

# SENATE COMMITTEE ON JUDICIARY

February 14, 2005  
1:00 P.M.

Hearing Room 343  
Tapes 32 - 33

Corrected 10/26/05

**MEMBERS PRESENT:**     **Sen. Ginny Burdick, Chair**  
                                  **Sen. Charles Starr, Vice-Chair**  
                                  **Sen. Floyd Prozanski**  
                                  **Sen. Charlie Ringo**  
                                  **Sen. Vicki Walker**  
                                  **Sen. Doug Whitsett**

**MEMBER EXCUSED:**     **Sen. Roger Beyer**

**STAFF PRESENT:**       **Joe O'Leary, Counsel**  
                                  **Dale Penn, Committee Assistant**

**MEASURES/ISSUES HEARD:**  
                                  **Introduction of Committee Measures – Work Session**  
                                  **SB 278, SB 279, & SB 280 – Public Hearing**  
                                  **SB 370 – Work Session**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 32, A</b>		
004	Chair Burdick	Calls the meeting to order at 1:10 p.m. and opens a work session to introduce measures.
<b><u>INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION</u></b>		
009	Joe O'Leary	Committee Counsel. Reads LC 116, 922, 1138, 1198, 1304, 1359, 1484, 1649, 1654, 1705, 1827, 1852, 1887, 1913, 1978, 2073, 2176, 2177, 2266, 2267, 2268, 2269, 2270, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2293, 2328, 2329, 2336, 2389, 2399, 2518, 2519, 2520, 2521, 2640, 2641, 2642, 2673, 2757, 2759, 2763, 2764, 2765, 2766, 2767, 2774, 2789, 2791, and 2271 for introduction ( <b>EXHIBITS A – DDD</b> ).
113	Sen. C. Starr	<b>MOTION: Moves LC's: 116, 922, 1138, 1198, 1304, 1359, 1484, 1649, 1654, 1705, 1827, 1852, 1887, 1913, 1978, 2073, 2176, 2177, 2266, 2267, 2268, 2269, 2270, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2293, 2328, 2329, 2336, 2389, 2399, 2518, 2519, 2520, 2521, 2640, 2641, 2642, 2673, 2757, 2759, 2763, 2764, 2765, 2766, 2767, 2774, 2789, 2791, and 2271 BE INTRODUCED as committee bills.</b> <b>VOTE: 6-0- 1</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 1 – Beyer</b>
122	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>

127	Chair Burdick	Opens a public hearing on SB 278, SB 279, & SB 280.
<b><u>SB 278, SB 279, &amp; SB 280 – PUBLIC HEARING</u></b>		
129	Joe O’Leary	Counsel. Describes SB 278, relating to personal representatives for purposes relating to use and disclosure of personal information; SB 279, relating to submission of application for waiver or renewal of waiver of federal requirements involving policy change for the Department of Human Services; and SB 280, relating to subpoenas issued under authority of Worker’s Compensation Board requiring production of individually identifiable health information be in conformity with requirements of Oregon Rules of Civil Procedure.
143	Kelly T. Hagan	Oregon State Bar. Summarizes testimony in support of SB 278 ( <b>EXHIBIT EEE</b> ).
191	Hagan	Discusses the proposed amendment ( <b>EXHIBIT FFF</b> ).
201	Chair Burdick	Wonders how often estates have no personal representation.
203	Hagan	Replies that this happens very often and cites examples.
220	Gwen Dayton	Oregon State Bar. Testifies in support of SB 278 ( <b>EXHIBIT GGG</b> ).
268	Dayton	Talks about the clarification of the rules relating to the access of medical records, and how SB 278 is needed.
318	Chair Burdick	Inquires how the Health Insurance Portability and Accountability Act of 1996 (HIPAA) legislation carved out the worker’s compensation standards.
325	Dayton	Discusses HIPAA privacy standards, and why they were implemented.
334	Chair Burdick	Asks if they are now enforcing the laws of civil procedure.
337	Dayton	Talks about the civil procedure regulations that hospitals must go through for workers compensation records.
362	Chair Burdick	Wonders about the changes made by SB 280.
367	Dayton	Comments on the changes made by SB 280 and not requiring legislative work.
351	Dayton	Explains the corroborative attempts that can be made with the committee and the work group.
392	Chair Burdick	Inquires if SB 280 is meant to be a last-resort method.
395	Dayton	Responds yes.
400	Lorey Freeman	Oregon State Bar. Reads testimony in support of SB 279 ( <b>EXHIBIT HHH</b> ).
458	Chair Burdick	Wonders if SB 279 would impose any costs.
464	Freeman	Replies that there is no fiscal impact, and details why.
500	Chair Burdick	Asks about a large packet of bills relating to HIPAA and the abilities of hospitals to release confidential information.
<b>TAPE 33, A</b>		
039	Dayton	Discusses the ability of family and friends to access confidential medical records. Addresses the past examples relating to confidential medical records.
070	Dayton	Talks about disclosure information.
080	Chair Burdick	Wonders about incapacitated individuals and their ability to disclose personal information.
085	Dayton	Comments on the issue that was raised, as well as methods used by Washington state’s to deal with this type of occurrence.
095	Chair Burdick	Inquires about the media.
099	Dayton	Talks about the media’s rights to medical information and cites examples.
111	Chair Burdick	Asks about restrictions to disclosure.

