

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

April 8, 1991                      Hearing Room 357 1:00 p.m.                      Tapes 71-72  
MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Kelly  
Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix VISTING  
MEMBER: Rep. Greg Walden, District 56 MEMBERS EXCUSED: Rep. Tom  
Brian Rep. Randy Miller STAFF PRESENT: Jim Dole, Committee Counsel  
Jeff Steve, Committee Assistant MEASURES HEARD: HB 2382 -  
International Pollution Law (PH/WS) HB 3199 - Liability Exemptions For  
Nonprofit Organizations (PH) HB 2381 - International Arbitration and  
Conciliation (PH/WS)

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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.

TAPE 71, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial  
Administration at 1:10 p.m.

HB 2382 - UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT PUBLIC  
HEARING

Witnesses:

Bruce Anderson, Oregon State Bar

011 BRUCE ANDERSON, OREGON STATE BAR: EXHIBIT A Reads from Exhibit A.

216 REP. JOHNSON: Given the flow of water in many rivers, what are the  
odds of any body in Oregon causing pollution in Canada?

220 ANDERSON: As one gets closer to Canada the chance of that happening  
is greater, especially with respect to wind blown pollution. The Act  
would not just apply with respect to Canada, but House Committee on  
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to other states as well.

236 REP. JOHNSON: It appears that because of the natural forces on  
Oregon, Oregonians are more likely to become the recipients of pollution  
than causing pollution themselves. 241 ANDERSON: In terms of major  
pollution that would be the case.

245 REP. BRIAN: Would this Act advantage or disadvantage Oregon  
businesses?

248 ANDERSON: If the Act were just an implementing piece of legislation  
that unilaterally granted jurisdiction for pollution claims then that  
would be a good question. However, the Act would only be in effect if  
this type of legislation were adopted in the foreign state guaranteeing  
mutuality. Oregon may benefit more from this legislation, but that does  
not prohibit people from the foreign jurisdiction from seeking  
settlement in Oregon when the pollution has originated in Oregon.

266 REP. BRIAN: Understands that this is unilateral as long as there is

right of reciprocity with the foreign state.

271 ANDERSON: Both states need to have passed similar legislation for the effect can take place. It is the Bar's goal to have this legislation adopted in other states in the United States and Canada. 286 JAMES DOLE, COMMITTEE COUNSEL: So far the Canadian provinces of British Columbia, Manitoba and Prince Frederick Island as well as Minnesota, Colorado, Wisconsin, Michigan and New Jersey have passed similar legislation. 291REP. BELL: Does the Act cover waste products that are being transported across boundary lines? 293ANDERSON: It limits it to pollution as defined by the law of the state where the action is brought.

HB 3199- LIABILITY EXEMPTION FOR NONPROFIT CORPORATIONS - PUBLIC HEARING

Witnesses:

Representative Greg Walden, District 56 Barbara Briggs, Columbia Gorge Center Tim Kral, Oregon Rehabilitation Association Charles Williamson, Oregon Trial Lawyers' Association Sandra Millius, Oregon Community Health Providers' Association 320 REPRESENTATIVE GREG WALDEN, DISTRICT 56: Has introduced HB 3199 at the request of Barbara Briggs, Director of Columbia Gorge Center in Hood River. The Center is a private non-profit corporation. HB 3199 defines certain nonprofit corporations which provide rehabilitation and vocational training as public bodies for purpose of exemption from liability for tort claims.

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364 REP. JOHNSON: Understands that there is a liability that a public body has for ministerial acts versus discretionary acts. What kind of protection will be given to these kinds of corporations by simply making them public bodies for the purpose of the Public Body Tort Act?

387 REP. WALDEN: It is important to recognize the type of people they are serving. Most of them have emotional mental or physical handicaps. Suits against these institutions could put many out of business. All HB 3199 does is limit liability. - 402 REP. JOHNSON: Concerned about limiting liability for agents of corporations that release individuals with mental or criminal backgrounds who then cause subsequent harm.

417 REP. WALDEN: These corporations are not dealing with criminal elements.

450 REP. EDMUNSON: Are you talking about personal injuries to people who live in the homes or injury to the public if the patient escapes?

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016 WALDEN: Patience escaping is a misnomer. Many of these people live in group home situations and come and go on their own. They are not incarcerated.

020 REP. EDMUNSON: Understood that some of these people are mentally disabled.

032 REP. JOHNSON: Concerned about what HB 3199 says on its face.  
044 REP. CLARK: Did you discuss broadening HB 3199 to include other  
nonprofit organizations that contract with the state? 055 REP.  
WALDEN: Was not sure that politically HB 3199 would survive if it was  
broadened out.

