

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**June 1, 2005 Hearing Room 357**

**8:45 A.M. Tapes 93 - 94**

**MEMBERS PRESENT:           Rep. Bob Ackerman, Chair**

**Rep. Linda Flores**

**Rep. Bill Garrard**

**MEMBER ABSENT:           Rep. Kelley Wirth**

**GUEST MEMBERS:           Rep. Greg Macpherson**

**STAFF PRESENT:           Joe O’Leary, Counsel**

**Sam Sears, Counsel**

**Bill Taylor, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 2285 – Work Session**

**SB 355A – Public Hearing and Work Session**

**SB 599A – Public Hearing and Work Session**

**SB 284 – Work Session**

**SB 368A – Public Hearing and Work Session**

**SB 332 – Public Hearing and Work Session**

**SB 106A – Reconsideration and 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.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 93, A</b>		
003	Chair Ackerman	Calls the meeting to order at 8:58 a.m. Announces the addition of SB 106A to the agenda for reconsideration. Opens a work session on HB 2285.

**HB 2285 – WORK SESSION**

013	Sam Sears	Counsel. Explains that HB 2285 requires the health professional regulatory board, upon request from the licensee who has received a notice of intent to impose disciplinary actions, to disclose all information obtained by the board in its investigation of the disciplinary actions; and provides an exception for information that is privileged or confidential under other laws. Advises that the -3 amendments are not a part of today's proceedings. Refers to the -4 amendments ( <b>EXHIBIT A</b> ) which make an additional change and do not affect the -3 amendments. Continues that these amendments further limit what a licensing board must disclose to a licensee and relieves concerns about disclosure laws on persons making complaints about licensees.
038	Chair Ackerman	Polls committee to see if they wish invited testimony.
045	Chair Ackerman	Invites testimony from an agency representative and an Oregon State Bar representative, limiting each to five minutes.
053	Kathleen Haley	Executive Director, Oregon Board of Medical Examiners. Testifies and submits written testimony in opposition to HB 2285 and the -4 amendments ( <b>EXHIBIT B</b> ). Lists the other boards also in opposition. Indicates the Governor's concern about HB 2285. Reiterates the key points on why they oppose HB 2285.

094	Haley	Continues that the promise of confidentiality is a key factor in persuading licensees and the public to make reports. States that the Board discloses information at the time of a contested case hearing. Concludes that significant additional time and expense will be needed to review files.
116	Thomas Doyle	Attorney, Portland, Oregon. Testifies in support of HB 2285 and the -4 amendments. Advises that access to statements by accusers is not available at this time. Believes the -4 amendments “level the playing field.” Offers examples of administrative law judge decisions being overturned.
167	Chair Ackerman	Refers to the -4 amendments. Cites a scenario and asks if confidentiality is preserved.
179	Doyle	Thinks it does. States that the amendments provide the licensees being charged to have the statements and identities of people testifying against them.
185	Haley	Disagrees. Explains that existing ORS 676.175 says “the information permitting the identification of the complainant.” Provides an example.
197	Rep. Flores	Asks if redaction of a name but not a description could be more thoroughly shielded by virtue of how the information is dealt with in a written document.
207	Haley	Responds that if the language was the same as in existing statute, the issue would be taken care of.
210	Rep. Garrard	Inquires if an accusation by an anonymous source still has to be proven.
215	Doyle	Replies, absolutely, charges have to be supported by other evidence.
226	Rep. Garrard	Seeks clarification that the evidence is available and confidentiality only covers the person presenting it.
236	Doyle	Answers, as it stands now, where there is an anonymous source there is no access to anything except to what is introduced. Continues that HB 2285 provides access to investigation as part of the complaint process. Provides an example.

269 Haley Interjects that they do not take anonymous complaints. Adds that they do thorough investigations, and the licensees have the opportunity to do thorough investigations as well.

280 Rep. Macpherson Asks if a change in the -4 amendments would address the concern about identifying information and suggests language.

290 Haley Responds that expanding the definition would help.

298 Chair Ackerman **MOTION: Moves to ADOPT HB 2285-4 amendments dated 5/31/05.**

**VOTE: 3-0-1**

**EXCUSED: 1 – Wirth**

303 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

304 Chair Ackerman **MOTION: Moves HB 2285 to the full committee with a DO PASS AS AMENDED recommendation.**

307 Rep. Garrard States reasons for opposing HB 2285.

313 Rep. Flores Comments that she will cast a courtesy vote to move to the full committee, with the suggestion to consider the revised language offered by Rep. Macpherson.

321 **VOTE: 2-1-1**

**AYE: 2 - Flores, Ackerman**

**NAY: 1 - Garrard**

**EXCUSED: 1 – Wirth**

327 Chair Ackerman **The motion CARRIES.**

**REP. ACKERMAN will lead discussion in the full committee.**

332 Chair Ackerman

Requests counsel to prepare an amendment addressing Rep. Macpherson's suggestion. Closes the work session on HB 2285 and opens a public hearing on SB 355A.

