

SENATE COMMITTEE ON JUDICIARY

March 11, 2003
8:00 a.m.

Hearing Room HR 343
Tapes 53 - 54

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Ted Ferrioli
 Sen. Charlie Ringo
 Sen. Charles Starr
 Sen. Vicki Walker

MEMBER EXCUSED: **Sen. Ginny Burdick, Vice-Chair**

STAFF PRESENT: **Bill Joseph, Counsel**
 Patricia Nielsen, Committee Assistant

MEASURE/ISSUES HEARD: **SB 320 – Public Hearing**
 SB 356 – Public Hearing
 SB 332 - 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 53, A		
005	Chair Minnis	Calls meeting to order at 8:17 a.m. Opens public hearing on SB 320.
<u>SB 320 – PUBLIC HEARING</u>		
010	Sen. Richard Devlin	District 19. Presents overview of SB 320, which provides that a court may not enter or enforce a confidentiality agreement, settlement agreement, stipulated agreement, protective order or judgment that prevents disclosure to the public of a document or other information that is evidence of financial fraud, defective product or environmental hazard, unless the court has entered a protective order for the document or information. Testifies in support of SB 320. Discusses confidential settlements and need for disclosure of information contained in such agreements. Describes five specific cases.
105	Sen. Walker	Expresses approval of concept and asks about issue of disclosure of intellectual property.
120	Sen. Devlin	Advises some sections protect specific information. Offers to address additional concerns which might be raised. Discusses balance between public's right to know about dangerous products and concerns for privacy.
130	Sen. Walker	Asks about information other than products.
135	Sen. Devlin	Acknowledges services are also covered.
140	Chair Minnis	Asks where cases were tried.
142	Sen. Devlin	Offers to research and return the information to the Committee.
145	Chair Minnis	Inquires about number of states with anti-secrecy statutes.
148	Sen. Devlin	Responds there are about sixteen.
150	Sen. Ringo	Asks why the measure is limited to three areas of financial fraud, defective product or environmental hazard.

155	Sen. Devlin	Responds the language is narrow to improve chances of passage.
168	Steve Piucci	Agrees there are certainly other areas which could be addressed. Trial lawyer. Testifies in support of SB 320. Provides written testimony (EXHIBIT A). Discusses Enron company collapse, and how secrecy caused damage to many people. Explains how confidential settlements can contain financial fraud which is sealed away from law enforcement.
270	Chair Minnis	Asks whether states with anti-secrecy statutes have more litigation in their federal courts.
275	Piucci	Explains how some federal courts have developed similar rules: <ul style="list-style-type: none"> • Cases brought in every forum where someone is injured or died. • Federal courts honor local state court laws.
300	Chair Minnis	Asks whether information about cases can be retrieved from states which already have anti-secrecy laws.
310	Piucci	Responds and explains that cases must be filed where accidents occur.
330	Chair Minnis	Asks about advantages of filing in federal or state court.
340	Piucci	Describes jurisdiction limitations.
345	Sen. Ringo	Asks if Oregon law would apply to cases tried in federal court.
355	Piucci	Confirms.
360	Chair Minnis	Inquires about applicable law in large class action suits.
365	Piucci	Confirms they are often filed in federal courts, and the law of the state where the suit is filed applies.
385	Bill Joseph	Committee Counsel. Discusses settlement agreements as contracts, which are governed by the state law where the contract is entered.
400	Sen. Walker	Asks how long the trend has been developing.
405	Piucci	Responds it began in the 1980s.
TAPE 54, A		
005	Sen. Walker	Asks about statute of limitation or statute of ultimate repose.
008	Piucci	Discusses.
010	Sen. Walker	Suggests those limitations should be extended.
012	Piucci	Agrees.
015	Steve Dixon	Consumer Advocate, Oregon State Public Interest Research Group (OSPIRG). Testifies in support of SB 320. Submits written testimony (EXHIBIT B). Discusses need for disclosure to protect consumers.
050	Jim Craven	American Electronics Association (AeA). Testifies in opposition to SB 320. Submits written testimony (EXHIBIT C). Expresses concerns about failure to protect intellectual property. Suggests the measure would damage Oregon's high-tech industry. Asserts the protections in the measure are insufficient. Recommends a detailed review of similar statutes in other states. Offers to continue discussing the issue.
150	Chair Minnis	Asks about passage of legislation in Texas.
155	Craven	Offers to research.
160	Chair Minnis	Discusses financial fraud provisions.
165	Craven	Points out the bill covers a broad range of discovery before something is determined fraudulent by courts.
180	Chair Minnis	Asks about application of disclosure provisions in the measure.
185	Craven	Opines the bill applies to discovery process.
200	Sen. Ringer	Asks for assistance in the effort to decrease fraudulent practices.

205	Craven	Reiterates the specific issues of concern to his association.
220	Sen. Ringo	Discusses how protective orders assure secrecy of confidential information.
240	Craven	Addresses specific wording in measure.
260	Sen. Ringo	Asks for additional work to resolve the industry's concerns.
300	Sen. Ferrioli	Recommends additional development with a work group.
310	Sen. Walker	Asks for specific suggestions to improve wording. Suggests that with an organization of 3800 members nationwide there are members within the sixteen states with the anti-secrecy laws, and those members could explain how the existing laws have changed the working environment.
340	Craven	Offers to research.
345	Chair Minnis	Closes public hearing on SB 320. Opens public hearing on SB 356.

SB 356 – PUBLIC HEARING

355	Sen. Tony Corcoran	District 4. Testifies in support of SB 356, which creates a truth verification examiner licensing process.
390	Matthew Keetle	Criminal Investigations Section, Lane County Sheriff's Department. Testifies in support of SB 356. Submits written material (EXHIBITS D, E, F).
400	William Endler	National Institute for Truth Verification (NITV). Testifies in support of SB 356. Explains how the voice-stress analyzer works. Discusses how the equipment differs from polygraph equipment.

