

HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

April 16, 2001
3:15 PM

Hearing Room 50
Tapes 112 - 117

MEMBERS PRESENT: **Rep. Bill Witt, Chair**
 Rep. Tim Knopp, Vice-Chair
 Rep. Betsy Johnson, Vice-Chair
 Rep. Alan Bates
 Rep. Alan Brown
 Rep. Janet Carlson
 Rep. Richard Devlin
 Rep. Bill Garrard
 Rep. Jerry Krummel
 Rep. Laurie Monnes-Anderson
 Rep. Vicki Walker

STAFF PRESENT: **Dan Clem, Committee Administrator**
 Patrick Brennan, Committee Assistant

MEASURE/ISSUES HEARD: **HB 3500 Public Hearing and 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 112, A		
004	Chair Witt	Calls the meeting to order at 3:30 p.m. Opens a work session on HB 3192.
<u>HB 3500 PUBLIC HEARING</u>		
008	Dan Clem	Committee Administrator. Gives a brief description of the bill. Mentions that the -1 amendments (EXHIBIT A) have been submitted for the committee's consideration.
030	Shelley Jensen	Verizon. Testifies in support of HB 3500. States that rate schedules are currently filed with the Public Utilities Commission (PUC) 30 days before they are offered to the public. Says the bill allows Verizon to offer service promotions on the day they are filed, so long as certain criteria are adhered to. Asserts that the change is necessary because competitive local providers do not need to file their rates with the PUC at all, giving Verizon's competitors 30 days notice of what Verizon has planned. Explains the -1 amendments: <ul style="list-style-type: none">• Define service promotions• Speak to the total service long-run incremental cost• Stipulate that costs are recovered over the length of time that the average consumer of the service keeps that service• Allow promotion on one day notice, rather than 30 day notice
060	Chair Witt	Asks if the amendments are designed to ensure the utility can charge a price to recover its cost.
064	Jensen	Clarifies that the amendments prevent "predatory pricing," in which competitors charge below cost to injure competitors.

071	Rep. Johnson	Indicates that PUC requested language in statute to define cost and to describe how they can be recovered. Requests clarification that competitors are provided with 30 days notice of new Verizon rates while Verizon does not have access to the same information about competitors.
075	Jensen	Replies affirmatively, as competitors are not required to file with PUC in advance of promotion. Explains that the rules treat providers differently.
087	Joan Smith	PUC Commissioner. Testifies in support of HB 3500 (EXHIBIT B) . States PUC has sought to prevent cost shifting between customers. Says the 30-day notice was designed to provide adequate time for review. Indicates she also supports the -1 amendments.
101	Rep. Brown	Asks why Verizon is subject to the notice requirements while other providers are not.
105	Smith	Replies that incumbent local exchange carriers are typically regulated, and that it is PUC's responsibility to ensure that rates offered do not shift cost or act unfairly in the marketplace
114	Chair Witt	Clarifies that the rules date back to when there was a virtual monopoly. Says HB 3500 allows Verizon to do promotions without needing to give competitors notice and hence unfair advantage.
123	Rep. Bates	Asks whether there could be efforts in the future to further level the playing field.
132	Jensen	Replies that the industry is moving in that direction. Indicates that PUC had planned to loosen the notification requirement when it was discovered that the requirement is in statute as well. Concludes that the system will be less cumbersome on everyone if HB 3500 becomes law.
144	Chair Witt	Closes the public hearing and opens a work session on HB 3500.
<u>HB 3500 WORK SESSION</u>		
148	Rep. Knopp	MOTION: Moves to ADOPT HB 3500-1 amendments dated 4/12/01.
150		VOTE: 9-0-2 EXCUSED: 2 - Devlin, Garrard Hearing no objection, declares the motion CARRIED.
152	Rep. Knopp	MOTION: Moves HB 3500 to the floor with a DO PASS AS AMENDED recommendation.
167		VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.
	Chair Witt	The "aye" votes for Rep. Devlin and Rep. Garrard are recorded later during this meeting and are reflected here. Please refer to Tape 113A, #160.
163	Rep. Walker	MOTION: Moves HB 3500 be placed on the Consent Calendar for floor consideration.
166		VOTE: 9-0-2 EXCUSED: 2 - Devlin, Garrard Hearing no objection, declares the motion CARRIED.
171	Chair Witt	Closes the work session on HB 3500 and opens a public hearing on HB 3192.
<u>HB 3192 WORK SESSION</u>		
175	Rep. Jeff Merkley	House District 16. Testifies in support of the -1 amendments

