

SENATE COMMITTEE ON JUDICIARY

February 28, 2005
1:00 P.M.

Hearing Room 343
Tapes 49 - 50

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

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

MEASURES/ISSUES HEARD:
 National Tort Reform – Informational Meeting
 SB 253 – Public Hearing
 SB 306 – Public Hearing

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.

TAPE/#	Speaker	Comments
TAPE 49, A		
004	Chair Burdick	Calls the meeting to order at 1:06 p.m. and opens an informational meeting on national tort reform.
<u>NATIONAL TORT REFORM – INFORMATIONAL MEETING</u>		
013	Dr. John C. Moorhead	President, Oregon Medical Association (OMA). Introduces Dr. Donald J. Palmisano and gives a brief history on his accomplishments.
037	Dr. Donald J. Palmisano	Immediate Past-President, American Medical Association (AMA). Submits a packet and testifies on national liability crisis (EXHIBIT A).
064	Palmisano	Recounts liability stories brought about by the crisis in the United States.
110	Palmisano	Discusses the 1987 Supreme Court decision that has caused large amounts of non-meritorious claims against doctors. Gives statistics on court costs for physicians.
137	Palmisano	Talks about insurers leaving the market due to rising court costs.
180	Palmisano	Brings up California's example of healthcare maintenance (pre-trial screening panels, etc.). Cites statistics that prove the effectiveness of this method.
225	Chair Burdick	Explains that there are numerous approaches to this issue facing the Legislature this session.
234	Sen. Ringo	Asks how much funding the AMA gets from the insurance industry.
238	Palmisano	Replies that the majority of funding comes from dues paid by

physicians and students.

247 Sen. Ringo Expresses his belief that the OMA received an amount of their budget from the insurance industry.

252 Morehead Stresses that the OMA is almost exclusively funded by dues.

263 Sen. Prozanski Asks about the advocacy resource center and the packet handed out to the committee (**Exhibit A**).

264 Palmisano Gives information on the resource center and the AMA.

271 Sen. Prozanski Inquires if the advocacy center is meant to get information out to the national level.

274 Palmisano Details the sharing of information through the advocacy center.

291 Sen. Prozanski Asks about the funding for the center.

293 Palmisano Responds that the resource center is almost exclusively funded by AMA dues.

307 Sen. Prozanski Brings up the issue of settlement caps.

320 Palmisano Discusses the non-economic caps in Missouri and California as examples of what the AMA recommends.

350 Sen. Prozanski Addresses the topic of mediation in order to stop frivolous lawsuits.

363 Palmisano Stresses the AMA's belief in physicians acknowledging and apologizing for any mistakes they cause; recommends good communication between physicians and patients.

405 Chair Burdick Asks about the arbitration process available as well as the non-economic caps in California.

407 Palmisano Replies with information on the California process as well as Kaiser-Permanente who uses mediation techniques.

437 Sen. Whitsett Talks about the problems with limiting a physician's practice due to insurance premiums, especially in rural areas.

477 Palmisano Expresses his agreement with Sen. Whitsett's ideas of cooperation between physicians and the AMA to battle the increased insurance premium.

TAPE 50, A

030 Palmisano Discusses the methods Texas, Georgia, and other states are using to deal with problems in insurance premiums.

046 Chair Burdick Closes the informational meeting and opens a public hearing on SB 253.

SB 253 – PUBLIC HEARING

052 William E. Taylor Counsel. Describes SB 253 relating to enacting an interstate compact for juveniles.

059 Rick Masters Special Counsel, The Council of State Governments. Testifies in support of SB 253. Addresses the increasing problems with juvenile offenders.

102 Masters Explains that 22 other states have adopted the compact that SB 253 would enact. Summarizes the effects of adopting SB 253.

153 Masters Discusses the increased regulatory standards resulting from the passage of SB 253. Talks about several other compacts that would act in accordance with this bill.

170 Chair Burdick Inquires as to the definition of the compact, and if this bill would replace the original compact from 1955.

