

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 FAMILY JUSTICE

February 1, 1991Hearing Room 357 2:00 p.m.Tapes 15 - 17

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2177 - Board of Nursing (WS) HB 2079 - Public Health Measure (WS) HB 2445 - Spousal Support (PH/WS) HB 2368 - Child Support (PH)

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TAPE 15, SIDE A

001 REP. MASON: Calls the meeting to order at 1:00 and discusses the agenda.

(Tape 15, Side A) WORK SESSION ON HB 2177 Witnesses:Joan Bachard, Board of Nursing.

009 HOLLY ROBINSON: Discusses the bill. An issued raised was keeping the records of initial inquiries confidential for the voluntary monitoring program. The Board was uncomfortable with the language on line 18, subsection 5 regarding what they will establish by rule. Their intent was to make it broader so the rules would deal with criteria for participation in the program and successful completion. Section 2 of the bill has been rewritten. Some of the language has been changed.

029 REP. MASON: There are two version of subparagraph 3.

051 HOLLY ROBINSON: Correct. On line 7 of bill it proposes to say "may lead' so there is some discretion reflected in the new version. The issue of confidentiality of records appears in lines 13 and 14 of the bill. On amended draft, lines 18-20, the attempt was to make the records of the program confidential. On line 13 of written amendments, which is a rewrite of the bill, states "all records pertaining to a licensee including inquiries to the Board regarding eligibility for participation and subsequent participation in the voluntary monitoring program if applicable." This will differentiate between those who apply but do not get in and the inquiry will still be confidential and not subject to public disclosure. The State Board of Nursing is not happy with

Subsection 5 so they asked for the language in handwritten draft that states "now the Board shall establish by rule criteria for eligibility to participate in the program and criteria for successful completion of the program." This is clearer on the intent.

113 REP. MANNIX: Likes the alternative language on the -1 amendments. Questions the language in subsection 6. Noticed the phrase "in good faith" was added.

HOLLY ROBINSON: Subsection 6 on -1 amendments is being deleted and replaced with -2.

122 REP. MANNIX: Leaving out the "good faith" language. Clarifies the amendments. Would like to hear from the people involved. What is your preference on these options?

131 JOAN BACHARD, EXECUTIVE DIRECTOR, OREGON STATE BOARD OF NURSING: We worked very close with Committee Counsel on these amendment and are very comfortable with the changes made.

134 REP. MANNIX: Clarifies question.

141 CHAIR CLARK: The language in the first option appears is substantially broader than second, "all records of the voluntary monitoring program". What is your reaction on this?

147 JOAN BACHARD: Anticipated with this statutory change that it only refer to the voluntary program. We have other statutes relating to other records of the licensees.

153 REP. MANNIX: Likes option B. Do you have any problem with that option? Lines 18 through 25 plus on the second piece of paper.

JOAN BACHARD: No problems with that.

158 REP. MANNIX: Moves to amend the bill as follows: taking the original draft of the bill and the -1 amendments lines 6 through 12 and lines 18 through 25 incorporating them into the bill. Also take the -2 amendments, which is a new subsection 6 to Section 2, and put it in the bill as a subsection 6 to Section 2. Discusses this proposal for clarification.

171 CHAIR CLARK: Rep. Mannix has moved to amend HB 2177 by including the -1 amendment and the -2 amendments. Is there discussion on the motion? Are there objections? Hearing none, it is so ordered.

REP. PARKS: Moves HB 2177 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Parks moves bill as amended to the full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Judy Bauman: Aye Rep. Marie Bell: Aye Rep. Jim Edmunson: excused
Rep. Kevin Mannix: Aye Rep. Tom Mason: Aye Rep. Del Parks: Aye Rep. Ron Sunseri: Aye Chair Kelly Clark: Aye

CHAIR CLARK: The bill is passed to the full committee with a do pass recommendation. Asks Rep. Mannix to carry the bill.

