

## CONFERENCE COMMITTEE ON SB 297B

August 22, 2003 Hearing Room 357  
8:00 a.m. Tapes 1 - 2

**MEMBERS PRESENT:** Sen. John Minnis, Chair  
Rep. Gordon Anderson  
Sen. Charlie Ringo  
Rep. Jeff Barker  
Rep. Max Williams

**STAFF PRESENT:** Craig Prins, Counsel  
Patsy Wood, Office Coordinator

**MEASURE/ISSUES HEARD:** SB 297B 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>  |
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| <b>TAPE 1, A</b>                   |                   |  |
| 008                                | Chair Minnis      | Calls the meeting to order at 8:15 a.m. and opens a work session on SB 297B.   |
| <b><u>SB 297B WORK SESSION</u></b> |                   |  |
| 012                                | Rep. Max Williams | Describes the procedures taken by the House Judiciary Committee to arrive at the current version of SB 297B.   |
| 026                                | Craig Prins       | Committee Counsel. Explains SB 297B which requires insurer to pay all sums covered by general liability insurance policy unaffected by other insurance that may provide coverage for same environmental claim. Describes the B22 amendments submitted by Rep. Ackerman ( <b>EXHIBIT A</b> ). |
| 041                                | Keith Leavitt     | Port of Portland. Discusses the two reasons for the B27 amendments ( <b>EXHIBIT B</b> ): 1) allocation issue and 2) distinction between defense and indemnity.   |
| 076                                | Leavitt           | Describes why the definition of "uninsured" in these amendments dates back to 1971.  |
| 101                                | Leavitt           | Discusses the distinction between defense costs and indemnity. Says there is nothing in the bill that shifts liability from the policy holder to the insurance company.  |
| 122                                | Rep. Barker       | Expresses his concerns about using the 1971 date for the availability of insurance.  |
| 128                                | Leavitt           | Reiterates why the 1971 date was chosen.   |
| 151                                | John DiLorenzo    | ICN Pharmaceuticals. Speaks to the B29 amendments ( <b>EXHIBIT C</b> ). Notes these amendments will work with or without the B27 amendments. Gives background on numerous lawsuits which have lead to these amendments.  |
| 217                                | Sen. Ringo        | Questions the "re-allocation provision" of the legislation; wonders why it makes sense to create a system where you can settle with one party preventing another party from seeking contribution from the first settling party.  |

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| 227              | DiLorenzo           | Speaks to the issue of contribution rights in this type of case and defense from further lawsuits.  |
| 262              | Sen. Ringo          | Explains the B28 amendments which reflect the original concept of the bill which was designed to help consumers who were being denied their right to a jury trial ( <b>EXHIBIT D</b> ).                               |
| 300              | Rep. Barker         | Wonders if waiving his right to a jury trial would affect the price of an insurance policy.   |
| 307              | Sen. Ringo          | Responds with examples of disputes that could be affected by mandatory arbitration clauses.   |
| 336              | Rep. Barker         | Agrees there can be problems when buying insurance, but thinks waiving the right to a jury trial in a large policy could cut the cost of the policy.  |
| 345              | Sen. Ringo          | Says this amendment is focused on any consumer contract - not just insurance policies.  |
| 351              | Rep. Williams       | Speaks to the effectiveness of mandatory binding arbitration in some instances.   |
| 405              | Sen. Ringo          | Responds with his experience with arbitration citing some can lead to reduced access to justice.  |
| 435              | Rep. Anderson       | Comments on his experience with arbitration saying, though fair, he would much rather go through a jury trial.  |
| <b>TAPE 2, A</b> |                     |   |
| <b>017</b>       | <b>Sen. Ringo</b>   | <b>MOTION: Moves to ADOPT SB 297B-28 amendments dated 08/21/03.</b>   |
| 019              | Rep. Barker         | Asks for clarification on the amendment.  |
| 021              | Sen. Ringo          | Explains these amendments would relate to small-dollar, consumer action and would not impact large lawsuits.  |
| <b>032</b>       |                     | <b>VOTE: 2-3</b><br><b>AYE: 2 - Sen. Minnis, Ringo</b><br><b>NAY: 3 - Rep. Anderson, Barker, Williams</b>   |
| <b>036</b>       | <b>Chair Minnis</b> | <b>The motion Fails.</b>  |
| 044              | Jack Munro          | The American Insurance Association. Discusses the B27 amendments regarding allocation and contribution ( <b>Exhibit B</b> ). Feels the effect of these amendments says that nobody would be uninsured.                |
| 103              | Chair Minnis        | Doesn't share the same understanding regarding being "uninsured" and asks for further clarification.  |
| 124              | Munro               | Refers to lines 17 through 19 of the B27 amendments which leads back to the determination of uninsured.   |
| 158              | John Powell         | North Pacific Insurance Company, American International Group and State Farm Insurance Companies. Uses the chalkboard to describe a timeline for determining when a party is uninsured for the purpose of allocation. |
| 178              | Chair Minnis        | Asks if the uninsured time is limited to the total amount of liability expressed in the policy.   |
| 185              | Powell              | Says, no, with a qualifier. Explains the insurer is liable for the indemnity limit of the policy plus unlimited defense costs.  |
| 217              | Chair Minnis        | Questions the defense costs.  |
| 218              | Powell              | Responds that defense costs would accrue under this legislation.  |
| 229              | Munro               | Discusses other problems with the definition of "uninsured" in the B27 amendments.  |
| 254              | Chair Minnis        | Asks why an insurer wouldn't settle for the amount of the policy rather than incur defense costs in a lawsuit.  |
| 260              | Greg Baird          | Attorney, Gordon & Polsker, LLP. States that no insured would accept that figure if they had defense cost claims far exceeding  |