(**EXHIBIT C**) to HB 3192. Says the amendments require language on billboard advertisements for the Oregon Lottery that declare lottery games pose risk to financial health. Indicates he has been made aware that there are other amendments that retain the current disclaimer language and impose the increased size requirements. Expresses preference for the –1 amendments. Public Affairs Manager, Oregon Lottery. Testifies in support of the –2 amendments to HB 3192 (**EXHIBIT D**). Says the –2 amendments were put forth in response to focus group testing that determined the existing disclaimer language to be more effective in achieving the committee’s stated desire to make the public aware of the financial risk involved in lottery games. Concedes that the size of the disclaimer was too small and says the –2 amendments address that issue.

217 David Hooper

246 Rep. Johnson Asks if the Oregon Lottery uses focus group research on a regular basis.

248 Hooper Replies that they do so with regard to advertising, so doing so in this instance was nothing out of the ordinary. Says the focus group questions regarding the disclaimer questions were a minor part of the particular study.

255 Rep. Johnson Asks if professionals perform the focus group research and, if so, how much such studies cost.

258 Hooper Replies that professional research is solicited, the cost of which is approximately \$10,000 per group.

266 Rep. Bates Asks whether the focus group considered other language besides the current language and that proposed by the –1 amendments.

269 Hooper Answers that the only language tested was that in current use and that proposed in the –1 amendments. Indicates that the focus group intimated that the current language is more effective than the proposed language, as the latter was seen as more “tongue in cheek.”

282 Rep. Carlson Reminds Mr. Hooper that focus group research is not as scientific as other types of survey models.

284 Hooper Replies affirmatively and says that fact is why the Oregon Lottery utilizes focus groups in series and looks for recurring patterns and trends.

295 Rep. Carlson Says focus groups are useful for providing clarity to existing knowledge or as a precursor to a wider study.

305 Rep. Johnson Objects to the use of \$10,000 to discern the semantic difference between two sets of disclaimer language. Submits that the language proposed by the bill’s sponsor should be sufficient.

317 Hooper Reiterates that the questions were added only as a part of another focus group study and did not add appreciably to the cost.

334 Chair Witt Requests confirmation that the only tangible effect of the –2 amendments is to increase the size of the current disclaimer used on billboard advertisements.

340 Hooper Replies affirmatively.

346 Rep. Johnson Opines that there seems to be a significant problem with gambling addiction in Oregon. Asks Mr. Hooper how big an issue gambling addiction is to the Oregon Lottery.

355 Hooper Replies that the Oregon Lottery takes the issue of gambling addiction seriously. Remarks that the billboards affected by HB 3192 deal with games that are less prone to gambling addiction. Agrees that disclaimers are important and should be enhanced.