066 REP. CLARK: There is no policy distinction between providing  
limited liability for one nonprofit corporation over another?

069 WALDEN: No. 080 REP. BRIAN: Is it your intent on lines 26 and  
27, page 1 of HB 3199 where it states "to the extent that the  
corporation is engaged in provision of services" to limit this liability  
only to the contracts referenced in line 28 or to any and all activity  
engaged in by the corporation? 088 WALDEN: Understands that the  
liability is limited to what is established in the contracts.  
091 DOLE: Agrees with that.

098 REP. BELL: To whom is the protection directed? Employees being hurt  
by patients such as in drug rehabilitation or patients being hurt on the  
premises, or visitors coming?

106 WALDEN: All of the above. .

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108 REP. EDMUNSON: An employee at the center who is injured by a  
patient can sue the patient without limit, but if the corporation is  
sued the liability is limited. 119 REP. BELL: If a visitor comes on the  
premises and is injured for any reason, the corporation's liability  
would be limited?

122 WALDEN: To \$50,000 for damage or destruction of property.  
\$100,000 for all other claims arising out of the same accident or  
occupance. 164 BARBARA BRIGGS, COLUMBIA GORGE CENTER: EXHIBIT B Reads  
from Exhibit B. 195 REP. BRIAN: Is it your understanding that the  
limited liability would apply only to those activities that are  
contracted for? 198 BRIGGS: Yes. 204 REP. BRIAN: Are you involved  
in drug and alcohol treatment programs? 206 BRIGGS: Currently the  
Center does not have the facilities to deal with these people, but the  
potential is there. Primarily serve mentally disabled and retarded  
individuals, but occasionally there are clients who are referred to the  
center who are physically disabled or who have drug and alcohol  
problems. 220 REP. EDMUNSON: Do you segregate the people you treat in  
any way pertaining to the particular treatment? 224 BRIGGS: The  
programs at the Center are more vocational than treatment oriented. They  
would be working in the same area. 231 REP. EDMUNSON: What does the  
Community Mental Health or Developmental Mental Disabilities Program  
established under ORS 436.020 do? 234 BRIGGS: It allows for the  
establishment of community mental programs to be established primarily  
by county or groups of counties. 239 REP. EDMUNSON: Could a drug  
treatment center be organized by a nonprofit organization through ORS  
436.020? 250 REP. BELL: What is the cost of the liability insurance?  
255 BRIGGS: Does not have information on it. 262 REP. JOHNSON:  
Understands that the Center has not discussed with its insurance carrier  
exactly what change this law would have on liability premiums.  
267 BRIGGS: Correct. 278 REP. MANNIX: Understands the Center's

main concern is limiting liability so as to 1) limit

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the expense of insurance or 2) if the Center ends up not being insured then limiting exposure to possible law suits.

285 BRIGGS: Yes.

289 REP. MANNIX: What percentage of your patients does the state pay treatment costs for?

293 BRIGGS: 100% 302TIM KRAL, OREGON REHABILITATION ASSOCIATION: EXHIBIT C Reads from Exhibit C. 346 REP. MANNIX: Refers to line 26 of HB 3199 it states, "to the extent that the corporation engaged in a provision of services . . ." does that mean that focus is directed on the services in determining whether the corporation is a public body as to the person or is the corporation protected as a public body if there is some reasonable standard? Suggests defining the organization as a "public body." 372 KRAL: The intent was to put a cap on liability with respect to only those services that the organization was providing under contract to the state. Did not intend to limit liability for services that the organization might be engaged in as a business activity that was not related to rehabilitation. 389 REP. MANNIX: There is greater potential for argument in litigation with the language as it now is in line 26. 425 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS' ASSOCIATION: EXHIBIT D Reads from Exhibit D.

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040 REP. CLARK: Would the constitutional argument be the same if instead of stating that sovereign immunity in state tort claims limits will be extended to private nonprofit corporations if the law read "tort liability for private no~ profit shall be limited to x dollars?"

046 WILLIAMSON: Thinks this would be unconstitutional.

069 REP. CLARK: Why would a straight cap on limiting tort liability for private nonprofit corporations be unconstitutional?

072 WILLIAMSON: There is a \$500,000 cap now on non-economic damages. This cap that is proposed is far more burdensome. It won't even pay for medical bills. Neither California nor Washington has a tort claims cap.

112 REP. BELL: Is it the whole system that allows public entities to have limits on liability that bothers you, or is it the concept of allowing a particular group to enjoy these limits. 117 WILLIAMSON: The OTLA opposes tort claims limits period.