113	Dayton	Responds with disclosure information.
128	Joan Kapowich	Department of Human Services (DHS). Testifies in opposition to SB 279 and discusses the updated listing of DHS Federal Waivers and Demonstrations ( <b>EXHIBIT III</b> ).
165	Kapowich	Comments on the wait for federal approval for waivers. Addresses the issue of Legislative Counsel's (LC) interpretation of bills being different from the Department of Human Services.
195	Chair Burdick	Asks if there is a fiscal impact.
197	Kapowich	Replies that there would be two high-level jobs relating to the passage of SB 279.
200	Chair Burdick	Wonders if the scope of the hearing might be limited.
205	Kapowich	Discusses the rules involved with the current public hearing system.
214	Chair Burdick	Brings up the issue of waivers causing budgetary concerns.
219	Sen. Prozanski	Inquires about community involvement prior to submitting the information to the federal government.
231	Kapowich	Talks about the recent changes to the Oregon Health Plan waiver, and how the public hearings held before the changes were implemented. Reiterates that this is a way the community could be involved.
257	Sen. Prozanski	Wonders about waivers being brought about by a change in legislative policy.
264	Kapowich	Comments on waiver amendments, citing recent examples.
280	Sen. Prozanski	Discusses section 3 of SB 279 and the role of the legislature being addressed in the bill in relation to LC, and the delay in such a method.
305	Freeman	Replies that there would be a small delay, and that it would be a waste of public money and time to have hearings after the waiver has been authorized.
340	Chair Burdick	Asks about the public hearing after a waiver was authorized.
343	Kapowich	Talks about the waiver process and the possibility of added time.
372	Chair Burdick	Desires clarification on the waiver process.
384	Kapowich	Responds with information on the public hearings.
410	Freeman	Details the delay in the process because of current law and how SB 279 can streamline the method.
440	Sen. Prozanski	Inquires about the different processes regarding waivers.
466	Kapowich	Comments on the waiver application process.
458	Freeman	Discusses her confusion with the Department of Human Services being against SB 279 when they already accomplish all the bill sets out to do.
<b>TAPE 32, B</b>		
046	Sen. Prozanski	Brings up the decision of the past legislative session.
055	Freeman	States that this bill does not conflict with past legislation, but instead streamlines the process.
079	Chair Burdick	Closes the public hearing on SB 278, SB 279, & SB 280.
085	Chair Burdick	Raises issues of concern with the current bill.
109	Chair Burdick	Opens a work session on 370.
<b><u>SB 370 – Work Session</u></b>		
110	Joe O'Leary	Counsel. Describes SB 370 and the -1 proposed amendment ( <b>EXHIBIT JJJ</b> ), relating to preserving the attorney-client privilege for communications made to office of public defense services as part of the complaint against the lawyer providing public defense services.
128	Sen. C. Starr	<b>MOTION: Moves to ADOPT SB 370-1 amendments dated</b>

2/14/05.

**VOTE: 5-0-2**

**EXCUSED: 2 - Beyer, Ringo**

132 Chair Burdick  
135 Sen. C. Starr

**Hearing no objection, declares the motion CARRIED.**

**MOTION: Moves SB 370-1 to the floor with a DO PASS AS AMENDED recommendation.**

**VOTE: 5-0-2**

**EXCUSED: 2 - Beyer, Ringo**

137 Chair Burdick

**Hearing no objection, declares the motion CARRIED.**

**PROZANSKI will lead discussion on the floor.**

140 Chair Burdick

Discusses the trip to Pendleton on March 17, 2005, comments on the Governor's bill packet, and provides information on the upcoming committee meeting on the meth problem.