		Comments that if video lottery games were advertised the language proposed would be more appropriate, as video lottery games are much more prone to addiction.
380	Rep. Johnson	Asks how strongly the Oregon Lottery is wedded to the current language, as her current inclination is to advance the –1
386	Hooper	amendments unless there is a convincing reason to do otherwise. Responds that advertising helps spread the word about the lottery. Asserts that the –1 amendments go too far and that the new language is not necessary.
396	Rep. Johnson	Asks whether Mr. Hooper’s objection is out of concern that the language proposed within the –1 amendments may have a chilling effect on lottery participation.
400	Hooper	Replies that his objection is rooted in the belief that the language is inaccurate with regard to the games being advertised..
TAPE 113, A		
004	Rep. Bates	Asks whether the focus group info was shared with Rep. Merkley, when was it received.
008	Hooper	Replies negatively, adding that the research results came out less than two weeks ago.
015	Rep. Merkley	Objects to Mr. Hooper’s testimony. Says Riley Research did not perform campaign research for him as Mr. Hooper’s testimony suggests. Disagrees that the –1 amendments make inaccurate assumptions about the lottery. Asserts that the disclaimer proposed in the –1 is personal and therefore has more impact. States the purpose of changing the language is to experiment with something that grabs attention, which the focus group results indicate is the case. Says it is necessary to impress people with the idea that the lottery is not a win-win program and that it has a down side. Opines that a small disclaimer saying that the odds are against the player is appropriate.
066	Chair Witt	Clarifies that Riley Research performed campaign research for his campaign, not Rep. Merkley’s.
070	Hooper	Apologizes for the confusion regarding Riley Research.
080	Rep. Johnson	MOTION: Moves to ADOPT HB 3192-1 amendments dated 4/6/01.
086	Rep. Bates	Wonders whether the language “may pose risks” would be preferable.
090	Chair Witt	Responds that the sponsor of the measure prefers the –1 language.
084		VOTE: 8-0-3
		EXCUSED: 3 - Devlin, Garrard, Knopp
	Chair Witt	Hearing no objection, declares the motion CARRIED.
096	Rep. Johnson	MOTION: Moves HB 3192 to the floor with a DO PASS AS AMENDED recommendation.
099	Rep. Walker	Indicates she will vote aye if necessary to send the bill to the floor. Indicates she is not convinced that change is necessary. Takes offense to the idea that the focus group info was not shared with the sponsor of the bill.
107	Rep. Krummel	Expresses opposition to the bill. Says common sense informs that the lottery is not an investment and is risky.
114	Chair Witt	Remarks that the bill testifies to the state’s ambivalence to the lottery. Says the state is addicted to lottery, but there are concerns to its side effects. Shares the belief with Rep. Merkley

		that the lottery poses risks to some that are prone to this type of addiction.
131	Rep. Knopp	Expresses preference to the original bill. Asserts that the disclaimer is likely to be no more effective than cigarette warning labels. Indicates he will support the amended bill in committee but may not do so on the floor.
141	Rep. Devlin	Concurs with Rep. Knopp.
145		VOTE: 9-2
		AYE: 9 - Bates, Brown, Carlson, Devlin, Garrard, Johnson, Knopp, Monnes Anderson, Witt
		NAY: 2 - Krummel, Walker V
	Chair Witt	The motion CARRIES.
		REP. MERKLEY will lead discussion on the floor.
146	Chair Witt	Closes the work session on HB 3192 and reopens the work session on HB 3500.
<u>3500 WORK SESSION</u>		
<u>155</u>	Rep. Witt	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REPS. DEVLIN AND GARRARD to BE RECORDED as voting AYE on the motion to send HB 3500 to the floor with a DO PASS AS AMENDED recommendation.
158		VOTE: 11-0
	Chair Witt	Hearing no objection, declares the motion CARRIED.
163	Chair Witt	Closes the work session on HB 3500 and opens a public hearing on HB 3502.

HB 3502 PUBLIC HEARING

175	Dan Clem	Committee Administrator. Gives a brief description of the bill. Northwest Natural Gas (NWN). Testifies in support of HB 3502 (EXHIBIT E). Describes reason bill was brought forth and the court case that helped prompt the need for the bill. Mentions that in the last rate case staff recommended a return of 8.7 percent, which caused a drop in stock price and threatened the company's financial well being. Indicates that PUC subsequently authorized a 10.2 percent return.
200	Gary Bauer	
250	Bauer	Comments that capital markets have become tight for public utilities. Says it is difficult to compare utility companies in different states. Says utility companies need to be able to deal with customers.
274	Rep. Bates	Says the proposal begs the question of what has happened in the past. Notes that PUC sets rates at a level sufficient to allow generation of capacity. Asks how HB 3502 changes that situation.
284	Susan Ackerman	NWN. Indicates that following the last rate case investors were counseled not to invest in Oregon public utilities. Emphasizes the need to listen to what shareholders are saying. Asserts the bill is completely on target, as NWN is experiencing rapid growth and further capital investment is needed. States the company needs something positive to take back to the investment community.
314	Rep. Monnes-	Wonders whether the issue deals specifically with natural gas.

