

SENATE COMMITTEE ON JUDICIARY

June 25, 2003
8:00 a.m.

Hearing Room 343
Tapes 175-178

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 3630A Public Hearing**
 SB 655 Work Session
 HB 2368B Work Session

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.

TAPE/#	Speaker	Comments
TAPE 175, A		
003	Chair Minnis	Calls the meeting to order at 8:15 a.m. and opens a public hearing on HB 3630A.
<u>HB 3630A PUBLIC HEARING</u>		
008	Rep. Max Williams	House District 35. Testifies in support of HB 3630A that requires State Accident Insurance Fund Corporation (SAIF) to establish reinsurance program for medical professional liability policies of certain rural doctors.
074	Sen. Walker	Asks why tagging this issue would be problematic over the long term.
080	Rep. Williams	Explains that it was suggested in his discussions with the Governor's office. Continues testimony in support of HB 3630A.
147	Sen. Ferrioli	Says he likes the concept of this bill, but wonders why SAIF was chosen.
162	Rep. Williams	Explains that it is in part because SAIF is an instrument of the State.
187	Sen. Ferrioli	Says he believes it is very important that it is clear why this is a good nexus.
225	Karen Whitaker	Oregon Health & Science University, Office of Rural Health. Submits testimony and testifies in support of HB 3630A (EXHIBIT A) .

353 Vice Chair Burdick Asks about the incentives that are still available in rural areas.
 363 Whitaker Lists the various programs available to physicians in rural areas.
 390 Cory Streisinger Director, Department of Consumer and Business Services.
 Submits testimony and testifies in support of HB 3630A
(EXHIBIT B).

TAPE 176, A

042 Sen. Walker Asks where the premium assessment excess has come from to fund this program.
 048 Streisinger Explains that collections have exceeded expectations because of September 11, 2001.
 079 Sen. Walker Asks if the program can still be funded with a reduction of premium assessment.
 084 Streisinger Says, yes.
 106 Chair Minnis Clarifies that this money is not a part of the SAIF reserves.
 111 Streisinger Agrees. Continues testimony in support of HB 3630A. Asks for adoption of the –A7 amendments **(EXHIBIT C)**.
 174 Sen. Walker Asks for clarification of the term “financial reinsurance.”
 186 Streisinger Explains that it is a tool that SAIF needs to have available in order to take some risk.
 219 Chris Veiger SAIF Corporation. Testifies in support of HB 3630A.
 242 John DiLorenzo Oregonians for Sound Economic Policy, Inc. (OSEP). Submits testimony and testifies as neutral on HB 3630A. Says he is not opposed to the concept, but is opposed to the participation by SAIF **(EXHIBIT D)**.

TAPE 175, B

018 Vice Chair Burdick Asks if the SAIF amendment to HB 3092 solves the problem of disclosure from SAIF.
 025 DiLorenzo Says, yes, if the amendment survives the conference committee.
 035 Sen. Ringo Asks what the concern is in the –A7 amendments.
 041 DiLorenzo Says it is the “‘may’ consist of financial reinsurance” in the –A7 amendments that may be problematic.
 074 Sen. Ringo Asks about oversight and disclosure as two separate issues.
 082 DiLorenzo Believes that adequate disclosure is not sufficiently addressed.
 105 Scott Gallant Oregon Medical Association. Testifies in support of HB 3630A, and the –A7 and –A8 amendments **(EXHIBIT E)**.
 239 Sen. Walker Expresses her concern about SAIF’s expansion of authority.
 255 Gallant Believes this is not the vehicle for dealing with that concern.
 302 Richard Lane Oregon Trial Lawyers Association. Testifies in support of HB 3630A.
 426 Paul Cosgrove Reinsurance Association of America. Testifies in support of HB 3630A and submits a hand-engrossed version of the –A8 amendments **(EXHIBIT F)**.

TAPE 176, B

029 Chair Minnis Asks why SAIF was chosen to administer the program.
 033 Streisinger Explains that this is an insurance program and SAIF is the insurance company owned by the state, and which the Legislature has the power to direct.
 056 Sen. Walker Asks about adding the disclosure requirement that was put into HB 3630.
 064 Streisinger Believes that it may not be appropriate in this bill.
 076 Sen. Walker Believes that if we are expanding the authority of SAIF there needs to be more oversight by the Legislature.