**SB 355A – PUBLIC HEARING**

- 343 Joe O'Leary Counsel. Explains SB 355A deals with licensing of charitable gaming. Describes current law which allows the Department of Justice to issue a license to a tax-exempt charitable organization to conduct a bingo operation but limited to one county. Continues the SB 355A will allow licensing of gaming in more than one county but limited to no more than three counties, so long as the gaming is conducted at a location where the organization regularly conducts charitable activities and the organization has a cumulative annual handle of no more than \$250,000.
- 367 Sen. David Nelson Senate District 29. Testifies in support of SB 355A.

**TAPE 94, A**

- 011 Rep. Garrard Asks what would prevent someone from another part of the state from coming into an area and competing with an organization.
- 016 Sen. Nelson Responds that this is very narrowly drawn and is limited to nonprofit organizations.
- 025 Jacqueline Zimmer Oregon Association of Area Agencies on Aging and Disabilities. Testifies in support of SB 355A. Expresses appreciation to Sen. Nelson for sponsoring the bill.
- 032 Ross Laybourn Assistant Attorney General, Department of Justice. Testifies and submits written testimony in support of SB 355A (**EXHIBIT C**). Believes SB 355A addresses concerns with the original bill by limiting bingo to counties where program services exist.
- 059 Laybourn Continues by explaining the \$250,000 constraint. Describes the four classes of bingo.

**The following prepared testimony is submitted for the record without public testimony:**

Margaret Davidson Executive Director, Community Connection of Northeast Oregon, Inc. Submits written testimony in support of SB 355A (**EXHIBIT D**).

079 Chair Ackerman Closes the public hearing and opens a work session on SB 355A.

**SB 355A – WORK SESSION**

**081 Rep. Flores MOTION: Moves SB 355A to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

**AYE: In a roll call vote, all members present vote Aye.**

**ABSENT: 1 - Wirth**

**087 Chair Ackerman The motion CARRIES.**

**REP. FLORES will lead discussion in the full committee.**

088 Chair Ackerman Closes the work session on SB 355A and opens a public hearing on SB 599A.

**SB 599A – PUBLIC HEARING**

092 Bill Taylor Counsel. Explains SB 599A which requires a court to dismiss a charge of failing to carry proof of insurance if the person charged delivers to the clerk of the court proof of insurance showing that the driver was insured at the time of the offense.

100 Michele Rossolo Senator Laurie Monnes Anderson's office. Testifies in support of SB 599A.

115 Chair Ackerman Asks counsel about a situation where a ticket is issued for not having a driver's license, but if a license is produced before the hearing, the case can be dismissed.

121 Joe O'Leary Counsel. Indicates he is not familiar with such a rule but there may be a local practice in individual counties.

125 Chair Ackerman Appears that this is an analogous situation where it is a technical violation but can be dismissed before a court appearance.

131 Chair Ackerman Closes the public hearing and opens a work session on SB 599A.

**SB 599A – WORK SESSION**

133 Rep. Garrard **MOTION: Moves SB 599A to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

**AYE: In a roll call vote, all members present vote Aye.**

**ABSENT: 1 - Wirth**

139 Chair Ackerman **The motion CARRIES.**  
**REP. GARRARD will lead discussion in the full committee.**

141 Chair Ackerman Closes the work session on SB 599A and opens a work session on SB 284.

**SB 284 – WORK SESSION**

145 Joe O’Leary Counsel. Explains SB 284 which extends the civil statute of limitations by six months if an attorney representing a party passes away before the period of time expires. Refers to the -1 amendments (**EXHIBIT E**) which address the issue raised by Rep. Macpherson at public hearing.

170 Rep. Macpherson States the amendment does the job.

173 Chair Ackerman Announces the committee is at ease until a quorum is reached.

180 Chair Ackerman **MOTION: Moves to ADOPT SB 284-1 amendments dated 5/31/05.**

**VOTE: 3-0-1**

**ABSENT: 1 - Wirth**

- 182 Chair Ackerman Hearing no objection, declares the motion **CARRIED**.
- 183 Chair Ackerman **MOTION: Moves SB 284 to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- ABSENT: 1 - Wirth**
- 189 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 191 Chair Ackerman Closes the work session on SB 284 and opens a public hearing on SB 368A.

**SB 368A – PUBLIC HEARING**

- 200 Bill Taylor Counsel. Explains that the -3 amendments to SB 368A (**EXHIBIT F**) replace the bill and address the possible federal copyright law issues that were raised. Continues that SB 368A prohibits audiovisual recording in a movie theater of the movie being exhibited without the written consent of the theater owner.
- 236 Ted Hughes Motion Picture Association. Testifies and submits written testimony in support of SB 368A and the -3 amendments (**EXHIBIT G**). Cites the dollar amount and number of employees involved in movie making. Refers to a local organization that buys DVDs, sends them for sanitizing, and then lends to its members. Informs that the Association did not intend to interfere with that activity.
- 273 Rep. Flores Asks if cell phones that have capabilities to record should be included.
- 279 Taylor Advises that “audiovisual device” includes cell phones.
- 289 Taylor Elaborates on Mr. Hughes’ testimony about the local provider. Offers that current language uses “video tape” and ORS 164.875 will not be amended.