	Anderson	Speculates that the market may not be competitive in this area. Asks whether the gas utility rate is held on par with that of hydroelectric power generation.
330	Ackerman	Acknowledges that PUC does probably consider that, but says HB 3502 requests that PUC take these issues into account when decisions are made. Notes that the same issues apply roughly to Washington state, although cases are easier to settle there.
351	Chair Witt	Requests an estimate of the current shareholder investment in NWN.
354	Ackerman	Estimates shareholder investment to be approximately \$800 million.
359	Chair Witt	Asks how much is typically invested annually.
363	Ackerman	Estimates annual investment to be approximately \$70 million. Says the most problematic capital improvements are those for which there is no revenue stream to support.
382	Chair Witt	Acknowledges the need for ongoing sources of capital to keep up investments and service. Asks whether NWN has correlated rates with investments.
389	Ackerman	Responds that NWN will be tested in the future when soliciting capital investments for expenditure on non-revenue generating projects.
398	Chair Witt	Asks whether PUC approval is necessary to spend dollars on investments.
403	Ackerman	Explains that the company must make capital investment prior to requesting that those investments be taken into account during the rate making process.
415	Rep. Bates	Ask how investments are paid for if rate increases are not granted.
TAPE 112, B		
005	Ackerman	Replies that utilities have little recourse but to ask again. Says companies can make a request of the county, but such requests are typically fruitless.
020	Ron Eachus	PUC Commissioner. Testifies in opposition to HB 3502 (EXHIBIT F). Says the bill is unnecessary and is bad policy. Indicates that rates set by PUC should be sufficient to ensure financial solvency. Mentions that utilities are constitutionally protected in their ability to maintain rates necessary for solvency. Lists four flaws with allowing utilities to match utility rates in other states: <ul style="list-style-type: none"> • Rate of return is only one component of rate setting • Cost of capital in other states reflects the tenor of that state's regulatory policies • Rates of return set by other states may be stale • Each utility is unique
074	Eachus	Asserts the legislature should allow PUC to set rates according to available evidence and judgement as to what is sound. Says rate setting involves several variables. Provides a handout regarding recent rate setting deliberation (EXHIBIT G).
152	Joan Smith	PUC Commissioner. Testifies in opposition to HB 3502. Says that where a utility's stock level is has to do more with where the market is than just the rate making process. Expresses hope

		that the misunderstanding with NWN can be worked out without unnecessary legislation.
188	Paul Graham	Department of Justice (DOJ). Testifies to a position of neutrality on HB 3502.
189	Chair Witt	Concludes that NWN is operating under the assumption that investors do not make investments in a vacuum, but instead look at many factors, of which rates is one. Says HB 3502 makes a simple requirement that PUC consider rates in other jurisdictions, so as to prevent Oregon utilities such as NWN from becoming unattractive investment opportunities.
207	Eachus	Concedes that is one goal, but says the company also wants rates set according to those offered in other states. Submits that the bill goes further than simply requiring other states' rates be part of the evidence, but rather requires rates comparative to other states. Says rates in other states are often set under totally different circumstances that have no relevance to Oregon.
238	Chair Witt	Refers to lines 28-30 of the bill and says the measure does not require comparative rates but asks that PUC consider them as part of the context. Asks if PUC would support amending the bill to clarify that the rates in other jurisdictions are only to be part of the equation.
256	Eachus	Says the suggestion is already consistent with current practice and would be unnecessary. Assures that PUC considers many factors and evidence, as required by the constitution. Submits the real question is whether the rates are sufficient for investment returns and says NWN seems concerned that rates are lower than other parts of the country.
284	Chair Witt	Asserts that consistency with current practice is not necessarily a reason not to put something into statute.
288	Smith	Mentions research that was commissioned to look into the issue.
304	Chair Witt	Says the goal is to protect consumers while allowing utilities to raise capital necessary to meet growing demand. Acknowledges there may be a need to work on compromise language.
315	Eachus	Reiterates PUC concerns with tying rates too closely to other states. Hypothesizes that NWN may be trying to gain an advantage for its next rate case.
336	Rep. Devlin	Agrees that rates should not be based solely on those of other states, but asks how PUC should address concern that investors will look exclusively to states where the rates are higher in hopes of greater returns.
346	Eachus	Agrees that investors consider rates of return, but says they also look for opportunities to invest in sound utilities. Offers as an example Pacific Gas and Electric (PGE) in California, which is now filing for bankruptcy despite substantially higher rates than sound Oregon companies. Says that sound companies are often a wiser investment.
370	Rep. Monnes-Anderson	Acknowledges the need for utilities to be able to attract financial capital. Comments that it is a bad sign when rate actions cause a drop in stock price. Notes that 10.25 percent is the lowest rate of any stand-alone gas company in the nation. Wonders how NWN can hope to stay competitive as an investment opportunity with such low rates.
393	Eachus	Responds that there is on basis for saying that investment in NWN has been unhealthy. Reiterates that the company is

