

## SENATE COMMITTEE ON JUDICIARY

April 28, 2005  
1:00 P.M.

Hearing Room 343  
Tapes 124 - 125

**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:** William E. Taylor, Counsel  
Joe O'Leary, Counsel  
Dale Penn, Committee Assistant

**MEASURES/ISSUES HEARD:**  
SB 324 – Work Session  
SB 243 – Work Session  
SB 99 – Work Session  
SB 265 – 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 124, A</b>		
003	Chair Burdick	Calls the meeting to order at 1:24 p.m. and opens a work session on SB 324.
<b><u>SB 324 – WORK SESSION</u></b>		
006	William E. Taylor	Counsel. Describes SB 324 relating to removing the exception requiring confidentiality under certain conditions for the terms of settlement or compromise of actions involving public body and terms of mediation agreement involving a public body. Describes the -2 and introduces the -3 amendment ( <b>EXHIBIT A</b> ).
031	Sen. Walker	States that the -3 amendment is vital to the bill; goes on to describe the changes made in that amendment.
047	Chair Burdick	Brings up the issue that someone, under the current statute, can be identified even without their name.
050	Sen. Beyer	Talks about how the amendment to the bill.
056	Sen. Starr	<b>MOTION: Moves to ADOPT SB 324-3 amendments dated 4/27/05.</b> <b>VOTE: 7-0-0</b>
057	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>
058	Sen. Starr	<b>MOTION: Moves SB 324 to the floor with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 7-0-0</b>
060	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. WALKER will lead discussion on the floor.</b>

065	Chair Burdick	Closes the work session on SB 324 and opens a work session on SB 243.
<b><u>SB 243 – WORK SESSION</u></b>		
067	Joe O’Leary	Counsel. Describes SB 243 relating to modifying the conditions of post-prison supervision or parole for persons convicted of a sex crime. Introduces and describes the -4 amendment ( <b>EXHIBIT B</b> ).
099	Sen. Starr	<b>MOTION: Moves to ADOPT SB 243-4 amendments dated 4/21/05.</b>
		<b>VOTE: 7-0-0</b>
101	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>
103	Sen. Starr	<b>MOTION: Moves SB 243 to the floor with a DO PASS AS AMENDED recommendation.</b>
105	Sen. Prozanski	Declares that the house committee on the Judiciary will not amend this version of the bill.
		<b>VOTE: 7-0-0</b>
112	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. PROZANSKI will lead discussion on the floor.</b>
114	Chair Burdick	Closes the work session on SB 243 and opens a work session on SB 99.
<b><u>SB 99 – WORK SESSION</u></b>		
115	William E. Taylor	Counsel. Describes SB 99 relating to modifying the requirements for retention and disclosure of genetic information. Introduces and discusses the -1 and -2 amendments ( <b>EXHIBITS C &amp; D</b> ).
138	Kerry Silvey	Genetics Program Coordinator, Oregon Department of Human Services, Health Services. Talks about the -1 amendment for SB 99.
160	Chair Burdick	Asks about the protections against insurance discrimination.
165	Silvey	Replies that everyone has certain predispositions, genetically, towards different traits, diseases, conditions, etc. Stresses that people should not be penalized (through insurance underwriting).
171	Silvey	States that, since everyone has these predispositions, this should have no impact on the risk factors for insurance agencies.
197	Sen. Whitsett	Inquires if this amendment expands the criteria of discrimination by insurance agencies to include all diseases as opposed to just genetic conditions.
219	Silvey	Explains that, when the legislation was initially discussed, only a few diseases were defined as genetic; recent research ties genetics into nearly every condition.
232	Sen. Whitsett	Wonders if tuberculosis is considered a genetic disease.
234	Silvey	Replies that there are genes that develop the antibody for those types of diseases, and some people may not have an abundance of the specific genes.
250	Taylor	Asks if everyone’s complete medical history is genetic.
258	Silvey	Responds that all medical tests and results are based entirely on genetics (samples of blood, clinical trials, etc.).
268	Taylor	Inquires if blood type is considered a genetic test.
272	Silvey	Stresses that it would be a genetic test, and that the different types of blood can act differently.
286	Elizabeth Earls	Kaiser Permanente. Discusses the -2 amendment. Talks about the changes to current statute that would be enacted by passing the -2 amendment.
320	Chair Burdick	Asks about insurers using information resulting from genetic tests