174 Masters Replies yes, this would completely replace the compact from 1955.

179 Chair Burdick Asks about a past attempt at changing the compact.

182 Masters States that he doesn't remember that attempt.

189 Taylor Cites historical detail on the different state compacts and the ambiguities between state drafting styles.

218	Sen. Whitsett	Inquires about the interstate commission created by SB 253.
223	Masters	Replies with information on the effects of SB 253. Discusses current law dealing with the compacts.
243	Sen. Whitsett	Wonders about statutory authorization given to the commission due to SB 253 as well as the fiscal impact.
248	Masters	Talks about the need for increased staff with the passage of SB 253.
265	Sen. Whitsett	Inquires if SB 253 would allow the commission to levy a tax to the states.
268	Masters	Responds that yes, it would allow the commission to require dues paid by the state.
277	Taylor	Clarifies the compact law between states, focusing on the funding methods available.
304	Sen. Whitsett	Comments on the interstate compact between California and Oregon.
315	Taylor	Replies with information on interstate compacts.
319	Masters	Submits a list of compacts currently in law (EXHIBIT B).
324	Sen. Beyer	Inquires about the commission created by SB 253.
337	Masters	Gives information on the creation of the commission.
342	Sen. Beyer	Wonders about the statutory authority of the commission.
345	Masters	Responds with information on the statutory authority of the commission.
364	Sen. Beyer	Asks about a legal challenge of the commission rules.
372	Masters	Explains that the challenge exists as a legal method of expressing your grievances. Goes over the need for SB 253 in relation to juvenile adjudication.
425	Harry Gilmore	Manager, Technical Assistance Unit, Department of Human Services. Submits testimony and testifies in a neutral stance on SB 253 (EXHIBIT C). Relates their hesitance to support SB 253 due to the fiscal impact not being accounted for in the Governor's budget.
490	Gilmore	Stresses that there needs to be passage of this bill by 35 states before it can go into effect.

TAPE 49, B

039	Sen. Whitsett	Inquires as to the fiscal impact.
044	Gilmore	Replies with information on the funding and administration of the compact now and after the passage of SB 253.
058	Sen. Whitsett	Desires clarification of the rules, and if they would be set by this commission.
061	Gilmore	Replies yes and cites examples of what would occur after SB 253 is passed.
070	Sen. Whitsett	Inquires if the figures could be changed in the future.
071	Gilmore	States that yes, they could be changed.
073	Chair Burdick	Wonders why there needs to be an increase in staff under this bill.
075	Masters	Gives information as to why the extra staff is needed.
108	Chair Burdick	Asks how much staff is currently employed by the compact.
109	Masters	Replies that there is no staff currently employed for this compact.
118	Sen. Beyer	Inquires if the first 35 states that pass the compact would get the right to set the rules.
119	Gilmore	States that once the prerequisite 35 states have passed the compact, the rule-making process can commence.

144	Sen. Beyer	Wonders if states entering the compact several years after the rules were set would get to participate in the amending of said rules if they didn't agree with the original setup.
153	Gilmore	Responds that there is a withdrawal process, by repealing the legislation, but that a state that enters later most likely could not participate in the rules process, as the rules would have already been set.
160	Masters	Discusses a sunset clause that was adopted by North Dakota as an option.
174	Karen Andall	Oregon Youth Authority (OYA). Testifies in a neutral stance on SB 253. Talks about the conversations on whether the compact dealing with juveniles should be under the OYA's authority.
194	Chair Burdick	Asks if they would need legislation to enact their rules.
195	Andall	Replies that it would most likely require legislation.
204	Chair Burdick	Closes the public hearing on SB 253 and opens a public hearing on SB 306.

