

## SENATE COMMITTEE ON JUDICIARY

April 01, 2003

8:00 a.m.

Hearing Room 343

Tapes 79-81

**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:**       **Bill Joseph, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **SB 136 Work Session**  
                                  **SB 255 Work Session**  
                                  **SB 259 Work Session**  
                                  **SB 397 Work Session**  
                                  **HB 2305A Public Hearing**  
                                  **HB 2306A Public Hearing**  
                                  **SB 70 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 79, A</b>		
003	Chair Minnis	Calls the meeting to order at 8:10 a.m. and opens a work session on SB 136.
<b><u>SB 136 WORK SESSION</u></b>		
010	Bill Joseph	Committee Counsel. Introduces SB 136 that permits Secretary of State to cancel or refuse to accept certain wrongful filings under Uniform Commercial Code-Secured Transactions.
017	Peter Threlkel	Secretary of State's Office. Introduces the -3 amendments to SB 136 ( <b>EXHIBIT A</b> ).
050	Chair Minnis	Asks for a review of the process.
053	Threlkel	Explains what will happen if the bill becomes law.
087	Sen. Ferrioli	Says we should accept these filings.
<b>098</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves to ADOPT SB 136-3 amendments dated 03/21/03.</b>
		<b>VOTE: 6-0</b>
<b>102</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>105</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves SB 136 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0</b>
<b>107</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. FERRIOLI will lead discussion on the floor.</b>
113	Chair Minnis	Closes the work session on SB 136 and opens a work session on SB 255.

**SB 255 WORK SESSION**

114 Bill Joseph Committee Counsel. Introduces the -1 amendments to SB 255 that requires veterinarians to report suspected aggravated animal abuse (**EXHIBIT B**).

126 Marcia Keith Oregon Veterinary Medical Association. Explains the -1 amendments.

167 Sen. Walker Asks why original language was deleted.

169 Keith Explains that there was an issue with the reporting.

183 **Vice Chair Burdick** **MOTION: Moves to ADOPT SB 255-1 amendments dated 03/06/03.**

**VOTE: 6-0**

188 **Chair Minnis** **Hearing no objection, declares the motion CARRIED.**

190 **Vice Chair Burdick** **MOTION: Moves SB 255 to the floor with a DO PASS AS AMENDED recommendation.**

**VOTE: 6-0**

192 **Chair Minnis** **Hearing no objection, declares the motion CARRIED. SEN. SCHRADER will lead discussion on the floor.**

194 Chair Minnis Closes the work session on SB 255 and opens a work session on SB 259.

**SB 259 WORK SESSION**

200 Bill Joseph Committee Counsel. Introduces 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.

211 Sen. Ringo Asks about the notification requirement.

226 Mark Landauer City of Portland. Says notice has to be given to the public body's attorney once the notice has been filed that a claim against that public body will be taken.

260 Vice Chair Burdick Clarifies that this does not apply to news media requests.

277 Sen. Ferrioli Discusses the request form and the paper trail required.

297 **Vice Chair Burdick** **MOTION: Moves SB 259 to the floor with a DO PASS recommendation.**

**VOTE: 6-0**

300 **Chair Minnis** **Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.**

303 Chair Minnis Closes the work session on SB 259 and opens a work session on SB 397.

**SB 397 WORK SESSION**

305 Bill Joseph Committee Counsel. Introduces SB 397 and the -1 amendments (**EXHIBIT C**).

336 **Vice Chair Burdick** **MOTION: Moves to ADOPT SB 397-1 amendments dated 03/17/03.**

**VOTE: 6-0**

340 **Chair Minnis** **Hearing no objection, declares the motion CARRIED.**

341 **Vice Chair Burdick** **MOTION: Moves SB 397 to the floor with a DO PASS AS AMENDED recommendation.**

**VOTE: 6-0**

346 **Chair Minnis** **Hearing no objection, declares the motion CARRIED. SEN. MINNIS will lead discussion on the floor.**

348 Chair Minnis Closes the work session on SB 397 and opens a public hearing on HB 2305A, 2306A.

**HB 2305A & HB 2306A, PUBLIC HEARING**

357 Neil Bryant Bend, OR. Submits testimony and introduces HB 2305A, that revises state policy and requirements for use and disclosure of

certain health information; HB 2306A that revises information privacy requirements for certain health insurers; HB 2307A that revises requirements for disclosure of or access to certain health information to conform to federal law relating to privacy of health information; and HB 2309A that allows physician or psychologist with patient authorization or court order to provide certain information to court visitor in protective proceeding **(EXHIBIT D)**.