lobbying for higher rates at the next rate hearing. Remarks that capital costs are the primary factor in rate setting.

TAPE 113, B

006	Rep. Monnes-Anderson	Opines that NWN's rates should not remain the lowest in the nation.
008	Eachus	Restates the risk of shifting cost. Says that rates in some states are set so as to protect them from adverse conditions that apply only to that state and therefore should not affect how Oregon sets its rates.
023	Rep. Garrard	Asserts that if the rates are not competitive then there will not be investment or growth.
029	Eachus	Responds that there is no compelling evidence that investment is insufficient to meet capital needs.
038	Brad Van Cleave	Industrial customers of NWN. Testifies in opposition to HB 3502. Says rates in other states are not the only factor in calculating rates and should not be emphasized in any way. Agrees with PUC that other states are often treated differently because they have different environments or situations to face.
060	Jeff Bissonette	Citizens' Utility Board (CUB). Testifies in opposition to HB 3502. Submits that if utility companies feel disadvantaged by rates as they are set they are free to appeal.
077	Chair Witt	Asserts that it is in the rate payers interest not to hinder the ability of utilities to attract capital and subsequently improve their infrastructure and service. Closes the public hearing on HB 3502 and opens a work session on HB 3874.

HB 3874 WORK SESSION

104	Dan Clem	Committee Administrator. Gives a brief description of the bill. Indicates that representatives of the Oregon Health Division (OHD), specifically Grant Higginson and Katie King, were cooperative and helpful in producing much in the way of information. Reviews some of the salient points from the cache of information OHD provided to the committee: <ul style="list-style-type: none">• 11 of 33 county applications contained mention of lobbying and/or activities to seek local anti-tobacco use ordinances• OHD makes rules and lobbies to dissuade the use of cigarette tax money for anti-smoking ordinance lobbying
155	Dan Clem	Continues reviewing salient points from OHD information: <ul style="list-style-type: none">• Counties were told on several occasions to correct request for proposals Reviews the specific information provided to committee members.
191	Rep. Krummel	Mentions that HB 2007 (1999) was referred to voters as Ballot Measure 88.
198	Dan Clem	Continues reviewing information provided by OHD. Indicates it is clear that the commissioners in Linn County were aware of the prohibition against using tobacco tax for lobbying.
248	Dan Clem	Continues reviewing information provided by OHD.
262	Rep. Carlson	Requests clarification whether OHD receives applications. Asks whether it is the application itself or the request for application that contains the information related to the prohibition of use of tobacco tax money.
270	Dan Clem	Mentions that 11 of the county applications on file indicated