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|                  |               | that figure.  |
| 266              | Chair Minnis  | Still questions why an insurer wouldn't just pay the initial amount of the policy to avoid litigation costs.  |
| 270              | Baird         | Responds that the insured will recognize defense costs are unlimited under the policy.  |
| 274              | Chair Minnis  | Asks if a policy which actually covered unlimited defense costs is a contract.  |
| 280              | Baird         | Responds that the issue is who takes care of the defense costs when the litigation covers multiple loss over multiple years. Says courts and insurers have allocated defense costs among the various periods during which the contamination has taken place.  |
| 289              | Munro         | Says commercial general liability policies were written with pollution exclusions, but the courts interpreted those exclusions differently. Says the Oregon State Bar's PLF policy is the only policy in Oregon that limits the defense cost obligation by contract. Discusses the problem with "reasonable commercial terms" (line 15 of the B27 amendments) as being an undefined phrase. |
| 331              | Chair Minnis  | Goes back to the timeline and asks what happened between 1971 and 2003.   |
| 333              | Munro         | Indicates the limitations of this proposed legislation.   |
| 351              | Baird         | Explains why the date 1985 should be added to the timeline.   |
| 382              | Munro         | Comments on the B29 amendments ( <b>Exhibit C</b> ) saying they appear more open-ended than what Mr. DiLorenzo intended.  |
| <b>TAPE 1, B</b> |               |   |
| 007              | Tom Gallagher | Schnitzer Steel Industries. Discusses how they are willing to modify the "all sums" piece of the policy for a share of the defense costs.   |
| 045              | Chair Minnis  | Wonders about the definition of "an Oregon insurance company" on line 15 of the B27 amendments.   |
| 047              | Gallagher     | Isn't sure if it means an insurance company licensed to do business in Oregon or domiciled in Oregon.   |
| 051              | Chair Minnis  | Alleges it is an insurance company licensed to do business in Oregon.   |
| 052              | Gallagher     | Agrees. Continues his discussion of actions for remedial investigation.   |
| 078              | DiLorenzo     | Rebuts. States under which circumstances the B29 amendment will apply.  |
| 101              | Chair Minnis  | Notes that the conferees are not in agreement about which amendments to adopt.  |
| 105              | Rep. Williams | Says he will prepare a memorandum to the Speaker of the House to consider discharging the House conferees.  |
| 111              | Chair Minnis  | Closes the work session on SB 297B and adjourns the meeting at 9:15 a.m.  |

## **EXHIBIT SUMMARY**

**A – SB 297B, -B22 amendments dated 8/4/03, submitted by Rep. Bob Ackerman, 1 pg**

**B – SB 297B, -B27 amendments dated 8/19/03, submitted by staff, 2 pgs**

**C – SB 297B, -B29 amendments dated 8/21/03, submitted by staff, 1 pg**

**D – SB 297B, -B28 amendments dated 8/21/03, submitted by Sen. Charlie Ringo, 3 pgs**