(Tape 15, Side A) WORK SESSION ON HB 2079 Witnesses:Dr. Larry Foster, Acting State Health Officer Dr. Gary Oxman, Health Officer, Multnomah County

203 HOLLY ROBINSON: This bill was introduced by the Health Division and will allow them to extend public health quarantine orders. The committee expressed concern over what the bill would be used for. The witnesses said it would be primarily tuberculosis (TB) or other casual contact or airborne types of disease. Discusses -3 amendments, language from the Health Division. The change is on line 4 and 10.

223 CHAIR CLARK: Have taken out the language "or substantial medical evidence indicates that the condition cannot be rendered noninfectious within 60 days or that the condition may reoccur...." and insert the language on lines 3 through 7 of the -3 amendments.

HOLLY ROBINSON: Correct. The substantive change is that the word "condition" is modified by "airborne route".

230 REP. MASON: Bothered because there might be some other route for an infectious disease to spread that might be applicable to this bill.

245 REP. MASON: Limiting this to airborne diseases?

CHAIR CLARK: At the end of the last meeting I asked the witnesses to work with Counsel and LC to come up with proposed language to limit the bill to TB or other kinds of situations very similar because that was the direction the discussion took. No decisions were made at that time.

258 LARRY FOSTER, ACTING STATE HEALTH OFFICER: The restrictive language applies only to extending the period from 60 to 180 days. Does not restrict the rest of the law which lets the Public Health Authority seek a court order for other kinds of medical conditions. It is only the time period issue. Seeking specifically for TB because 180 days is the period of treatment necessary to render the patient noninfectious.

270 REP. MANNIX: Wouldn't this carry HIV phobia to the other extreme by separating airborne contaminants? Discusses reaction to AIDS.

282 LARRY FOSTER: Comments the picture is so clear for TB rather the HIV.

294 CHAIR CLARK: You have the authority, if this bill falls between the cracks, to go back to the Judge.

LARRY FOSTER: Yes, to extend it beyond the 60 days.

298 REP. MANNIX: Are there other diseases that are not airborne that we currently don't have?

LARRY FOSTER: Yes, but a period beyond 60 days will not be necessary. Discusses an example of a rare disease.

REP. MANNIX: Can you live with this amended approach?

LARRY FOSTER: Yes.

GARY OXMAN, MULTNOMAH COUNTY HEALTH OFFICER: Specific concern with TB is the needed 180 days treatment. If it was shorter they would still be

infectious and you create a legal system that promote partial treatment of TB.

327 REP. BAUMAN: Moves the -3 amendments into the bill.

CHAIR CLARK: Rep. Bauman moves the -3 amendments to HB 2079.

331 REP. BAUMAN: Thanks the witnesses. Questions previously raised are addressed by the amendments. Feels at ease with the amendments and with fact the bill will accomplish the purpose Public Health had in mind.

343 CHAIR CLARK: Any objections to the motion? Hearing none, so ordered.

342 REP. BAUMAN: Moves HB 2079 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Bauman moves the amended bill to full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Judy Bauman: Aye Rep. Marie Bell: Aye Rep. Jim Edmunson: excused Rep. Kevin Mannix: Aye Rep. Tom Mason: Aye Rep. Del Parks: Aye Rep. Ron Sunseri: Aye Chair Kelly Clark: Aye

CHAIR CLARK: The bill is passed as amended to the full committee with a do pass recommendation. Asks Rep. Bauman to carry the bill.

(Tape 15, Side A) PUBLIC HEARING ON HB 2445 Witnesses: Paul Saucy Bill Linden, State Court Administrator Kate Brown, Women's Rights Coalition Virginia Peterson, Older Women's League Karen Berkowitz, Oregon Legal Services Corp.

368 HOLLY ROBINSON: Under current law spousal support cannot be re-started once terminated. This bill would grant the court authority to restart previously terminated support under certain circumstances.

CHAIR CLARK: Defines spousal support as alimony.

384 PAUL SAUCY, LAWYER: Proponent of the bill. (EXHIBIT A). Alimony is only awarded in the original divorce decree. Causes for termination are 1) getting remarried and 2) retirement of payor. The court is not allowed to enter an order of "token" support in order to keep the door open if something happens. This bill proposes if the ground for termination ceases to exist, they can come back in and ask for the support to be reinstated. It must be within the same time frame of the award. Discusses written testimony offered to the committee. Discusses examples.