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141 REP. MANNIX: You are way beyond the intent of HB 3199.

160 WILLIAMSON: If these are the things that the state should be doing then the state should pay for liability insurance.

173 SANDRA MILLIUS, OREGON COMMUNITY MENTAL HEALTH PROVIDER ASSOCIATION: Offers support for HB 3199. 216 REP. EDMUNSON: Do these nonprofit corporations handle persons discharged from the state hospital? 223 MILLIUS: Persons discharged from the state hospital who have criminal histories are in special programs. 230 REP. EDMUNSON: Do those separate institutions fall under the limitations proposed by HB 3199? 231 MILLIUS: Yes.

232 REP. EDMUNSON: Are some patients that come to these institutions under private contract and not referred by the state?

239 MILLIUS: The general rule is that 10% of the client mix is non-state funded.

254 REP. EDMUNSON: What percentage of these facilities are exclusively state contract?

257 MILLIUS: Does not know.

258 REP. EDMUNSON: Do all these facilities have some percentage of persons under private contract?

260 MILLIUS: Not all. It depends on what programs you are talking about. 266 REP. EDMUNSON: HB 3199 would only extend the limitations on tort claims for those patients under contract. Concerned that there is still liability for all those private insurance placements.

HB 2382 - WORK SESSION

323 MOTION, REP. MANNIX: Moves HB 2382 to Full Committee with a "do pass" recommendation. 353 VOTE: 6 0 Motion passes. Rep. Mannix to carry.

AYE: Clark, Edmunson, Johnson, Mannix, Bell, Baum NO: 0 EXCUSED: Brian, Miller

HB 2381 - INTERNATIONAL COMMERCIAL ARBITRATION ACT - PUBLIC HEARING - 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 April 8, 1991 - Page 7

Witnesses:

Jerome Barton, Oregon State Bar Ross Runkel, Oregon Dispute Resolution Commission Roger Martin, Securities Industry Association

377 JEROME R. BARTON, OREGON STATE BAR: EXHIBIT E Reads from Exhibit E.

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001 BARTON: Continues.

049 REP. EDMUNSON: Would this affect international sanctions against a foreign country?

058 BARTON: Only if the foreign government and the business entity they were contracting with agreed that the Act would be the rules for arbitration. The Act cannot be forced upon any party unless mutually agreed upon.

104 ROSS RUNKEL, OREGON DISPUTE RESOLUTION COMMISSION: Supports HB 3281.

119 REP. EDMUNSON: Do other Pacific rim states have similar legislation?

120 RUNKEL: California has adopted this Act and Connecticut and Texas have adopted similar versions. Washington has not. All Canadian provinces have adopted this legislation.

135 ROGER MARTIN, SECURITIES INDUSTRY ASSOCIATION: EXHIBIT F and G Summarizes Exhibit F. 172 REP. EDMUNSON: Does Section 56, page 16 need to be included in HB 2381?

175 MARTIN: Does not think that it is not necessary.

HB 2381 - WORK SESSION

198 MOTION, REP. EDMUNSON: Moves deletion of Section 56, page 16.

200 VOTE: No objection. Motion passes. 201 MOTION, REP. EDMUNSON:

Moves HB 2381 as amended to Full Committee with a "do pass"

recommendation. DISCUSSION ON THE MOTION 203 REP. MANNIX: Wants to

know about the impact of Court filing fees. 206 BARTON: Any time that

the Court system is used to intercede the normal court fees for petition

will apply. - - These minutes contain materi&ls which paraphrase and/or

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209 REP. MANNIX: For the record, normal Court filing fees will apply.

219 VOTE:6-0 Motion passes. Rep. Clark to carry.

AYE: Clark, Edmunson, Johnson, Mannix, Bell, Baum NO: 0 EXCUSED: Brian, Miller

228 CHAIR BAUM: Adjourns Subcommittee on Civil Law and Judicial Administration at 3: 10 p.m.

Submitted by: Reviewed by: J. Kennedy Steve,  
Assistant David Harrell, Office Manager

EXHIBIT LOG:

A Testimony on HB 2382 - Bruce H. Anderson - 18 pages B Testimony on HB 3199 - Barbara C. Briggs - 3 pages C Testimony on HB 3199 - Tim Kral - 1 page D Testimony on HB 3199 - Charles Williamson - 6 pages E Testimony on HB 2381 - Jerome Barton - 10 pages F Testimony on HB 2381 - Roger Martin - 1 page G Testimony on HB 2381 - Roger Martin - 2 pages

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