

# SENATE COMMITTEE ON JUDICIARY

May 22, 2003  
8:00 AM

Hearing Room 343  
Tapes 138 – 139

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

**MEASURE/ISSUES HEARD:** HB 2592A Public Hearing and Work Session  
HB 3015A Public Hearing and Work Session  
HB 3107A Work Session  
HB 3361 Public Hearing and Work Session  
HB 3520A Public Hearing  
HB 3389A Public Hearing  
HB 3317 Public Hearing and Work Session  
HB 3366 Public Hearing and Work Session  
HB 3544A 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 138, A</b>		
003	Chair Minnis	Calls the meeting to order at 8:30 a.m. and opens a public hearing on HB 2592A.
<b><u>HB 2592A PUBLIC HEARING</u></b>		
010	Carl Myers	Oregon Justice of the Peace Association. Testifies in support of HB 2592A.
015	Chair Minnis	Closes the public hearing on HB 2592A, and opens a work session on HB 2592A.
<b><u>HB 2592A WORK SESSION</u></b>		
020	Vice Chair Burdick	<b>MOTION: Moves HB 2592A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 4-0-2</b>
		<b>EXCUSED: 2 - Walker, Ferrioli</b>
025	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED. SEN. RINGO will lead discussion on the floor.</b>
<b><u>HB 3015A PUBLIC HEARING</u></b>		
030	Rep. Betsy Johnson	House District 31. Testifies in support of HB 3015A that requires State Court Administrator to establish procedures applicable to every court in state to protect confidentiality of Social Security numbers required in certain domestic relations

042	Bradd Swank	proceedings. State Court Administrator's Office. Testifies in support of HB 3015A.
051	Bill Joseph	Committee Counsel. Discusses the compromise made with the bill on the House side.
059	Swank	Further clarifies the amendments on the House side.
060	Chair Minnis	Closes the public hearing on HB 3015A and opens a work session.

**HB 3015A WORK SESSION**

<b>065</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves HB 3015A to the floor with a DO PASS recommendation.</b> <b>VOTE: 5-0-1</b> <b>EXCUSED: 1 - Walker</b> <b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. STARR will lead discussion on the floor.</b>
067	Chair Minnis	
070	Chair Minnis	Closes the work session on HB 3015A, and opens a work session on HB 3107A.

**HB 3107A WORK SESSION**

<b>075</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves HB 3107A to the floor with a DO PASS recommendation.</b> <b>VOTE: 5-0-1</b> <b>EXCUSED: 1 - Walker</b> <b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. FERRIOLI will lead discussion on the floor.</b>
080	Chair Minnis	
085	Chair Minnis	Closes the work session on HB 3107A, and opens a work session on HB 3361.

**HB 3361 PUBLIC HEARING**

092	Paul Frisch	Oregon Medical Association. Submits written testimony and testifies in support of HB 3361 ( <b>EXHIBIT A</b> ).
102	Bruce Bishop	Oregon Association of Hospitals and Health Systems. Submits written testimony and testifies in support of HB 3361 ( <b>EXHIBIT B</b> ).
111	Sen. Ringo	Clarifies when a physician's apology is an admission of guilt.
120	Frisch	Explains the context for when an apology could be considered an admission of guilt.
134	Vice Chair Burdick	Clarifies that this bill would not protect doctor's from being brought to court for malpractice, but just limit the use of the doctor's apology in court.
140	Frisch	Says that is correct.
142	Sen. Ringo	Further clarifies the use of an apology in court.
145	Bill Joseph	Committee Counsel. Clarifies how the use of the statement "I'm sorry" could be used or not used in a trial.
150	Chair Minnis	Closes the public hearing on HB 3361 and opens a work session.

**HB 3361 WORK SESSION**

<b>155</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves HB 3361 to the floor with a DO PASS recommendation.</b> <b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. RINGO will lead discussion on the floor.</b>
157	Chair Minnis	
160	Chair Minnis	Closes the work session on HB 3361, and opens a public hearing on HB 3520A.