274	Rep. Carlson	they were doing activities related to tobacco ordinances. Says the question is whether the prohibition is part of the application process.
284	Dan Clem	Responds that the guidebook is used as a model when considering which items are to be part of the application. Asserts it is implied that the packet is sufficient, as there is evidence of responsiveness to the packet's request.
320	Dennis Mulvehill	Government Affairs Officer, Washington County. Testifies regarding Washington County's involvement in anti-smoking ordinances. Says all five county commissioners strongly support anti-smoking ordinances, but object to the linkage of lobbying for such ordinances to the receipt of tobacco funds. States that the county commission believes OHD should never require lobbying as a requisite for receiving funds.
385	Rep. Krummel	Notes the difference in the amount of funding received by Washington County and asks whether the drop was due to the request that the county lobby for anti-smoking ordinances.
398	Mulvehill	Replies that the county gave up available tobacco funds because of the requirement that they county lobby other local governments for anti-smoking ordinances.
TAPE 114, A		
008	Grant Higginson	Acting Administrator, Oregon Health Division. Submits informational materials (EXHIBIT H). Says it is difficult to take a position on the bill without a better definition of the word "lobbying". Mentions that government employees are not encouraged to lobby. Says OHD has worked with the Attorney General's Office, which indicated there are no strict legal restrictions as to what employees can or cannot do. States that government employees are not allowed to push for or against ordinances on the ballot.
048	Higginson	Comments that Washington County decided not to put forth a program informing about the dangers of smoking for fear of looking like it is lobbying for anti-smoking ordinances.
062	Rep. Carlson	Asks who is responsible for reviewing applications from counties for tobacco funds and how counties are notified of application status.
069	Higginson	Replies that there is a set of criteria used by OHD for this purpose.
073	Chair Witt	Suggests that the issue should be taken up by the parties to the bill and brought back at a later date.
080	Rep. Carlson	Mentions that a conversation or correspondence clearly led someone to believe that the policy works differently than described by OHD.
090	Higginson	Responds that in the case of Linn County the application criteria dealt specifically with ordinances, at the request of the county. Says the review of Linn County's application included a notation that that work to that effect should have progressed farther, which may have been misinterpreted to imply proscriptive language.
116	Rep. Devlin	Asks if the bill will be brought back for work session and, if so, whether amendments would be appropriate.
120	Chair Witt	Replies that amendments are always welcome from committee members when bills are scheduled for work session. Requests

125	Rep. Walker	that Dr. Higginson attend any future hearings on the bill. Requests that Bill Perry of the Oregon Restaurant Association (ORA) be asked to attend as well.
137	Chair Witt	Closes the work session on HB 3874 and opens a work session on HB 3953.
<u>HB 3953 WORK SESSION</u>		
140	Dan Clem	Committee Administrator. Gives a brief description of the bill. Indicates that the –3 amendments (EXHIBIT I) have been submitted for the committee’s consideration.
164	Chair Witt	Remarks that the –3 amendments are inclusive of previous amendments submitted for the bill.
170	Bill Perry	ORA. Testifies in support of HB 3953. Explains that there was concern that parts of the bill would provide exemptions that are too broad, adding that the –3 amendments address that problem. Says that all other work places other than those listed in the exemptions will be subject to state law or local ordinance.
193	Rep. Johnson	Mentions that St. Helen’s recently passed an ordinance that is currently on hold. Asks whether the bill affects ordinances passed after January 1999.
200	Perry	Replies that St. Helen’s’ bar ban would be precluded while leaving the remainder intact.
207	Rep. Johnson	Reads the list of exemptions from ordinances: <ul style="list-style-type: none"> • Restaurants marked “no minors allowed” • Bowling centers • Charitable and fraternal organizations used for conducting bingo games
214	Perry	Clarifies that charitable organizations may fall under either the bingo game or no minors exemption.
221	Rep. Carlson	Asks which particular communities have ordinances that could be affected by the passage of HB 3953.
230	Perry	Mentions that Baker City, Central Point, Benton County, Lake Oswego, Multnomah County, and perhaps a few others will be affected.
249	Rep. Carlson	Asks whether changing the date of ordinances from January 1999 to January 2000 would alter the list of affected communities.
252	Perry	Replies that such a change would leave a few more ordinances intact, while changing the date to January 2001 would leave even more intact.
263	Rep. Walker	Recalls testimony provided at the last hearing on the bill indicating that local jurisdictions will have the opportunity to pass ordinances in all non-exempt places.
272	Perry	Replies affirmatively, adding that the bill has no effect on ordinances designed to affect venues other than those on the exemption list.
283	Rep. Walker	Asks whether the surveys performed by ORA were sent only to ORA members.
291	Perry	Answers that surveys were sent to all restaurants and bars in areas affected by local anti-smoking ordinances. Says ORA typically conducts polling for additional input, but indicates the board is ultimately responsible for policy decisions.
305	Rep. Walker	Asks if ORA is aware that the Tobacco Institute considers HB

