealing with a live animal, not an inert object such as a boat or skis and that is a big difference.

>There is a decline in number of 4-H groups and other small groups that are teaching young people ride and work with horses.

>There will be more safety if bill is passed allowing experienced teachers to work with young people and horses.

073 LINDA YOUNG, HORSE COUNCIL OF OREGON: (EXHIBIT E) In their newsletter supporting this bill they made a distinction between participant and spectator. Participant would mean a person actually engaged in the activity or a person assisting or riding with the participant. Spectator is one who co- mingles with the animals placing themselves in a position of inherent risk.

100 REP. BRIAN: Is there any liability difference between a participant and a spectator? If you are a participant it seems you have put yourself at a different level of risk than if you are a spectator.

149 LORNA CHANG, EXECUTIVE DIRECTOR, OREGON RIDERS UNLIMITED: Submits and summarizes testimony in support of HB 2650 (EXHIBIT F).

>Very important that small facilities for therapeutic horseback riding remain viable and the cost of insurance needs to be controlled. The handicapped benefit enormously from riding.

163 TED BUNNELL, WESTERN DRAFTERS: Submits and summarizes testimony in support of HB 2650 (EXHIBIT G).

>Comments on distinction between spectator and participant.

>Section 3 of bill requiring signs be posted is very important part of bill.

193 DIANE EDGINGTON, CHAIRMAN, LEGISLATIVE COMMITTEE, OREGON HORSEMENS' ASSOCIATION: Supports HB 2650.

>Backyard horseman thinks he is covered by his homeowner's insurance until he has a claim. Also if insurance salesman learns owns a horse, insurance is canceled even though there is no claim and no accident.

246 DAN APPLEBAKER, OREGON EQUESTRIAN TRAILS, BACKCOUNTRY HORSEMENT OF AMERICA: Submits and summarizes testimony in support of HB 2650 (EXHIBIT H).

>Many or most of the horse clubs do not carry liability insurance. If cost is reduced, more clubs will carry insurance.

>There is an inherent risk in association with horses. People should be responsible for their actions.

282 REP. JOHNSON: Comments on the differences between ordinary negligence or extraordinary negligence.

APPLEBAKER: Supports the bill the way it is written.

(Tape 61, Side B;) HB 2650 - Equine Activities, Work Session

345 MOTION: REP. MANNIX moves to adopt handwritten amendments to HB 2650, Page 2, Section 1, after line 16, add item (7) and in line 21 after constitute delete "a conscious and reckless disregard of the probable consequences" and insert "gross negligence or intentional misconduct". (EXHIBIT M)

394 REP. CLARK: Rep John Meek from HillSB oro is here and indicates his full support of the bill.

JOHN MEEK, STATE REPRESENTATIVE HOUSE DISTRICT 5: Horseowner and has daughter who enjoys riding. High risk for friends of daughter who wish to ride.

VOTE: Hearing no objection, Chair Baum so moves. Rep. Edmunson excused.

MOTION: REP. MANNIX moves to adopt handwritten amendments to HB 2650, page 2, line 22, insert new section 3 as follows: "Notwithstanding ORS 18-475 (2), a participant who engages in an equine activity accepts and assumes the inherent risks of the equine activity in so far as they are resonably obvious, expected or necessary." Line 22, change "3" to "4" and on line 29 change "4" to "5". (EXHIBIT N)

VOTE: Hearing no objection, Chair Baum so moves. Rep Edmunson excused.

TAPE 62, SIDE B

030 MOTION: REP. MANNIX moves to change two portions of the bill on page 2 line 13, after "engages in", add "or assists in". On line 15 after " `Participant' " insert "does not include a passive spectator who is merely standing by and observing an event without any other physical involvement." Delete line 16.

Discussion followed regarding the distinction between spectator and participant. Amendment is an attempt to draw the line between someone who is just standing and watching and someone who is getting involved.

REP. MANNIX withdraws motion.

185 MOTION: REP. MANNIX moves HB 2650 to the full committee as amended with a do pass recommendation.

VOTE: In a roll call vote, the motion carried with all members present voting aye. Rep. Edmunson excused. CHAIR BAUM will carry the bill to the full committee.

(Tape 62, Side B) HB 2989 - Sports Officials' Liability, Public Hearing
Witnesses: John Hilsenteger, Assistant Executive Director, Oregon School Activities Association Randy Stevens, Attorney and Amateur Sports Official

255 GREG CHAIMOV: Introduces HB 2989

271 RANDY STEVENS, ATTORNEY: Submits and summarizes testimony in favor of HB 2989. (EXHIBIT

>Increase in number of sports officials who have been criminally assaulted. Also have officials cases of officials being named as primary or additional defendants because of their acts as sports officials.

>National Association of Sports Officials prepared model legislation to limit sports officials liability. HB 2989 is based on that legislation. The intent of HB 2989 is to eliminate sports officials from law suits based on things such as poor field conditions, perceived bad calls, or defective equipment. Even though many sports officials are covered by liability insurance through NASO or other organizations, the cost of premiums and the emotional cost of being a named defendant exists as a problem for sports officials.

