

## SENATE COMMITTEE ON JUDICIARY

March 05, 2003  
8:00 a.m.

Hearing Room 343  
Tapes 49 - 50

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

**STAFF PRESENT:**       **Craig Prins, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **HB 2426 Public Hearing and Work Session**  
                                  **SB 259 Public Hearing**  
                                  **SB 297 Public Hearing**

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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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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>Tape 49, A</b> 003	Chair Minnis	Calls the meeting to order at 8:10 a.m. and opens a public hearing on HB 2426 that makes technical or advisory committees and task forces for Office for Oregon Health Policy and Research subject to public meeting laws.
<b><u>HB 2426 PUBLIC HEARING</u></b>		
010	Jim Gardner	Pharmaceutical Research and Manufacturers of America. Submits testimony and testifies in support of HB 2426 <b>(EXHIBIT A)</b> .
059	Sen. Ringo	Asks what happened to the opposition of HB 2945 from last session.
063	Gardner	Explains it is either a change in administration or a change in policy.
088	Chair Minnis	Closes the public hearing on HB 2426 and opens a work session.
<b><u>HB 2426 WORK SESSION</u></b>		
092	Vice Chair Burdick	<b>MOTION: Moves HB 2426 to the floor with a DO PASS recommendation and be placed on the CONSENT CALENDAR.</b>
		<b>VOTE: 5-0-1</b>
		<b>EXCUSED: 1 - Sen. Ferrioli</b>
097	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED. SEN. MINNIS will lead discussion on the floor.</b>

102 Chair Minnis Closes the work session on HB 2426 and opens a public hearing on SB 259.

**SB 259 PUBLIC HEARING**

099 Mark Landauer City of Portland, Office of Government Relations. Submits testimony and testifies in support of SB 259 that requires person requesting inspection of public record that person knows relates to claim against public body to notify attorney for public body of request (**EXHIBIT B**).

124 Ben Walters City of Portland. Testifies in support of SB 259.

141 Sen. Ringo Questions the fairness issue.

157 Walters Says a public request could fall in the wrong hands.

174 Sen. Ringo Asks for clarification of the procedure for review of public records.

180 Walters Explains that some records are routine, but some need review by the city attorney.

202 Andrea Meyer American Civil Liberties Union. Testifies as neutral on SB 259.

232 Sen. Ferrioli Talks about procedures set up in SB 259 and wonders if all the steps will be taken.

290 Chair Minnis Suggests contacting the Attorney General's office for further clarification of what the law change does.

297 Chair Ringo Suggests that the city wants an opportunity to see if there is damaging information in the records.

328 Chair Minnis Closes the public hearing on SB 259 and opens a public hearing on SB 297.

**SB 297 PUBLIC HEARING**

342 Justin Baxter Oregon State Bar. Submits testimony and testifies in support of SB 297 that creates presumption that certain clauses in consumer contract on standardized printed form are void (**EXHIBIT C**).