**HB 3520A PUBLIC HEARING**

167	Bill Joseph	Committee Counsel. Introduces HB 3520A that allows court to
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180	Bradd Swank	offer educational or remedial program to person who violates safety belt law. State Court Administrator's Office. Testifies regarding HB 3520A.
217	Chair Minnis	Clarifies the issues of concern.
223	Swank	Replies. Says he is concerned about the potential expense.
239	Chair Minnis	Asks about programs of this kind around the state.
257	Sen. Walker	Questions the validity of the measure.
275	Vice Chair Burdick	Concurs with Sen. Walker's view of the bill.
279	Chair Minnis	Says he is an advocate of traffic school, but is not sure this takes care of the issue of concern. Closes the public hearing on HB 3520A and opens a public hearing on HB 3389A.

**HB 3389A PUBLIC HEARING**

285	Bill Taylor	Committee Counsel. Introduces HB 3389A that provides additional means of establishing identity of controlled substance in prosecutions involving controlled substances.
334	Michael Dugan	District Attorney, Deschutes County. Submits written testimony and testifies in support of HB 3389A ( <b>EXHIBIT C</b> ).

**TAPE 139, A**

001	Chair Minnis	Clarifies the process for use of the crime lab.
005	Dugan	Further outlines the process in question.
035	Dr. Emma Dutton	Oregon State Police, Forensic Services. Submits testimony and testifies in support of HB 3389A ( <b>EXHIBIT D</b> ). Says that the kit used is not 100% accurate, but is a presumptive test.
058	Chair Minnis	Asks if there is a charge for the service.
063	Dr. Dutton	Indicates there is no charge for the service.
068	Vice Chair Burdick	Asks which kinds of drugs would indicate a false positive.
079	Dr. Dutton	Says there are prescribed medications which may do this, but she does not know of any over-the-counter drugs which would create a false positive.
097	Vice Chair Burdick	Asks if there are more false positives or false negatives.
100	Dr. Dutton	Says there currently is no data regarding this.
105	Sen. Walker	Asks what would happen if a police officer were color blind, therefore unable to properly read the test.
107	Dr. Dutton	Indicates this would have to be handled during the training of the officer.
110	Sen. Walker	Asks when a reading must be taken.
119	Dr. Dutton	Says it should be read within 30 minutes.
125	Sen. Walker	Asks if this test would be admissible in court.
130	Dugan	Explains that each county is different in the way they handle admissible evidence.
155	Sen. Ringo	Asks about the safeguard for a false positive.
162	Dugan	Explains those safeguards.
190	Sen. Ringo	Asks if over-the-counter drugs can be confirmed in the laboratory.
200	Dr. Dutton	Says that only controlled drugs can be confirmed.
211	Susan Russell	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 3389A. Says the bill is not necessary and the test in question is unreliable.
250	Chair Minnis	Asks what documentation Ms. Russell has which indicates the unreliability of these tests.
260	Russell	Defers to the testimony submitted by Dr. Dutton, indicating this sufficiently questions the validity of those tests.
265	Chair Minnis	Further questions Ms. Russell's assertion that the tests are

		unreliable.
311	Russell	Comments on the admissibility of the tests in question.
318	Chair Minnis	Clarifies Ms. Russell's concerns.
330	Russell	Further comments on her concerns with the tests.
362	Chair Minnis	Suggest that further work be done on the bill.
371	Sen. Ringo	Asks about the reliability of the test.
380	Russell	Says there are variables in the reliability.
411	Sen. Ringo	Questions the variables.
420	Russell	Says the problem is that the legislature would declare those tests as prima fascia evidence.
430	Sen. Ringo	Further questions Ms. Russell's concern regarding the use of prima fascia evidence.
453	Chair Minnis	Comments on the use of prima fascia evidence.
<b>TAPE 138, B</b>		
035	Taylor	Asks about it being admissible in a grand jury.
040	Russell	Says there is no problem with that, but points out such evidence is already used before grand juries.
052	Chair Minnis	Comments on his personal experience regarding prosecutors and grand juries.
054	Russell	Further comments.
061	Dugan	Asks what direction the chair would like to see this legislation go.
081	Chair Minnis	Comments on the agreement which needs to be reached. Closes the public hearing on HB 3389A and opens a public hearing on HB 3317 and HB 3366.