TAPE 53, B

005	Chair Minnis	Asks whether control questions are used in the examinations.
010	Endler	Confirms.
035	Keetle	Continues and discusses workload of county sheriff offices, and how the equipment will streamline the investigation process.
060	Chair Minnis	Assumes evidence from the analyzer is inadmissible like the polygraph.
065	Keetle	Confirms.
070	Sen. Walker	Asks about using the equipment if witness is using drugs or is pregnant.
080	Endler	Discusses limitations on polygraph because of drug use, or if a woman is pregnant and the equipment picks up two heartbeats.
090	Sen. Walker	Asks about lack of sleep affecting polygraph results.
095	Endler	Explains how different physical stressors affect the examination, compared to the voice-stress analyzer.
105	Sen. Ferrioli	Asks about using the equipment to record conversations and whether the equipment works on recorded voices.
110	Endler	Acknowledges there are some limitations. Reiterates this is only a tool to assist in investigation.
120	Chair Minnis	Explains limits on using voice recordings as evidence.
125	Sen. Ferrioli	Inquires why a statute is necessary if the equipment is available over-the-counter. Asks if it is legal to use it for recording.
140	Keetle	Explains broad purpose of truth-verification devices which can be interpreted to require polygraph-type physical responses. Discusses proposed -1 amendment (3-4-03) clarifying the issue (EXHIBIT G).
160	Sen. Ferrioli	Suggests clarifying existing law to allow use, instead of passing a new law to authorize use.
165	Endler	Explains licensing law, which describes the instrumentation. Describes number of states which have accepted use of the

		instrumentation. Continues this instrument is different from over-the-counter versions and is only sold to law enforcement agencies.
195	Chair Minnis	Comments that with polygraph licensure, there is a certain acceptance of certification administering the tests. Suggests there is a confidence issue with regard to qualifications of the person conducting the test.
210	Endler	Describes the training program required before certification to use the equipment. Discusses recertification requirements. Compares polygraph training, which is not subject to continuing certification.
220	Chair Minnis	Asks about admissibility of polygraph evidence.
225	Endler	Explains.
240	Brian Strickland	Polygraph examiner. Testifies in opposition to SB 356. Provides written material (EXHIBITS H, I). Discusses research surrounding the voice-stress analysis equipment. Questions the accuracy rates of the equipment under certain circumstances.
395	Chair Minnis	Asks about accuracy of the equipment.
400	Strickland	Responds it is about 50 percent, versus polygraph which is 85-98 percent accurate. Discusses other new technology being developed.

TAPE 54, B

005	Strickland	Points out where and when the polygraph is admissible and useful:
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- Admissible in probation or parole proceedings
- Not admissible in new crimes
- Pregnant women not tested to avoid liability for aborted pregnancy
- The test is conducted later rather than sooner after an incident, to avoid the possibility of false positive results

020	Chair Minnis	Closes public hearing on SB 356. Opens public hearing on SB 332.
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SB 332 – PUBLIC HEARING

025	Bill Perry	Oregon Restaurant Association. Testifies in support of SB 332, which allows an employer to collect a \$1 processing fee for each week or part of a week for which payment is made under a writ of garnishment. Discusses collection of child support and writs of garnishment by employers. Describes limitation on employers collecting fees through the payroll process. Discusses proposed -1 and -2 amendments (EXHIBITS J, K).
055	Chair Minnis	Asks about fiscal impact.
060	Perry	Advises he is not aware of a fiscal impact.
065	David Nebel	Oregon Law Center. Testifies in opposition to SB 332. Raises concern over employers beginning to charge for services they already perform, such as payroll.
090	Sen. Walker	Comments on increasing numbers of garnishments and child support assessments. Asks if employers should be allowed to keep costs down.
100	Nebel	Agrees but has no details on increasing numbers of garnishments.
105	Sen. Walker	Discusses other costs increasing for employers.
110	Nebel	Reiterates concern over keeping the paycheck as intact as possible.

120	Sen. Walker	Points out there are other avenues for relief.
135	Sen. Ringo	Comments on burden on employers through writs of garnishment, which should be reimbursed.
140	Nebel	Predicts an increase in the fees over time.
155	Chair Minnis	Asks whether employers would simply terminate employees.
160	Nebel	Suggests employees are protected from discharge on basis they are being garnished.
165	Chair Minnis	Asserts there is a cost to the employer for processing a garnishment.
167	Nebel	Agrees but points out there is a cost to the employer for payroll services anyway.
170	Chair Minnis	Suggests if an employer uses a payroll-processing professional and asks for a garnishment to be processed, there is additional cost.
180	Chair Minnis	Closes public hearing in SB 332. Adjourns meeting at 9:59 a.m.

EXHIBIT SUMMARY

- A – SB 320, written testimony, Steve Piucci, 1 p**
- B – SB 320, written testimony, Steve Dixon, 6 pp**
- C – SB 320, written testimony, Jim Craven, 2 pp**
- D – SB 356, written testimony, Matthew Keetle, 1 p**
- E – SB 356, written testimony, Matthew Keetle, 15 pp**
- F – SB 356, written testimony of Jan Clements, Matthew Keetle, 1 p**
- G – SB 356, -1 amendments (3-4-03), Matthew Keetle, 3 pp**
- H – SB 356, article “Detection of Deception,” Brian Strickland, 4 pp**
- I – SB 356, written testimony, Brian Strickland, 2 pp**
- J – SB 332, -1 amendments (3-10-03), staff, 1 p**
- K – SB 332, -2 amendments (3-10-03), staff, 1 p**