081	Chair Minnis	Asks to whom information would be prepared and provided by SAIF.
088	Streisinger	Says the information would be provided to the Department of Consumer and Business Services.
090	Chair Minnis	Asks if the legislature would have access to that information.
091	Streisinger	Believes it would be available to the Legislative Assembly and members of the public.
094	Chair Minnis	Asks about the SAIF public records issue and the Court of Appeals ruling.
100	Streisinger	Says she does not know what the status is.
105	DiLorenzo	Explains there is a stay order pending appeal.
126	Sen. Ringo	Says he is willing to risk adding the proposed –A9 amendments.
150	Chair Minnis	Closes the public hearing on HB 3630A and opens a work session on SB 655.

SB 655 WORK SESSION

158	Sen. Walker	Introduces SB 655 that creates crime of unlawful trafficking in communication or access devices. Says the -1 amendments constitute a “gut and stuff” of SB 828 (EXHIBIT G).
189	Vice Chair Burdick	MOTION: Moves to ADOPT SB 655-1 amendments dated 5/27/03. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ringo
194	Chair Minnis	Hearing no objection, declares the motion CARRIED.
195	Vice Chair Burdick	MOTION: Moves SB 655 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ringo
228	Chair Minnis	Hearing no objection, declares the motion CARRIED. SEN. WALKER will lead discussion on the floor.
236	Chair Minnis	Closes the work session on SB 655 and recesses the meeting until 3:00 p.m.
238	Chair Minnis	Reconvenes the meeting at 3:07 p.m. Opens a work session on HB 2368B which makes technical and administrative changes to cigarette and tobacco products taxes to facilitate administration and enforcement.

HB 2368B WORK SESSION

240	Craig Prins	Committee Counsel. Goes through a section-by-section analysis of HB 2368B prepared by Pete Shepherd, Department of Justice (EXHIBIT H) .
390	Sen. Walker	Asks why a particular section was changed from four years to five.
394	Prins	Replies that he does not know.
404	Pete Shepherd	Deputy Attorney General. Also does not know why. Introduces Mathew McCauley from the Tobacco Compliance Task Force division of the Department of Justice.
407	McCauley	Department of Justice. Says the number was changed from four to five years for record-keeping requirements.
427	Sen. Walker	Responds records are kept for three years for tax purposes.
432	McCauley	Thinks the five-year recommendation was used because RICO (Racketeer Influenced and Corrupt Organization) prosecutions are five years on the statute of limitations.
507	Prins	Continues his section-by-section analysis of the bill.
TAPE 177, A		
035	Sen. Ringo	Asks for the rationale behind Marion County being the venue.
039	Shepherd	Explains the rationale as being that the tax is due to the Department of Revenue in Salem.
048	McCauley	Explains that there was some ambiguity as to the venue being in Marion County and this statute would clarify that.
053	Sen. Ringo	Asks if this applies to the private right of action venue.
060	McCauley	Says he does not believe there is a private right of action statutorily existing in ORS 323 or HB 2368B.
084	Prins	Continues his section-by-section analysis of HB 2368B.
070	Shepherd	Refers to Section 82 that deals with private cause of action; says Section 26 would not apply to that claim.
080	Prins	Continues his section-by-section analysis of the bill.
097	Chair Minnis	Returns to the "private right of action" issue in Section 75.
120	Prins	Points out that Section 75 refers to the person accepting the order for delivery. Continues his section-by-section analysis of the bill specifically referring to tobacco products.
195	Prins	Continues his section-by-section analysis of the bill.
230	Sen. Ringo	Asks how physical evidence is defined.
235	Prins	Says an electronic notice would be sent out, but the certification is on paper.
242	Vice Chair Burdick	Asks what the penalty is for lying about one's age to purchase cigarettes over the Internet.
255	Shepherd	Explains the infraction would be minor in possession of tobacco which carries a small fine.
267	Vice Chair Burdick	Asks what the fine is for delivery to a minor.
272	Shepherd	Explains the remedies for delivery are in Section 81 on page 32 and 33 and are in addition to sanctions currently provided in law.
311	Vice Chair Burdick	Wonders how the \$10,000 fine would be carried out.
316	Shepherd	Doesn't believe new penalties are being prescribed for minors.
345	Prins	Says he will clarify that portion with the Department of Revenue.
365	Sen. Walker	Questions Section 76 and the notice of tax liability, wonders how the tax is collected or paid.
369	Shepherd	Describes Section 76, page 30, lines 41-42 which refers to Section 77, subsection 4 which tells how the tax is to be paid.