**TAPE 50, A**

047 Chair Minnis Asks about federal law preemption.

052 Baxter Explains the federal preemption.

060 Chair Minnis Asks about the binding nature of arbitration clauses.

063 Baxter Points out article 1, section 17 of the Oregon Constitution.

074 Chair Minnis Wonders about states rights and federal preemption.

083 Baxter Says the evolving law of arbitration points to state law.

098 Sen. Walker Asks if the national independent auto dealers want arbitration.

108 Baxter Refers to exhibit C in his written testimony.

136 Sen. Walker Inquires about the goal of this legislation.

142 Baxter Responds, it is a matter of free choice.

159 Sen. Walker Thinks the bill is too broad.

167 Chair Minnis Wonders if physicians could use consumer contracts.

172 Baxter Says some states have HMO's using such contracts.

186 Sen. Ringo Asks when arbitration is expensive and when not.

192 Baxter Gives an example of arbitration being expensive.

229 Sen. Ringo Asks who gets to choose the arbitrator.

233 Baxter Explains that it is usually the drafter of the contract.

253 Sen. Ringo Expresses concern about steering by the drafter to a particular arbitrator.

275 Chair Minnis Asks if line 17 in the bill violates contract law.

279 Baxter Clarifies his understanding of contract law.

294 Chair Minnis Calls for a 5 minute recess at 9:00 a.m.

297 Chair Minnis Reconvenes the meeting at 9:15 a.m. and re-opens the public

		hearing on SB 297.
303	Bruce Rothman	Oregon Consumer League. Submits testimony and testifies in support of SB 297 <b>(EXHIBIT D)</b> .
512	John Powell	Regence Blue Cross/Blue Shield of Oregon, State Farm Insurance, and North Pacific Insurance. Introduces Leonard Hagen.
<b>TAPE 49, B</b>		
006	Leonard Hagen	Regence Blue Cross/Blue Shield of Oregon. Submits testimony and testifies in opposition to SB 297 <b>(EXHIBIT E)</b> . Discusses the need to use standardized contracts.
081	Sen. Ringo	Expresses his understanding of what this bill would provide.
084	Hagen	Says the bill is much too broad.
100	Sen. Ringo	Says he would like to focus on the issue of the arbitration clause.
108	Hagen	Discusses their industry's policy.
118	Powell	Talks about arbitration in the insurance industry.
137	Sen. Ferrioli	Wonders if a consumer is free to x-out any part of a contract. Asks how to balance access to legal protection while being bound by a binding arbitration clause.
170	Hagen	Says he does not know where the balance is.
176	Sen. Ferrioli	Expresses his approval of this bill.
192	Lana Butterfield	Safeco Insurance Co. Introduces Bob Dorband.
198	Bob Dorband	Safeco Insurance Co. Submits testimony and testifies in opposition to SB 297 <b>(EXHIBIT F)</b> .
224	Chair Minnis	Asks if consumers are aware of the content of contracts.
227	Dorband	Replies that in some instances, they are not.
232	Chair Minnis	Asks about the principal in law with respect to contracts.
234	Dorband	Says there is an assumption that people enter into contracts freely and voluntarily.
240	Chair Minnis	Asks how an insurance company can guarantee that a consumer knows the contents of a contract.

244	Dorband	Says policies are highly regulated and are drafted in a simple, consumer friendly manner.
277	Peggy Anet	Health Insurance Association of America. Submits testimony and testifies in opposition to SB 297 <b>(EXHIBIT G)</b> .
342	Chair Minnis	Asks if her organizations use binding arbitration clauses.
346	Anet	Responds they have deleted binding arbitration clauses and have inserted the appeals process required by Oregon statute.
357	Matt Farmer	Oregon Association of Realtors. Testifies in opposition to SB 297. Says arbitration in real estate is essential, and that the bill is too broadly written.
<b>TAPE 50, B</b>		
012	Chair Minnis	Expresses concern about binding arbitration clauses and the waiver of a person's right to a jury trial.
021	Julie Brandis	Associated Oregon Industries. Testifies in opposition to SB 297.
050	Paul Cosgrove	Oregon Financial Services Association. Submits testimony and testifies in opposition to SB 297 <b>(EXHIBIT H)</b> .
098	April McVay	Oregon Independent Auto Dealers. Submits testimony and testifies in opposition to SB 297 <b>(EXHIBIT I)</b> .
114	Chair Minnis	Asks if these are binding arbitration clauses.
121	Justin Baxter	Oregon State Bar. Explains the law on binding contracts and the ability to appeal.
151	Vice Chair Burdick	Asks if binding arbitration requires consent of both parties.
155	Baxter	Responds that either party can enter into arbitration.
187	Chair Minnis	Asks if federal law addresses binding and non-binding arbitration.
191	Baxter	Responds that it addresses arbitration in general.
207	Chair Minnis	Closes the public hearing on SB 297 and adjourns the meeting at 10:04 a.m.

## **EXHIBIT SUMMARY**

**A – HB 2426, written testimony submitted by Jim Gardner, 3 pp**

**B – SB 259, written testimony submitted by Mark Landauer, 2 pp**

**C – SB 297, written testimony submitted by Justin Baxter, 115 pp**

**D – SB 297, written testimony submitted by Bruce Rothman, 22 pp**

**E – SB 297, written testimony submitted by Leonard Hagen, 1 p**

**F – SB 297, written testimony submitted by Robert Dorband, 1 p**

**G – SB 297, written testimony submitted by Peggy Anet, 1 p**

**H – SB 297, written testimony submitted by Paul Cosgrove, 1 p**

**I – SB 297, written testimony submitted for Monty King by April McVay, 1 p**

**J – SB 259, written testimony submitted for the League of Oregon Cities by staff, 1 p**

**K – SB 259, written testimony submitted for Seth Karpinski by staff, 1 p**