TAPE 16, SIDE A

013 PAUL SAUCY: Continues testimony. This bill will reduce litigation on these matters. It is not mandatory nor does it have to be set at same level. Just gives an option.

068 CHAIR CLARK: What do other states do?

PAUL SAUCY: Not sure.

CHAIR CLARK: Will need answer at some point.

PAUL SAUCY: Will check.

CHAIR CLARK: Interested in knowing if other states have this. Spousal support would not automatically come back but the person would have the authority to petition the court to consider reinstating and the court would have the ability to do so.

084 PAUL SAUCY: Correct, does not set the amount or reestablish the right to get it. It has to be proven.

089 REP. MANNIX: Why don't we deal with the issues of reduction? Is that in another statute?

094 PAUL SAUCY: A modification order does not have that problem.

097 REP. MANNIX: What about a time line saying that after the entry of the order they would have two years? We will hear the argument that there needs to have some kind of finality.

104 PAUL SAUCY: Did put it in by stating they can only come back within the time frame support is ordered.

CHAIR CLARK: Permanent is 10 years?

PAUL SAUCY: No, permanent is until one of the parties dies or court changes it mind.

112 CHAIR CLARK: Some states make it 10 years?

PAUL SAUCY: Not to my knowledge.

117 REP. MASON: Doesn't depend on the age of the women?

120 PAUL SAUCY: Not aware of a statute to that effect. One of the criteria to set support is the age of the parties.

122 REP. PARKS: Isn't there the presumption that the women should become self supportive?

PAUL SAUCY: There is a statute that states at the end of 10 years the person paying can ask the court to make the recipient prove the need.

REP. PARKS: Burden of proof is on the recipient.

129 PAUL SAUCY: True. Comments on experience in this area.

131 REP. PARKS: How long was your client divorced before remarriage?

PAUL SAUCY: A couple of years.

145 REP. PARKS: After then she was again divorced?

157 PAUL SAUCY: Second huSB and died. He was already retired and elected plans without a survivor option. When he died that income died with him.

180 REP. PARKS: Comments on women controlling the payor.

PAUL SAUCY: Follows the analysis through.

REP. PARKS: Believes it is loaded with litigation. Do you think there should be any restriction on judges, some ground rules to follow?

191 PAUL SAUCY: Discusses ORS 107.015 and a survey stating about 15% of the cases receive awards.

200 REP. PARKS: States that survey is of little value in Oregon. What restrictions should be on judges?

216 PAUL SAUCY: Believes statutory guidelines are sufficient.

219 REP. SUNSERI: It seems the trend is to encourage people to get on with their lives. If a woman is divorced, and is supported for a number of years and support is terminated, under this proposal, the person who is providing the support cannot get on with life because this is hanging over their head. They have to continue to plan for it because at some unknown date they may have to pick up this expense again.

238 PAUL SAUCY: The trade off is that he did not have to pay for that time.

242 CHAIR CLARK: Intent of Chair will be no work session today.

249 REP. MASON: Bothered by responsibility. The current divorce law is void of a sense of responsibility. Discusses an example of a 30 year marriage being dissolved and the law not taking into consideration who wanted it.

PAUL SAUCY: Difficult to answer since in 1972 there has been no fault divorce. If the matter is litigated, it may be brought up.

REP. MASON: Bothered by remarriage in this regard. Seems you assume it is not a permanent thing because you leave a hook back into the first marriage.

304 PAUL SAUCY: I think marriage is very important. For some reason over 50% of marriages end in divorce. It is not necessarily remarriage, it can be retirement, a disability, etc., but it is the major reason for support termination.

327 REP. BELL: You are talking about some things beyond our control and other things that are in our control. Discusses support working both ways. Marriage is a willing contract. Believes once you remarry you renounce all claim to the prior marriage.

349 PAUL SAUCY: It is not automatic that support terminates after remarriage. The court looks at why the support was awarded to begin with.

