

HOUSE COMMITTEE ON JUDICIARY

March 12, 2003 Hearing Room 357
1:00 p.m. Tapes 78 - 80

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Gordon Anderson, Vice-Chair
 Rep. Robert Ackerman, Vice-Chair
 Rep. Jeff Barker
 Rep. Bob Jenson
 Rep. Jerry Krummel
 Rep. Greg Macpherson
 Rep. Floyd Prozanski
 Rep. Lane Shetterly

STAFF PRESENT: **Bill Joseph, Counsel**
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **Informational Hearing: Tort Reform/Medical Liability**

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 78, A	Speaker	Comments
003	Chair Williams	Opens the meeting at 1:10 p.m. Introduces former representative, Kevin Mannix.
<u>Informational Meeting: Tort Reform/Medical Liability</u>		
020	Kevin Mannix	Submits testimony and testifies on tort reform (EXHIBITS A-C). Introduces one of his associates, Chris Bishop.
124	Mannix	Continues his testimony on tort reform.
195	Chair Williams	Says that he appreciates Mr. Mannix coming forward with this idea/concept. Asks how other states have worked with this idea.
207	Mannix	Defers to Mr. Bishop.
210	Chris Bishop	Attorney. Testifies on tort reform. Discusses no-fault systems in Florida and Virginia (Exhibit B).
250	Rep. Prozanski	Asks how other states have set up a value for the injuries to infants and if it is limited to recovery through the guardian or parent.
262	Mannix	Answers that with their proposal they have tried to rely on the workers' compensation system. Defers to Mr. Bishop regarding Virginia and Florida.
273	Bishop	Explains that Virginia and Florida compensate for all the medical expenses incurred.
297	Mannix	Says that in their first version of the proposal, the injured person would receive temporary disability benefits as well as permanent benefits and the parents of the child would be compensated for their lost wages.
308	Bishop	Adds that both Virginia and Florida do not have a schedule of benefits, per say, but they do have a periodic payment as medical charges are incurred.
314	Vice-Chair Ackerman	Asks if they have any idea what the cap would be on a

		severe neurological disability.
328	Mannix	Says that he is not sure. Discusses the calculation.
353	Vice-Chair Ackerman	Asks if a permanent total disability award would be offset against a permanent total award.
362	Mannix	Answers that is what this proposal says, but it is truly a proposal. Says that he expects debate on what offsets ought to be allowed.
377	Bishop	Points out that in the appendix of the study, he has included a state-by-state comparison of the laws.
385	Vice-Chair Ackerman	Asks if they propose that a catastrophic injury claim would be below \$250,000.
390	Mannix	Responds that he doesn't know and explains.
407	Rep. Prozanski	Asks about the schedule of attorney fees under this proposal.
418	Mannix	Says that he doesn't think there is a schedule of attorney fees under their proposal.
TAPE 79, A		
004	Bishop	Comments that they have left that open for the committee to decide.
009	Rep. Krummel	Inquires about the charts in the back of the study on liability reform. Asks if those charts are based on the Medical Injury Compensation Reform Act (MICRA) legislation or on Proposition 103.
018	Bishop	Says that he believes that those are based upon MICRA which was passed in 1975.
020	Rep. Krummel	Asks if they have looked at Proposition 103 in terms of the differences it made to the California system.
028	Bishop	States that he has not studied Proposition 103, but has listened to the arguments given to the U.S. Congress regarding this issue. Adds that proposition 103 and MICRA both contributed to the decrease in insurance rates in California.
040	Mannix	Discusses their proposal.
062	Rep. Krummel	Asks for information about the ways a person would enter the system.
073	Mannix	Explains the system and how it will protect people's rights.
087	Bishop	Refers to study and inclusion of statutory provisions of California and three other states.
095	Vice-Chair Anderson	Inquires about ramifications of medical providers.
100	Mannix	Says that the idea of their proposal is to reduce the cost of coverage.
112	Bishop	Remarks that the insurance rates have decreased in Florida and Virginia since they have implemented their no-fault system.
116	Vice-Chair Anderson	Comments on review of peers of medical providers.
124	Bishop	Says that in Virginia and Florida, the medical providers that have not had claims have had a decrease in their insurance.
132	Mannix	Concludes his comments on their study and proposal (Exhibits B & C) . Says that a private business client paid for the study.

Procedural Consideration, Oregon Association of Defense Counsel

197	Bill Sime	Esq., Parks Bauer Sime & Winkler. Oregon Association of Defense Counsel. Submits testimony and testifies on tort reform (EXHIBIT D) .
324	James C. Edmonds	Esq., Clark Lindauer Fetherston Edmonds & Lippold LLP.