311	Perry	3953 to be an effort to pre-empt local anti-smoking ordinances.
319	Rep. Walker	Replies he is not familiar with the Tobacco Institute.
		Remarks that some groups have sought this type of preemption measure and inquires whether ORA is working to the same end.
330	Perry	Acknowledges that ORA has not supported full restaurant bans before but that it has worked on preemption before.
345	Chair Witt	Says that HB 3953 was brought forth at the request of ORA, not tobacco companies.
353	Rep. Knopp	MOTION: Moves to ADOPT HB 3953-3 amendments dated 4/16/01.
356		VOTE: 11-0
	Chair Witt	Hearing no objection, declares the motion CARRIED.
362	Rep. Knopp	MOTION: Moves HB 3953 to the floor with a DO PASS AS AMENDED recommendation.
367	Rep. Bates	Expresses opposition to the bill. States he supports getting cigarettes out of restaurants, but says HB 3953 as amended is a clear case of preemption. Opines that the bill is a way of preventing communities from enacting logical and reasonable smoking bans.
385	Rep. Carlson	Says she been wrestling with the decision of whether to support the bill. Remarks that the issue seems to be between local control versus business interest versus freedom for smokers to congregate in public places. Expresses concern with smoke moving from smoking to non-smoking areas of restaurants, but concludes she was convinced as to the difficulty of putting it in statute. Indicates she will support the motion to send the bill to the floor.
TAPE 115, A		
011	Rep. Devlin	Indicates he opposes the motion. States the bill would have been less objectionable if it was expanded to other workplaces. Asserts that if the bill included bars but was not preemptive it would face fewer local proposals.
030	Rep. Garrard	Counters that Rep. Carlson should not focus on whether the measure reduces county rights. Mentions that ordinances banning smoking are controversial and says this bill will actually increase the number of areas where people cannot smoke in places like Klamath County.
042	Rep. Brown	Declares himself to be an ardent anti-smoker. Indicates he introduced the bill at the request of ORA because cities and counties should not have the ability to trample the rights of small businesses.
051	Rep. Johnson	Indicates she is persuaded by the bill's standardization and agrees with Rep. Garrard that there will be some areas where there will be more restrictions on smoking should the bill become law. Mentions that there has been no formal position taken by the Association of Oregon Counties (AOC) or the League of Oregon Cities (LOC). Indicates she will support motion but may not support the bill on the floor.
072	Rep. Walker	States opposition to the bill. Asserts that local communities can and should be able to pass their own ordinances. Submits that smoking ordinances will be clearly posted in all affected establishments, which should alleviate concerns that there will

106 Rep. Krummel be confusion as to whether a particular community has banned smoking. Asserts that the committee should acknowledge home rule.
Acknowledges the effect preemption can have on local government. Says local governments will still be free to pass ordinances on other types of business, meaning that HB 3953 does not represent total preemption. Indicates that he supports the bill.

120
VOTE: 7-4
AYE: 7 - Brown, Carlson, Garrard, Johnson, Knopp, Krummel, Witt
NAY: 4 - Bates, Devlin, Monnes Anderson, Walker V
Chair Witt
The motion CARRIES.

130 Rep. Devlin **REP. KRUMMEL will lead discussion on the floor.**
131 Rep. Walker Provides notice of possible minority report.
137 Chair Witt Provides notice of possible minority report.
Closes the work session on HB 3953 and opens a work session on HB 3785.

HB 3785 WORK SESSION

140 Dan Clem Committee Administrator. Gives a brief description of the bill. Mentions that the –1 amendments (**EXHIBIT J**) have been submitted for the committee’s consideration.

175 Jack Barnes Farmers Insurance. Testifies in support of HB 3785 (**EXHIBIT K**). Explains that the bill will allow the use of software for determining 80th percentile of charges, which the bill sets as a “reasonable” level for particular medical services. Notes that the bill offers medical providers the right of arbitration against insurers.