#### **HB 3366 & HB 3317 – PUBLIC HEARING**

091	Tim Martinez	Oregon Bankers Association. Testifies in support of HB 3317 that expands crime of unlawful factoring of credit card transaction.
119	Vice Chair Burdick	Asks about the devices which are used to read a card.
130	Martinez	Comments on those devices.
138	Martinez	Offers testimony regarding HB 3366 that provides that defenses and exceptions created by provisions of Oregon Revised Statutes or recognized by courts of state do not apply to requirement that certain financial transactions be in writing.
160	Dick Rasmussen	Legal Counsel, West Coast Bank. Submits testimony and testifies in support of HB 3366 ( <b>EXHIBIT E</b> ).
180	Chair Minnis	Closes the public hearings on HB 3317 and HB 3366. Opens a work session on HB 3317.

#### **HB 3317 WORK SESSION**

<b>185</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves HB 3317 to the floor with a DO PASS recommendation.</b>
190	Susan Russell	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 3317. Believes the penalty should not be changed.
200	Chair Minnis	Comments on Ms. Russell's concerns.
210	Vice Chair Burdick	Indicates that she agrees with Ms. Russell.
220	Chair Minnis	Further comments on Ms. Russell's expressed concerns.
		<b>VOTE: 6-0</b>
<b>240</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED. SEN. WALKER will lead discussion on the floor.</b>
245	Chair Minnis	Closes the work session on HB 3317, and opens a work session on HB 3366.

### **HB 3366 WORK SESSION**

<b>250</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves HB 3366 to the floor with a DO PASS recommendation.</b>
255	Sen. Ringo	Clarifies that a public hearing had been held earlier on the bill.
260	Chair Minnis	Indicates that a public hearing had been held.
<b>265</b>	<b>Chair Minnis</b>	<b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED. SEN. FERRIOLI will lead discussion on the floor.</b>
270	Chair Minnis	Closes the work session on HB 3366, and reopens a public hearing on HB 3520A.

### **HB 3520A – PUBLIC HEARING**

281	Rep. Gordon Anderson	House District 3. Testifies in support of HB 3520A with reference to his constituent's experience regarding the issue.
335	Sen. Walker	Expresses her concerns with the bill.
343	Chair Minnis	Closes the public hearing on HB 3520A and opens a public hearing on HB 3544A.

### **HB 3544A PUBLIC HEARING**

360	Darrell Fuller	Oregon Auto Dealers Association. Submits written testimony and testifies in support of HB 3544A that modifies limitations on penalty wages for failure to pay wages on termination <b>(EXHIBIT F)</b> and the -A2 amendments <b>(EXHIBIT G)</b> .
420	Don Schellenberg	Oregon Farm Bureau. Testifies in support of the -A2 amendments.
440	Christine Hammond	Bureau of Labor and Industry (BOLI). Testifies in support of HB 3544A and the -A2 amendments.
450	Sen. Ringo	Asks about people who are wrongfully deprived payment of salaries.

### **TAPE 139, B**

020	Hammond	Points out that the Bureau is comfortable with the bill as amended.
030	Sen. Ringo	Asks why commissioned salespeople are being singled out by this bill.
035	Hammond	Talks about conditions that need to be met in order for a commissioned salesperson to be paid.
050	Sen. Ringo	Asks how long before a commission is paid.
055	Fuller	Says within 3 to 5 business days unless there are financing issues.
070	Sen. Ringo	Clarifies the concerns with the fired employee exaggerating the money owed them.
075	Fuller	Comments on the concerns in question.
095	Chair Minnis	Closes the public hearing on HB 3544A and adjourns the meeting at 10:05 a.m.

### **EXHIBIT SUMMARY**

- A – HB 3361, written testimony, Paul Frisch, 3 pp.**
- B – HB 3361, written testimony, Bruce Bishop, 1 p.**
- C – HB 3389A, written testimony, Michael Dugan, 3 pp.**
- D – HB 3389A, written testimony, Dr. Emma Dutton, 2 pp.**
- E – HB 3366, written testimony, Dick Rasmussen, 1 p.**
- F – HB 3544A, written testimony, Darrell Fuller, 1 p.**

**G – HB 3544A, -A2 amendments, Darrell Fuller, 1 p.**