**TAPE 80, A**

072	Gwen Dayton	Vice President, Oregon Association of Hospitals and Health Systems. Submits testimony and testifies in support of HB 2305A <b>(EXHIBIT E)</b> .
170	Chair Minnis	Asks if there are new amendments to HB 2305A.
174	Dayton	Says there are -3A amendments that clarify language in the authorization form <b>(EXHIBIT F)</b> . Continues section-by-section overview of HB 2305A.
201	Sen. Ringo	Asks if Section 6 on page 6 overturns a 1985 case.
211	Dayton	Says it does not.
230	Sen. Ringo	Asks for clarification of the "Humpfers" case.
215	Dayton	Explains the case and the release of medical records without permission.
270	Sen. Ringo	Asks if the Health Insurance Portability and Accountability Act (HIPAA) prevents a private cause of action.
262	Dayton	Explains that it does not try to create a private cause of action. Continues her overview of the bill by section.
349	Chair Minnis	Refers to Section 3 on page 4 and asks if the language is directly out of the federal act.
353	Dayton	Replies that the concept is, but not expressed word-for-word.
361	Chair Minnis	Believes that Section 3, subsection 3 on page 4, is loosely structured.
368	Dayton	Explains the key to Section 3 is in the definitions of terms.
422	Chair Minnis	Asks about covered entities.
429	Dayton	Explains what they are.
444	Sen. Walker	Asks about the notices being sent out by all health care providers.
455	Dayton	Explains the notice of privacy practices.

**TAPE 79, B**

039	Sen. Walker	Asks if the notice requirement is being dealt with in these HIPAA bills.
042	Dayton	Explains that HB 2306A deals with these notices.
063	Sen. Ringo	Asks about the fees for health care information referred to in Section 4 on page 5.
067	Dayton	Explains that reasonable costs are a part of Oregon law.
089	Sen. Ringo	Talks about the wide variety of charges when asking for medical records in his law practice.
098	Dayton	Says it would now be a HIPAA violation.
110	Sen. Ringo	Asks about the penalties for violation.
129	Dayton	Says enforcement of HIPAA is complaint driven, and enforced by the Federal Department of Health and Human Services. Explains the penalties.
163	Sen. Ringo	Expresses his concern with enforcement.
171	Dayton	Explains that currently the State does not have dual enforcement authority.
184	Vice Chair Burdick	Agrees that there should be some private cause of action.
196	Dayton	Explains that HIPAA is not being taken lightly.

227	Molly Burns	Kaiser Permanente. Submits testimony and testifies in support of SB 2306A ( <b>EXHIBIT G</b> ).
350	Herrmann Vice Chair Burdick	Asks if the Department of Consumer Business Services rule making authority allows adoption of a template form.
362	Herrmann	Believes that they do.
392	Vice Chair Burdick	Expresses concern about the complexity of this bill.
402	Herrmann	Explains that the requirements of HIPAA are fairly uniform.
447	Sen. Walker	Expresses concern about the forms being too lengthy.
470	Herrmann	Explains the difficulty in shortening and simplifying the forms.
<b>TAPE 80, B</b>		
032	Chair Minnis	Closes the public hearing on HB 2305A and HB 2306A and opens a work session on SB 70.

**SB 70 WORK SESSION**

041	Bill Taylor	Committee Counsel. Introduces SB 70 that creates procedure for establishment of guardianship in juvenile court and the -2 amendments ( <b>EXHIBIT H</b> ).
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<b>056</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves to ADOPT SB 70-2 amendments dated 03/17/03.</b>
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**VOTE: 6-0**

<b>088</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
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<b>089</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves SB 70 to the floor with a DO PASS AS AMENDED recommendation.</b>
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**VOTE: 6-0**

<b>092</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED. SEN. MINNIS will lead discussion on the floor.</b>
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095	Chair Minnis	Closes the work session on SB 70 and re-opens the public hearing on SB 2306A.
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**HB 2306A PUBLIC HEARING**

098	Molly Burns Herrmann	Kaiser Permanente. Continues review of HB 2306A and the -A3 amendments ( <b>EXHIBIT I</b> )
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235	Richard Lane	Oregon Trial Lawyers Association. Testifies in opposition to HB 2306A. Says Federal HIPAA law will be implemented on April 14, 2003.
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335	Vice Chair Burdick	Asks about protectiveness through state law versus federal law.
350	Lane	Says that denial of the private cause of action for a violation of State law is removed.

384	Vice Chair Burdick	Asks if a solution might be to make reference to Federal rule.
390	Lane	Says it would be an improvement. Urges deletion of Section 6 on page 6, and Section 7 on page 7 of HB 2305A.

**TAPE 81, A**

020	Chair Minnis	Asks if a private right of action can be reversed by the Legislature.
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026	Joseph	Replies, yes.
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042	Chair Minnis	Asks for a section-by-section analysis by both sides of the issue. Closes the public hearing on HB 2306A and adjourns the meeting at 10:05 a.m.
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**EXHIBIT SUMMARY**

**A – SB 136, -3 amendments submitted by staff, 2 pp**

- B – SB 255, -1 amendments submitted by staff, 1 p**
- C – SB 397, -1 amendments submitted by staff, 1 p**
- D – HB 2305A, HB 2306A, HB 2307A, and HB 2309, written testimony submitted by Neil Bryant, 5 pp**
- E – HB 2305A, written testimony submitted by Gwen Dayton, 3 pp**
- F – HB 2305A, -A3 amendments submitted by staff, 1 p**
- G – HB 2306A, written testimony submitted by Molly Burns Herrmann, 5 pp**
- H – SB 70, -2 amendments submitted by staff, 2 pp**
- I – HB 2306A, -A3 amendments submitted by staff, 1 p**