>It is getting harder every year to find enough men and women to serve our youth as amateur sports officials.

>Other states with similar liability legislation are Arkansas, Rhode Island, New Jersey, Mississippi, Maryland, Tennessee and Pennsylvania. Limited liability legislation was pending in ten other states as of September 1990.

>The bill will only cover organized athletic competition and applies only to amateur sports officials.

>Competition must be sanctioned by a grade school, high school, or college or by a nonprofit corporation, which would include AAU, special olympics, etc. Would encourage committee to consider listing municipalities as another sponsoring organization for covered amateur athletic contests.

>Sports official is defined as a registered member of an organization providing education and training to officials. Has instruction once a week by organization regarding rules, etc.

>Universally supported by sports officials across the state, it is supported by the Oregon School Activities Association and NASPO.

378 REP. BELL: Isn't there some insurance through school coverage for sports official? STEVENS: When register at the beginning of the season, pay membership dues to the national federation, to the OSAA, included in those fees often times is insurance. There are instances, however, particularly AAU contests or special olympics, who otherwise would be officiating school activities and where you would not be covered. Schools - don't know; haven't had a case.

408 REP. BELL: What about the person on sidelines when official does not show up and pinch hits and has no training and belongs to no organization?

STEVENS: Encourage coaches and sponsoring organizations to use only trained officials.

440 REP. BELL: What about official who does not call rough play? Shouldn't there be some liability that that official must assume?

STEVENS: That may be why some officials are getting named. The bill as written is those things that come up to but not quite reaching gross negligence is a subjective call.

478 REP. MANNIX: These officials are working for charity. They are doing it to help out and are not well paid for these amateur events. Because of that extra protection other than standard negligence defenses.

TAPE 63, SIDE B

142 STEVENS: Doesn't know of anyone who receives more than 10 percent of their income from officiating fees. Labor of love.

REP. MANNIX: Why take sports officials and differentiate them from others; one is charity activity. Is it because talking about judgement calls.

STEVENS: Increasing difficulty of getting sports officials to assist; adopting this legislation would remove one of risks for participating as an amateur sports official.

174 REP. MANNIX: Efforts to get insurance?

STEVENS: Insurance is included in registration when we register sports officials for the OSAA sanctioned activities; but times at special olympics, AAU, and not sure if insurance transfers off. Insurance is 20 to 25 percent of registration fee that is paid for OSAA registration.

REP. MANNIX: Address issue differently. Instead look at players and say despite abolishment of assumption of risk for those who engage in athletic activities they and their parents or guardians who allow them to participate have assumed the risk.

Waivers contrary to public policy?

STEVENS: Officials being named because of inadequate equipment, poor playing conditions, poor field conditions, variety of different things.

230 REP. MANNIX: Make a list of things officials not responsible for rather than give them a blanket higher level of protection under gross negligence standard.

STEVENS: Might be workable.

254 REP. BELL: Problem with wording of gross negligence. Beyond what is reasonable. Should be responsible for letting things get too loose. Should be some recourse.

288 JOHN HILSENTEGER, OREGON SCHOOL ACTIVITIES ASSOCIATION (OSAA): Submits and summarizes testimony in support of HB 2989.

Over 3,000 sports officials from all walks of life.

Case of umpire being sued because he enforced the rules the way they were written.

325 REP. MANNIX: How do you feel about listing some things officials would not be responsible.

HILSENTEGER: Anything is better than present. Lots of different sports involved. Don't know if you could be specific enough.

>Player slid into homeplate and claimed homeplate was defective and she now has plate in her leg and she is sueing umpire.

350 REP. MANNIX: Misconduct of a player could not be sueing umpire.

367 REP. CLARK: Will bring bill back again. Suggest pursue written list and talk to proponets of bill and have proposed amendments for next time bill is heard.

REP. BELL: Distinction between an overt action on part of player and continued rough play.

389 CHARLIE WILLIAMS, OREGON TRIAL LAWYERS ASSOCIATION: Think people should be responsible for their negligent acts.

>Nothing to the effect that insurance is unavailable or expensive. WOULD like the names of the two cases and will get complete facts on those cases.

>If umpire assumes responsibility for condition of field and he knows about defect such as homeplate, he should have some liability for it.

>Giving away of legal rights when there is not shown the need to do that.

011 TIM VANAGAS, OREGON TRIAL LAWYERS ASSOCIATION: Testifies in opposition of HB 2989.

>Any type of immunity bill, has the effect of disentitle people to compensation whom a jury might find entitled to compensation. Rep. Mannix suggestion of laundry list of things a sports official would not be responsible; would be an inexact science to try and establish in advance without hearing what happened that a rule of no immunity would apply.

>Sports official responsible for playing conditions or equipment omissions on the field? Generally, probably not; but could hypothesis a situation where knows it has happened then could be a responsibility for sports official.

>No matter what the standard that is adopted, attorneys still can make claims, maybe not successfully and maybe not as frequently but can still make claims. Adopting of a stricter standard wont mean that claims can't be filed.

090 public hearing on 3052