		Oregon Association of Defense Counsel. Testifies on tort reform. Discusses expert discovery and disclosure.
374	Chair Williams	Asks Mr. Sime his opinion on expert disclosure.
392	Sime	Explains that it would help to promote settlement.
413	Rep. Prozanski	Asks what bill his group is interested in.
417	Sime	Answers, HB 2497.

TAPE 78, B

The History of Tort Reform & the Aftermath of the *Lakin* Decision, Legislative Counsel

022	Dave Heyndrickx	Senior Deputy, Legislative Counsel. Submits testimony and testifies on tort reform (EXHIBIT E).
225	Heyndrickx	Continues his testimony on the history of tort reform.

TAPE 79, B

003	Heyndrickx	Continues discussing the history of tort reform.
071	Rep. Krummel	Asks about doctors providing free care under the Oregon Health Plan (OHP) in our county health clinics and if they would be covered under the Oregon tort claims act.
081	Heyndrickx	Answers, yes. Explains that it would be an additional responsibility for the county.
091	Rep. Krummel	Asks if it should be established as part of the cost of care.
095	Heyndrickx	Answers, yes.
096	Rep. Krummel	Wonders if a physician that sees OHP patients, as well as other patients, would be covered under the tort claims act with their OHP patients.
105	Heyndrickx	Says, yes, that is a real problem.
129	Rep. Prozanski	Asks Mr. Heyndrickx if he can summarize a few cases that precede the <i>Lakin</i> decision.
134	Heyndrickx	Says that there were cases on Article 1, Section 10 and explains.
167	Rep. Prozanski	Reports that there were a couple of decisions that came out of the Court of Appeals that differed as to the constitutionality of caps.
177	Heyndrickx	Concludes that they don't seem to be backing away from the <i>Lakin</i> decision. Feels that there will be some further evolution on this issue.

The Governor's Medical Professional Liability Insurance Task Force Report & the Oregon Insurance Division

192	Cory Streisinger	Director, Oregon Department of Business and Consumer Services. Submits testimony and testifies on tort reform (EXHIBITS F & G).
205	Meg Reinhold	Senior Policy Advisor, Department of Consumer and Business Services. Submits testimony and testifies on tort reform (EXHIBITS H & I).
242	Chair Williams	Comments that he served intermittently on the task force. Commends the report, but says that there wasn't any consensus.
264	Streisinger	Continues her testimony on tort reform. Concludes that they hope to have a more detailed plan to give to the committee very shortly.
400	John Egge	Chair, SAIF Board of Directors. Testifies on tort reform.
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001	Chair Williams	Asks how long Mr. Egge will need before he has an outline to give to the Governor.
005	Egge	Answers that they don't really have a timetable yet, but expects to have one soon and understands the urgency.
019	Vice-Chair Ackerman	Asks Ms. Streisinger about pooling of insurance risks and if the

030	Streisinger	legislature would have the authority to authorize that. Replies that there are a number of mechanisms that already exist in the insurance code for doing various types of risk pooling, joint underwriting agreements and so on.
031	Vice-Chair Ackerman	Comments that he appreciates their testimony because they emphasize a market approach to the problem.
038	Rep. Shetterly	Wonders if the participants in the Governor's Medical Professional Liability Insurance Task Force (Exhibit G) have had a chance to evaluate their proposal.
053	Streisinger	Answers that this is something that has come together very quickly and that they have talked with some members of the task force.
055	Rep. Krummel	Asks if they have taken a look at Proposition 103 (California).
062	Reinhold	Responds that she doesn't have any expertise on the value of Proposition 103, but does know that the MICRA reforms were very effective.
069	Chair Williams	Reports that he would be very interested in seeing additional information. Adjourns the meeting at 3:04 p.m.

EXHIBIT SUMMARY

A – Outline of No-Fault Medical Injury Claim System Proposal, submitted by Kevin Mannix, 2 pgs.

B – A Study of a No-Fault Medical Injury Claims System to Replace Litigation, submitted by Kevin Mannix, 69 pgs.

C – A Proposal for a No-Fault Medical Injury Claims System for Oregon, submitted by Kevin Mannix, 5 pgs.

D – Written testimony, submitted by Bill Sime, 3 pgs.

E – Recent Developments on Liability Limitations, submitted by Dave Heynderickx, 3 pgs.

F - Written testimony, submitted by Cory Streisinger, 4 pgs.

G – Governor's Medical Professional Liability Insurance Task Force Report, January 2003, submitted by Cory Streisinger, 22 pgs.

H – Written testimony, submitted by Meg Reinhold, 2 pgs.

I – Medical Professional Liability Insurance Membership Roster, submitted by Meg Reinhold, 2 pgs.