SB 306 – PUBLIC HEARING

211	William E. Taylor	Counsel. Describes SB 306 relating to criminal penalties for selling, giving, or otherwise providing alcoholic beverages to people under 21 years of age.
230	Vinita Howard	Member, Governor's Advisory Committee on Driving Under the Influence of Intoxicants (DUII). Submits testimony and testifies in support of SB 306 (EXHIBIT D).
268	Howard	Details the minimum drinking age law's relation to decreasing deaths on the roads.
291	Joanne Fairchild	Trauma Nurse Coordinator, Legacy Emanuel Hospital. Submits testimony and testifies in support of SB 306 (EXHIBIT E). Discusses her professional history dealing with mind-altering chemicals.
360	Fairchild	Declares her support for an amendment to allow first-time offenders to receive education (at their expense) on alcohol abuse.
381	Chair Burdick	Inquires if parents should lock up liquor cabinets.
385	Fairchild	Stresses that such a precaution would help out immensely.
413	Pamela S. Erickson	Director, Oregon Coalition to Reduce Underage Drinking. Submits testimony and testifies in support of SB 306 (EXHIBITS F & H).
480	Erickson	Cites a recent example of severe alcohol poisoning involving two underage drinkers furnished alcohol from an adult.

TAPE 50, B

015	Erickson	Explains recent statistics involving binge drinking and it's relation to underage drinking.
027	Jon Stubenvoll	Communications Director, Oregon Liquor Control Commission (OLCC). Submits testimony and testifies in support of SB 306 (EXHIBIT G).
064	Sen. Prozanski	Raises the issue of individuals who do not know the law, and if there should be some equity in this policy.
087	Stubenvoll	Offers clarification on willingly providing alcohol to a minor as opposed to unwillingly breaking the law.
090	Sen. Prozanski	Comments on individuals who have licenses as opposed to those who do not, and asks if there should be equity in the law in relation to those situations.
104	Stubenvoll	Illustrates the differences between knowingly and unknowingly breaking the law.

121	Chair Burdick	Expresses her concern over this issue.
134	Daina Vitolins	Oregon District Attorneys Association (ODAA). Testifies in support of SB 306.
152	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 306 due to the increase in the mandatory minimum sentence. Discusses the confusion relating to licensed and un-licensed individuals.
194	Andrea Meyer	American Civil Liberties Union. Testifies in opposition to SB 306.
197	Steve Lanning	Oregon American Federation of Labor-Congress of Industrial Unions. Testifies in opposition to SB 306. Stresses their opposition due to the confusion relating to licensed and un-licensed individuals.
218	Bill Perry	Oregon Restaurant Association (ORA). Testifies in a neutral stance on SB 306. Details the problems of the establishment being burdened with the majority of the penalties due to the reluctance to go after the individuals who brokered the deal (the buyer and the seller). Stresses that the courts are not currently enforcing the laws.
260	Sen. Prozanski	Inquires as to the suspension of the licenses.
272	Perry	Offers information as to the suspension of licenses and the assessment of fines.
294	Sen. Prozanski	Wonders if a chart or scale should be constructed detailing a series of penalties and sanctions for businesses that break the law.
316	Perry	Stresses that the restaurants continue to be sanctioned even if they follow the rules and do the right things.
327	Sen. Prozanski	Inquires if people with a suspended license are put into a database that lets other businesses know about their history.
338	Perry	Replies that such a communal database is highly sought after by the ORA.
347	Sen. Beyer	Inquires as to the wording of SB 306 relating to the mandatory minimum fine.
375	Sen. Prozanski	Gives information on court decisions and mandatory penalties.
406	Chair Burdick	Submits written testimony from Stuart Fishman in opposition to SB 306 (EXHIBIT I).
407	Chair Burdick	Closes the public hearing on SB 306 and adjourns the meeting at 2:55 p.m.

EXHIBIT SUMMARY

- A. **Torts, Medical Liability Reform, Donald J. Palmisano, 78 pp**
- B. **SB 253, list of interstate compacts, Rick Masters, 1 p**
- C. **SB 253, written testimony, Harry Gilmore, 2 pp**
- D. **SB 306, written testimony, Vinita Howard, 3 pp**
- E. **SB 306, written testimony, Joanne Fairchild, 11 pp**
- F. **SB 306, written testimony, Pamela S. Erickson, 1 p**
- G. **SB 306, written testimony, Jon Stubenvoll, 2 pp**
- H. **SB 306, written testimony, Pamela S. Erickson, 2 pp**
- I. **SB 306, written testimony, Stuart Fishman, 2 pp**