374 REP. BELL: It is like two different bills. Might have to look at the court order being permanent based on the contribution to the earning.

387 CHAIR CLARK: If you took Rep. Bell's suggestions and listed the reasons spousal support could be reinstated, would you run the risk of putting people in a no-win situation?

397 PAUL SAUCY: Yes. Suggests if you make an exception for marriage in this bill it would be saying remarriage does terminate spousal support. With a statute to that effect, it would be hard for a judge not to rule

that way and it may not be appropriate.

TAPE 15, SIDE B

005 REP. PARKS: Comments on a bill he will be introducing dealing with enhanced earning capacity.

010 REP. BAUMAN: How many spousal support awards are to the male partner?

013 PAUL SAUCY: I can't tell you. But, with discussion from other attorneys, there are a few out there. Do not have experience with this.

018 CHAIR CLARK: This will be brought up again.

026 KATE BROWN, WOMEN'S RIGHTS COALITION: Discusses written testimony (EXHIBIT B). Offers testimony in favor of the bill. Responds to the concerns of the representatives. Discusses Rep. Bell's concerns. The property judgment awarded to a wife, paid out over a period of time, represents her share or contribution to the marriage. If remarried during the time of the payout period, she is still entitled to the property because that is what she earned in the marriage. Spousal support is restitution. Offers further discussion on remarriage aspect. Reasons for awarding support may be as tax benefits, for a specific purpose such as education, etc. Terminating alimony is in essence punishing a women for remarrying.

099 REP. BELL: Comments on inequities involved in a dissolution. Believes the rules should be more specific with regard to remarriages and awards for property, career enhancement, etc.

117 KATE BROWN: What needs to be kept in mind is we are simply opening the door for continuation of the support. Giving the court the ability to do what is fair. Comments that 70% of men's lifestyles improve after a divorce and 90% of women's go down.

142 REP. MASON: Appreciates last comment. No fault divorce has been a disaster for women and a minority of men. By taking away the fault, it took away some of the economics. Does not believe it is working. References her example in written testimony.

181 KATE BROWN: Appreciates concerns. When talking about control take it back to a women going back to school to get a graduate degree, which is in her control, and husband and saying she can support herself and it terminated. Not sure control is the issue here but what was entitled under the decree.

196 REP. EDMUNSON: How sensitive is the court to abuse? The court plays a strong judgment role in determine what is fair.

206 KATE BROWN: Comments on Multnomah County judges.

221 REP. BAUMAN: The issue that comes to the committee is one of permission for a judge to look at facts in individual cases. Concerned about the stereo-typical image of the women that will not go, the moral defectiveness of divorced people. Feels it is not an issue of morality but of financial equity and justice. We will not be making the decision for the judge and encouraging immorality and financial inequity. We will be opening the door for the judge to decide.

287 KATE BROWN: The bottom line in the court's determination in spousal support is need.

299 REP. BAUMAN: Would a judge have the power to say no?

KATE BROWN: Yes. It simply opens the door for the judge to take a look and determine what is fair in each instance.

REP. BELL: Comments on the stereo typing.

307 CHAIR CLARK: Recesses 3:30 the meeting. Reconveying at 3:44.

324 CHAIR CLARK: Continues with HB 2445.

336 BILL LINDEN, STATE COURT ADMINISTRATOR: Comments don't go to the merits of the issues. (EXHIBIT C) Believes it will have a work load impact and urges sending it to Ways & Means because of budget reductions. The courts will be discussing with Ways & Means what the reduction will cause. If we lose resources we will lose people. This bill has the likelihood that more cases will come back into the court system.

382 REP. EDMUNSON: You estimate about 4,500 domestic cases handled by the court system per year.

BILL LINDEN: Correct.

REP. EDMUNSON: You state that there will be a 1% increase with a cost of about \$100 per case.

409 BILL LINDEN: Yes. We have identified a formula to calculate different types of cases. It is not a hard general fund expenditure increase here. This will just increase the number of cases we will handle.

TAPE 16, SIDE B

004 REP. EDMUNSON: What is your total budget request? BILL LINDEN: Base budget is \$233,000,000.

REP. EDMUNSON: This would add \$45,000.