375	Sen. Walker	Asks about the Distributor paying tax to the State of Oregon, and their liability.
415	Shepherd	Explains how the tax is collected from the distributor.
420	Sen. Ringo	Questions Section 76 and reference to the age of the purchaser, and says nowhere does it mention Internet sales to minors.
438	Shepherd	Describes how Internet sales to minors have developed into a problem.
447	Sen. Ringo	Asks if 15 year olds are buying cigarettes through the Internet.
460	Shepherd	Describes Internet sales to minors.
468	Prins	Continues his section-by-section analysis of the bill.
TAPE 178, A		
007	Prins	Concludes his section-by-section analysis of the bill.
045	Prins	Describes the -B15 amendments from Bill Linden (EXHIBIT I); -B16 amendments from Jim Gardner (EXHIBIT J); and the-B17 amendments that amend Section 82 (EXHIBIT K).
087	Sen. Walker	Asks if -B17 amendments restrict “BIG” tobacco from suing.
090	Chair Minnis	Wants to get through all the amendments before questions.
092	Prins	Continues describing the amendments -B18 (EXHIBIT L); -B19 conflict amendments (EXHIBIT M); -B20 amendments from Mark Nelson (EXHIBIT N); -B21 from Marshall Coba (EXHIBIT O); the -B22 from the American Cancer Society with a sunset clause (EXHIBIT P); and-B23 from the American Cancer Society and the American Heart Association (EXHIBIT Q).
136	Vice Chair Burdick	Clarifies that the -B23 amendments would be applied only if there is a task force.
139	Prins	Says the -B24 amendments are from Sen. Burdick (EXHIBIT R); and the -B26 amendments are from Sen. Ringo (EXHIBIT S).
174	Chair Minnis	Beginning with -B19 amendments looks for clear consensus.
185	Vice Chair Burdick	MOTION: Moves to ADOPT HB 2368B-B19 amendments dated 06/03/03. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ferrioli
223	Chair Minnis	Hearing no objection, declares the motion CARRIED.
230	Chair Minnis	Asks if there is support for B15 amendments.
234	Bill Linden	R.J. Reynolds. Clarifies why these amendments are needed.

255	Vice Chair Burdick	MOTION: Moves to ADOPT HB 2368-B15 amendments dated 05/27/03. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ferrioli
260	Chair Minnis	Hearing no objection, declares the motion CARRIED.
263	Prins	Explains the –B16 amendments.
274	Vice Chair Burdick	Expresses her concern for the B16 amendments.
276	Sen. Ringo	Expresses his ambivalence for these amendments.
291	Jim Gardner	Philip Morris. Explains these amendments remove language from the bill that they originally proposed.
303	Sen. Ringo	Confirms that Oregon cannot oppose separate labeling requirements.
308	Sen. Walker	Agrees with using the -B16 amendments.
318	Sen. Starr	MOTION: Moves to ADOPT HB 2368-B16 amendments dated 05/27/03. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ferrioli
320	Chair Minnis	Hearing no objection, declares the motion CARRIED.
323	Prins	Explains the –B22 amendments.
339	Vice Chair Burdick	MOTION: Moves to ADOPT HB 2368B-B22 amendments dated 06/16/03. VOTE: 5-0-1 EXCUSED: 1 - Sen. Ferrioli
342	Chair Minnis	Hearing no objection, declares the motion CARRIED.
352	Chair Minnis	Asks the committee to consider the B18 and B23 amendments together.
359	Sen. Walker	Expresses her concerns about setting up another task force rather than using the resources already available.
370	Shepherd	Discusses expenses associated with the task force. Feels the task force would have no significant fiscal impact on the Department of Justice (DOJ).
389	Sen. Walker	Asks if there is currently oversight for the Master Settlement Agreement.
393	Shepherd	Responds, no.
414	Sen. Ringo	Refers to recommendations he was given by DOJ.
420	Shepherd	Agrees there are good ideas in the Attorney General’s report that are not being implemented.
434	Chair Minnis	Asks Sen. Burdick to explain the –B24 amendments.
440	Vice Chair Burdick	Explains that the –B24 amendments stop Internet sales of tobacco to minors.
TAPE 177, B		
030	Mark Nelson	R. J. Reynolds. Clarifies that R. J. Reynolds does not sell on the Internet, and only one vendor uses this approach.