182 Chair Burdick

Adjourns the meeting at 2:20 p.m.

## **EXHIBIT SUMMARY**

- A. **Introductions, LC 116, staff, 11 pp**
- B. **Introductions, LC 922, staff, 10 pp**
- C. **Introductions, LC 1138, staff, 9 pp**
- D. **Introductions, LC 1198, staff, 69 pp**
- E. **Introductions, LC 1304, staff, 3 pp**
- F. **Introductions, LC 1359, staff, 5 pp**
- G. **Introductions, LC 1484, staff, 2 pp**
- H. **Introductions, LC 1649, staff, 9 pp**
- I. **Introductions, LC 1654, staff, 13 pp**
- J. **Introductions, LC 1705, staff, 2 pp**
- K. **Introductions, LC 1827, staff, 1 p**
- L. **Introductions, LC 1852, staff, 2 pp**
- M. **Introductions, LC 1887, staff, 1 p**
- N. **Introductions, LC 1913, staff, 4 pp**
- O. **Introductions, LC 1978, staff, 2 pp**
- P. **Introductions, LC 2073, staff, 2 pp**
- Q. **Introductions, LC 2176, staff, 3 pp**
- R. **Introductions, LC 2177, staff, 3 pp**
- S. **Introductions, LC 2266, staff, 4 pp**
- T. **Introductions, LC 2267, staff, 11 pp**
- U. **Introductions, LC 2268, staff, 3pp**
- V. **Introductions, LC 2269, staff, 1 p**
- W. **Introductions, LC 2270, staff, 2 pp**
- X. **Introductions, LC 2272, staff, 28 pp**
- Y. **Introductions, LC 2273, staff, 14 pp**
- Z. **Introductions, LC 2274, staff, 3 pp**
- AA. **Introductions, LC 2275, staff, 1 p**
- AB. **Introductions, LC 2276, staff, 1 p**
- AC. **Introductions, LC 2277, staff, 3 pp**
- AD. **Introductions, LC 2278, staff, 2 pp**
- AE. **Introductions, LC 2279, staff, 2 pp**

- AF. **Introductions, LC 2293, staff, 1 p**
- AG. **Introductions, LC 2328, staff, 4 pp**
- AH. **Introductions, LC 2329, staff, 3 pp**
- AI. **Introductions, LC 2336, staff, 3 pp**
- AJ. **Introductions, LC 2389, staff, 4 pp**
- AK. **Introductions, LC 2399, staff, 3 pp**
- AL. **Introductions, LC 2518, staff, 17 pp**
- AM. **Introductions, LC 2519, staff, 3 pp**
- AN. **Introductions, LC 2520, staff, 17 pp**
- AO. **Introductions, LC 2521, staff, 1 p**
- AP. **Introductions, LC 2640, staff, 13 pp**
- AQ. **Introductions, LC 2641, staff, 12 pp**
- AR. **Introductions, LC 2642, staff, 3 pp**
- AS. **Introductions, LC 2673, staff, 7 pp**
- AT. **Introductions, LC 2757, staff, 1 p**
- AU. **Introductions, LC 2759, staff, 3 pp**
- AV. **Introductions, LC 2763, staff, 17 pp**
- AW. **Introductions, LC 2764, staff, 4 pp**
- AX. **Introductions, LC 2765, staff, 14 pp**
- AY. **Introductions, LC 2766, staff, 13 pp**
- AZ. **Introductions, LC 2767, staff, 13 pp**
- BA. **Introductions, LC 2774, staff, 2 pp**
- BB. **Introductions, LC 2789, staff, 7 pp**
- BC. **Introductions, LC 2791, staff, 1 p**
- BD. **Introductions, LC 2271, staff, 1 p**
- BE. **SB 278, written testimony, Kelly T. Hagan, 1 p**
- BF. **SB 278, proposed amendment, Kelly T. Hagan, 2 pp**
- BG. **SB 280, written testimony, Gwen Dayton, 2 pp**
- BH. **SB 279, written testimony, Lorey Freeman, 1 p**
- III. **SB 279, Updated Listing of Federal Waivers and Demonstrations, Joan Kapowich, 4 pp**
- JJJ. **SB 370, -1 amendments, staff, 1 p**