313 Rep. Flores Comments that Section 3 addresses any recording or transmitting of a motion picture by technology now-known or later developed.

321 Chair Ackerman Closes the public hearing and opens a work session on SB 368A.

**SB 368A – WORK SESSION**

324 Rep. Garrard **MOTION: Moves to ADOPT SB 368A-3 amendments dated 6/1/05.**

**VOTE: 3-0-1**

**ABSENT: 1 - Wirth**

328 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

330 Rep. Garrard **MOTION: Moves SB 368A to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 3-0-1**

**AYE: In a roll call vote, all members present vote Aye.**

**ABSENT: 1 - Wirth**

338 Chair Ackerman **The motion CARRIES.**  
**REP. GARRARD will lead discussion in the full committee.**

339 Chair Ackerman Closes the work session on SB 368A and opens a public hearing on SB 332.

**SB 332 – PUBLIC HEARING**

344 Joe O’Leary Counsel. Explains SB 332 extends physician-patient privilege to confidential communications between patients and dentists. Continues that ORS 40.235 provides that a patient has a privilege to refuse to disclose and prevent any other person from disclosing confidential communications in a civil action, suit or proceeding, if made for the purposes of diagnosis or treatment of the patient’s physical condition. Provides information on testimony from the Senate side.

393 Rep. Macpherson Believes there is an ethical duty of confidentiality regardless of what is in statute. Asks if this deals with evidentiary privilege because it could affect that ethical duty to be impaired by being subpoenaed.

406 O'Leary Responds yes.

408 Rep. Macpherson Asks if there was any indication on the Senate side that any dentist had ever been called as a witness to give this kind of information.

411 O'Leary Answers that there was no such assertion made on the Senate side.

415 Rep. Flores Comments that this appears to be preemptive.

420 O'Leary Believes so.

**TAPE 93, B**

003 Chair Ackerman Offers information on discussions with insurance defense attorneys who indicate they would issue blanket subpoenas to all health providers and hospitals in an area, attempting to obtain information.

017 Chair Ackerman Closes the public hearing and opens a work session on SB 332.

**SB 332 – WORK SESSION**

**020 Chair Ackerman MOTION: Moves SB 332 to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

**AYE: In a roll call vote, all members present vote Aye.**

**ABSENT: 1 - Wirth**

**023 Chair Ackerman The motion CARRIES.**  
**REP. ACKERMAN will lead discussion in the full committee.**

024 Chair Ackerman Closes the work session on SB 332.

- 028 Joe O'Leary Counsel. Explains the procedure for reconsideration of SB 106A which is the Governor's elder abuse bill. Describes a possible conflict with HB 2415 that accomplishes a piece of SB 106A. Refers to the -7 amendments (**EXHIBIT H**) that would delete the portions of SB 106 that are wholly completed by HB 2415.
- 045 Chair Ackerman Refers to a similar bill that is now up for consideration on the Senate floor. Opens a work session on SB 106A.

**SB 106A – WORK SESSION**

- 050 Chair Ackerman **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 106A.**
- 051 Chair Ackerman Asks if this is a subcommittee or full committee function.
- 055 Joe O'Leary Counsel. Advises that it is appropriate for the subcommittee to present all three amendments to the full committee.
- 058 **VOTE: 3-0-1**  
**AYE: All members present vote Aye.**  
**ABSENT: 1 - Wirth**
- 062 Chair Ackerman **The motion CARRIES.**
- 067 Chair Ackerman **MOTION: Moves to RECONSIDER the vote by which "Moves SB 106A to the full committee with a DO PASS AS AMENDED recommendation".**  
**VOTE: 3-0-1**  
**AYE: All members present vote Aye.**  
**ABSENT: 1 - Wirth**
- 071 Chair Ackerman **The motion CARRIES.**
- 075 Chair Ackerman **MOTION: Moves to ADOPT SB 106A-7 amendments dated 5/31/05.**

**VOTE: 3-0-1**

**ABSENT: 1 - Wirth**

**078 Chair Ackerman Hearing no objection, declares the motion CARRIED.**

**079 Chair Ackerman MOTION: Moves SB 106A to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 3-0-1**

**AYE: All members present vote Aye.**

**ABSENT: 1 - Wirth**

**083 Chair Ackerman The motion CARRIES.**

**REP. ACKERMAN will lead discussion in the full committee.**

**086 Chair Ackerman Closes the work session on SB 106A and adjourns the meeting at 10:00 a.m.**

### **EXHIBIT SUMMARY**

- A. HB 2285, -4 amendments, staff, 3 pp**
- B. HB 2285, written testimony, Kathleen Haley, 2 pp**
- C. SB 355A, written testimony, Ross Laybourn, 1 p**
- D. SB 355, written testimony, Margaret Davidson, 2 pp**
- E. SB 284, -1 amendments, staff, 1 p**
- F. SB 368, A3 amendments, staff, 6 pp**
- G. SB 368A, written testimony, Ted Hughes, 27 pp**
- H. SB 106, A7 amendments, staff, 1 p**