048	Vice Chair Burdick	Clarifies that the purpose of this legislation is to verify the age of the person purchasing the tobacco products. She is willing to work with Mr. Nelson on these amendments.
068	Chair Minnis	Asks Sen. Ringo to explain the –B26 amendments.
070	Sen. Ringo	Explains the origin of the B26 amendments.
097	Chair Minnis	Asks for the timeline for implementation.
098	Sen. Ringo	Says upon implementation of the bill.
104	Mark Nelson	Seven-Eleven Corporation. Says all tobacco products are behind the counter in 7-11's. Says the Oregon Grocery Association brought opposition last session to this type of amendment.
121	Gardner	Says a provision like this is on his list of pro-active measures to pursue.
133	Richard Kosesan	Oregon Neighborhood Store Association. Explains how some small grocers do not have the space to move all these products behind the counter, even though the industry is heading in that direction already.
156	Vice Chair Burdick	Expresses her support for this amendment.
170	Chair Minnis	Says he could support this amendment if it had a future date for implementation.
181	Sen. Ringo	Suggests nine months to a year.
184	Chair Minnis	Asks if there is an emergency clause.
185	Vice Chair Burdick	Replies, no.
191	Chair Minnis	Suggests drafting an implementation date.
194	Sen. Ringo	Suggests June 1, 2004.
196	Sen. Walker	Likes July.
212	Chair Minnis	Says the amendments adopted will be combined and other amendments looked at on a later date.
219	Chair Minnis	Closes the work session on HB 2368B and adjourns the meeting at 4:25 p.m.

EXHIBIT SUMMARY

- A – HB 3630A, written testimony submitted by Karen Whitaker, 8 pp**
- B – HB 3630A, written testimony submitted by Cory Streisinger, 6 pp**
- C – HB 3630A, -A7 amendments submitted by staff, 2 pp**
- D – HB 3630A, written testimony submitted by John DiLorenzo, 6 pp plus booklet**
- E – HB 3630A, -A8 amendments submitted by staff, 1 p**
- F – HB 3630A, -A8 amendments hand-engrossed and submitted by Paul Cosgrove, 1p**
- G – SB 655, -1 amendments submitted by staff, 2 pp**
- H – HB 2368B, written material prepared by Pete Shepherd and submitted by staff, 10 pp**
- I – HB 2368B, -B15 amendments submitted by staff, 1p**
- J – HB 2368B, –B16 amendments submitted by staff, 1 p**
- K – HB 2368B, -B17 amendments submitted by staff, 1 p**
- L – HB 2368B, -B18 amendments submitted by staff, 3 pp**
- M – HB 2368B, -B19 amendments submitted by staff, 2 pp**
- N – HB 2368B, -B20 amendments submitted by staff, 1 p**
- O – HB 2368B, -B21 amendments submitted by staff, 1 p**
- P – HB 2368B, -B22 amendments submitted by staff, 5 pp**
- Q – HB 2368B, -B23 amendments submitted by staff, 3 pp**

R – HB 2368B, -B24 amendments submitted by staff, 1 p

S – HB 2368B, -B26 amendments submitted by staff, 1 p