BILL LINDEN: Yes. The cumulative effect adds up.

006 REP. BAUMAN: Is there space in dockets to fill in?

016 BILL LINDEN: Discusses Multnomah County and Judge Londer, scheduling cases regularly and it is a high volume court.

037 REP. PARKS: How did it get to 450 cases?

BILL LINDEN: Cannot predict what the work load would be but just identified how many domestic relation cases handled in a year.

042 VIRGINIA PETERSON, OREGON OLDER WOMEN'S LEAGUE: Introduces herself, discusses purposes of the League, and offers testimony in favor of HB 244 5. Interested in this bill because it gives one more option to a very small percentage of older women who find themselves in this position. Each of these cases must be heard on its merits based on the need of the petitioner and capacity of respondent. It requires faith in

the judicial system.

064 KAREN BERKOWITZ, OREGON LEGAL SERVICES CORPORATION: Did not intend to speak to this bill initially but was the attorney who represented the wife in the case of Woita v. Woita. The Oregon Court of Appeals stated the trial court does not have the power to reinstate spousal support once it is terminated. Discusses case. This also involves disabled people who will be supported by the state if not supported by former spouses.

096 REP. PARKS: Did you represent her in the trial court?

KAREN BERKOWITZ: No

REP. PARKS: How long had she worked?

KAREN BERKOWITZ: Don't remember, was not prepared to speak to that.

104 REP. PARKS: Wants to make a point. Can do it in the work session.

CHAIR CLARK: Closes hearing on HB 2445.

WORK SESSION ON HB 2445

111 REP. MANNIX: Moves the bill to full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2445 to the full committee.

REP. MANNIX: To the motion. Appreciates the State Court's desire to send it to Ways and Means. It does not have appropriation in it though. Don't think it is appropriate to send it on. Was convinced by discussion it is a good bill and will simply give the trial judge discretion to do justice when required. It is important to allow an equitable consideration of the facts and circumstances of each case.

147 REP. PARKS: Believes its the most ill conceived bill. There are so many concepts mixed up and no limiting factors at all, no restrictions. The basic problem with the statute is that it mixes up several concepts such as personal welfare system. Discusses alimony statute elements as demeaning. Alimony does not survive the death of the huSB and. Would like the opportunity to not vote on this bill until we evaluate other approaches that address the same problem.

212 REP. SUNSERI: Questions Rep. Parks. All we are really doing is opening the door so the judge can make the determination on the individual circumstances.

REP. PARKS: We talk about the concept that all judges are wonderful and all-knowing. There needs to be rules stating what these factors to be considered are.

234 REP. BELL: How is this incompatible with your bill? Your bill would not cover all situations. Discusses example of the huSB and being a blue collar worker in a union. Your bill would not be all inclusive and it would no be incompatible with this.

249 REP. PARKS: The way the bill is phrased is with enhanced earning capacity not degrees. Does not cover people without enhanced earning capacity and is based on the ability to pay and the needs of the wife.

269 CHAIR CLARK: The motion is on HB 2445 not on Rep. Parks' bill.

287 REP. MANNIX: Mentions if a bill is sent to the Senate and other legislation comes in that will have some impact, we will send word over that we like this new legislation and both bills may come back. Discusses the process of bills.

301 CHAIR CLARK: Point is if a better bill comes along, we can let the other chamber know.

REP. BELL: Was trying to convince Rep. Parks to vote my way.

310 REP. MASON: Questions for Mr. Saucy. Do the court retain traditional equity power and standards regarding this bill?

PAUL SAUCY: Yes.

314 REP. MASON: One must still come into court.

PAUL SAUCY: Yes.

319 REP. MASON: Would like you to disclaim for the record your hypothetical on the "rebound" marriage. Bothered by that.

PAUL SAUCY: Disclaim the rebound marriage.

323 REP. PARKS: That is could be a significant circumstance.

PAUL SAUCY: Believes every divorce ends a marriage that went sour.

REP. PARKS: We are talking about reinstating the right to seek alimony.