		in underwriting penalties.
329	Earls	Describes how the -2 amendment seeks to halt such an occurrence.
357	Sen. Prozanski	Inquires about a possible conflict in the drafting that allows insurance companies to access these documents.
371	Earls	Stresses that the section under question relates to HealthCare providers as opposed to insurers.
386	Sen. Prozanski	Asks what comprises healthcare operations.
387	Earls	Replies with information on what may comprise healthcare operations.
400	Chair Burdick	Expresses her support of these amendments, and believes they stop insurance companies from accessing and using this personal information for the purpose of underwriting costs.
418	Sen. Whitsett	Declares his hesitation to support the clause relating to all diseases being labeled as genetic conditions.
432	Chair Burdick	States that the intent is not to discriminate against individuals.
458	Sen. Walker	Asks if they need both amendments.
<b>TAPE 125, A</b>		
016	Chair Burdick	Says they need both.
017	Sen. Beyer	Asks for the evidence that proves there is a problem for this bill to fix; there has been a lack of proof to support passing this bill.
031	Sen. Prozanski	Inquires about the purpose of the -1 amendment protecting the genetic information of individuals which then might be used against them in their employment.
041	Silvey	Stresses that current statutes defines genetic information very narrowly, and this attempts to protect family medical history.
049	Sen. Prozanski	Desires clarification on the need for the -1 amendment.
054	Silvey	Talks about how this aspect of the bill does not deal with the disclosure but rather the use of that information.
069	Sen. Prozanski	Inquires if the data is prohibited from being disseminated in a negative way against the individual.
075	Silvey	Replies that this involves only the use of the data (underwriting insurance, etc.).
083	Sen. Beyer	Explains that this is unlawful employment practice. Brings up a hypothetical involving actions being brought against employers due to known medical history.
104	Chair Burdick	Talks about how some genetic diseases are covered in current statute.
119	Silvey	Discusses the -1 amendment dealing with employment and insurance issues.
138	Sen. Walker	Declares that the -1 amendment addresses the problems with current statute.
151	Sen. Beyer	Explains that anytime a person doesn't hire a prospective employee, this bill would open up legal actions if the employer has some form of medical knowledge of that family (member of the family had a heart attack in the past, etc.).
171	Taylor	Reads ORS 192.531 dealing with the definition of genetic information.
181	Sen. Beyer	Talks about the need for tighter drafting language on what would constitute genetic information.
192	Sen. Prozanski	Explains that he believes such knowledge used against a prospective employee would need to be garnered through genetic tests, and not anyway else (knowledge of the family, etc.).
185	Taylor	Discusses the legal definition of genetic tests.

235	Sen. Beyer	Recommends certain drafting choices that would make him more comfortable with the bill.
246	Sen. Walker	Inquires about employers being allowed to access personal medical records.
270	Silvey	Points out the argument that prospective employers can establish such testing as a requirement for employment.
295	Sen. Whitsett	Declares that the requirement to provide medical testing is an entirely legal criterion.
317	Chair Burdick	Says that medical employees, public safety officers, etc., are required to take medical tests to determine their level of fitness for their positions.
337	Taylor	Reads the legal definition of “solely genetic disease/condition,” and the importance of establishing legislative history/intent on the senate and house floor.
355	Chair Burdick	Inquires about existing law for limitations on employment practices.
374	Silvey	Offers information on existing employment statutes, and how this bill does not seek to undermine those rules.
387	Chair Burdick	Expresses her desire to have counsel work with the witnesses to come to a better amendment dealing with the issues raised today.
319	Silvey	Talks about the drafting language difficulties in framing conditions that are “solely genetic” within the bill.
437	Chair Burdick	Asks how you can tell between genetic factors and lifestyle factors relating to conditions like heart attacks.
444	Silvey	Replies with information on past diagnosis and factors for diseases/conditions being wrong; advancing technology continually changes our knowledge of the factors for diseases and conditions.
472	Sen. Prozanski	States that the amendments dictate the employer cannot discriminate against a prospective employee because of their family medical history.

#### **TAPE 124, B**

018	Chair Burdick	Talks about the problems brought up by Sen. Beyer concerning the employers needing protection against allegations from prospective employees.
024	Sen. Prozanski	Brings up the issue that you can always have an employee bring up erroneous claims against a prospective employer.
055	Chair Burdick	Introduces written testimony from Nancy C. Prouser in support of SB 99 ( <b>EXHIBIT G</b> ). Closes the work session on SB 99 and opens a work session on SB 265.

#### **SB 265 – WORK SESSION**

067	William E. Taylor	Counsel. Introduces and describes the -1 amendment ( <b>EXHIBIT E</b> ). Submits written testimony from Virginia R. Vanderbilt, Senior Deputy Legislative Counsel, on the -1 amendment ( <b>EXHIBIT F</b> ).
100	Sen. Prozanski	Commends the work done by Legislative Counsel and the process servers that this bill seeks to help.
118	Chair Burdick	Closes the work session on SB 265 and moves SB 881 to Tuesday, April 3, 2005. Adjourns the meeting at 2:27 p.m.

## **EXHIBIT SUMMARY**

- A. SB 324, -3 amendment, staff, 3 pp
- B. SB 243, -4 amendment, staff, 2 pp
- C. SB 99, -1 amendment, staff, 5 pp
- D. SB 99, -2 amendment, staff, 2 pp
- E. SB 265, -1 amendment, staff, 1 p
- F. SB 265, written testimony, Virginia Vanderbilt, 2 pp
- G. SB 99, written testimony, Nancy Prouser, 2 pp