PAUL SAUCY: Believes a judge would look at that along with all the other circumstances.

REP. MASON: Discusses the "clean hands" equity concept.

CHAIR CLARK: Asks for roll call vote.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Bauman: Aye Rep. Bell: Aye Rep. Edmunson: Aye Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Nay Rep. Sunseri: Aye Chair Clark: Aye

358 CHAIR CLARK: HB 2445 goes to the full committee with a do pass recommendation. The Chair will carry. Closes the work session.

(Tape 16, Side B) PUBLIC HEARING ON HB 2368 Witnesses: Michael Wells, OSB Family Law Section

367 MICHAEL WELLS, OREGON STATE BAR, CHAIR OF LEGISLATION COMMITTEE OF THE FAMILY LAW SECTION: Discusses the intent of HB 2368. It did not intend that the SED and the DAs enforce the support awards differently. Not indented to make them change their rules. Refers to Mr. John Ellis's testimony given earlier. This bill will amend ORS 25.285. Provides only that the SED and the DA would have the guidelines as the only criteria for enforcement. The problem is some courts are treating those criteria as the only criteria. This bill will cure that problem. It is not uniform on treating modifications of child support. Comments

on the work load issue. Currently some circuits are using the criteria as the standarads. Use of the guidelines should actually lower the number of contested child support cases.

TAPE 17, SIDE B

021 MIKE WELLS: Continues testimony. If the parties do not agree to the numbers, with the use of the guidelines, it can be stipulated that it be submitted to the court in the form of affidavits. Discusses Lane County's practices. The consensus of my committee is we think uniformity between private and public enforcement should be instituted. Can the guidelines with some restrictions and have the substantial change in circumstances requirement that would apply with out the limitations. We are willing to work with the State Court Administrator's office and the Department of Justice to come up with some thing that encompasses the concerns in SB 220 and this bill.

054 HOLLY ROBINSON: In amendments submitted to the committee what was added in was "the total amount of support for the child or children under the current order varies by 10% or \$25 which ever is greater" from the amount set forth in the guidelines? Would you explain that.

MIKE WELLS: Yes. It was the consensus of the committee that the threshold was too high. If we simply took the administrative rule from the Dept. of Justice in many cases, especially with the higher income support awards, the percentage to dollar value goes up but you may not reach the threshold. Concerned that the threshold was too high from that stand point. The numbers can change.

073 HOLLY ROBINSON: This is an "either" "or".

MIKE WELLS: Yes.

074 KAREN BERKOWITZ, FAMILY LAW TASK FORCE OF OREGON LEGAL AIDE PROGRAM: Offers testimony opposing HB 2386 (EXHIBIT D) Agrees with the concept but are concerned that as written there is no uniformity. The current standard in the 4D case is governed by administrative regulations. Comments from written testimony. The bill, as written, does not provide for a 2 year passage of time and creates a 10% variation. We'd like any bill that would create the same time standards and same percentage standards.

103 REP. MANNIX: Will we be able to get a LC draft which gives us proposed modifications? Questions Ms. Berkowitz on the 25% threshold. Doesn't 10% sound more appropriate?

112 KAREN BERKOWITZ: That is something SED created. Don't care what the threshold is as long as it is applicable to everyone. The bill as written still leaves the 4D cases subject to administration regulations to meet other requirements.

117 REP. MANNIX: Your main concern is the equity issues and practicality of the thresholds.

120 KAREN BERKOWITZ: Yes. Would advise clients to run to the DAs office and apply for 4D services in order to resists these modifications. The court would then have to apply the stricter standard.

REP. MANNIX: Thank you.

123 CHAIR CLARK: Close the hearing. Comments to the committee.
Adjourns at 4:26 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2445 - Paul Saucy - 3 pages
B - Testimony on HB 2445 - Kate Brown - 1 page C - Testimony
on HB 2445 - William Linden - 2 pages D -Testimony on HB 2368 - Karen
Berkowitz - 3 pages E -Testimony on HB 2368 - William Linden - 7 pages F
- Testimony on HB 2368 - Deanne L. Darling - 2 pages