220 Doug Heatherington Farmers Insurance. Testifies in support of HB 3785. Says that 80th percentile with regard to bills for neurosurgery consultation fall below \$300. Comments regarding a growing practice among chiropractors of referring patients for subsequent examination by other chiropractors. Questions whether subsequent examinations for which the charge is over \$700 is reasonable.

280 Heatherington Offers an example of a patient who received numerous expensive treatments totaling \$3,021. Mentions another case where 2-day bill was \$14,000. Clarifies his purpose in offering these examples is not to disparage anyone, but rather to provide a sense of cost and argue for standards of reasonableness.

340 Heatherington States it is difficult to reconcile differences of opinion between insurers and providers as to the appropriate level of charges when there is no standard available for doing so. Explains that it is the patient who is usually stuck with the balance, adding that they often pursue arbitration against the insurer. Asserts that the solution to this problem is to use the 80th percentile standard, which is similar to standards used in other states. Says use of the percentile means that the highest 20 percent of bills will be

reimbursed at the rate of the 80th percentile.

TAPE 114, B

004	Heatherington	States that providers currently have no recourse against insurers, whereas this measure provides that to them. Reiterates that customers get caught in the middle of these disputes because there is no standard, and insurance companies are free to do as they see fit.
024	Keith Bauer	Attorney. States the bill allows a direct right of action between providers and insurance companies, meaning that patients are no longer required to take action.
034	Rep. Walker	Says that the programs in other states referred to as similar by Mr. Heatherington are in fact related to Worker's Compensation. Asks if there is any other state that does specifically what this bill proposes.
042	Heatherington	Replies negatively, adding that HB 3785 is a progressive step.
045	Rep. Walker	Inquires why the 80 th percentile was chosen.
047	Heatherington	Replies that the bill's proponents felt that was a reasonable standard.
050	Rep. Walker	Asks if there is evidence that the measure would save costs.
051	Heatherington	Replies affirmatively, referring to a class action lawsuit. Reiterates that one of the main purposes of the measure is to remove clients from the middle of disputes between providers and insurers.
060	Rep. Walker	Asks how the class action lawsuit is related to the bill.
064	Bauer	Replies that the bill will not affect the lawsuit, but says future relations will be improved.
073	Rep. Walker	Inquires whether the lawsuit will help determine whether this measure is constitutional.
075	Bauer	Acknowledges that the suit challenges certain issues, such as whether challenges can go further.
080	Rep. Walker	Casts doubt on whether the 80 th percentile is a reasonable standard.
083	Bauer	Suggests committee should determine whether the percentile is appropriate and, if not, what percentile would be appropriate.
087	Rep. Bates	Requests dollar amounts to illustrate where the costs fall out within the percentile structure. Acknowledges that there are some bad operators who take advantage of the system by charging unreasonable rates.
094	Heatherington	Provides informational materials (EXHIBIT L).
108	Rep. Bates	Asks for further definition of the cost level at the 80 th percentile.
124	Bauer	Offers to provide data prior to the next hearing.
130	Rep. Devlin	Asks whether the bill will be disallowed if the class action lawsuit determines the standard to be unreasonable.
138	Bauer	Replies that in that event a reasonable standard will be established in the future. Explains that codes are used to provide uniformity for all providers.
158	Rep. Devlin	States that if the court finds the standard unreasonable from a past case, then the 80 th percentile standard will not be viable.
163	Bauer	Concedes that the end result may be companies litigating different levels as being reasonable. Says there may be variations today as to what is reasonable.
177	Rep. Monnes-	Asks whether the proposed standard takes inflation into account

	Anderson	and, if so, what prevents providers from colluding to set an artificially high standard.
184	Bauer	Responds that this bill will work better than other states that use a cap figure because bills rise the 80 th percentile will rise as rates rise. Asserts that there are already methods for addressing the antitrust concerns raised by Rep. Monnes-Anderson.
202	Rep. Krummel	Remarks that “reasonable and necessary” also applies to diagnosis codes. Asks whether there may be situations in which something could be considered reasonable but unnecessary.
213	Heatherington	Replies affirmatively. Acknowledges there are other issues as well, such as duplicate billings and billing for multiple codes when a single code is applicable.
228	Rep. Krummel	Agree that one reason there is conflict is that clients defer to the insurance companies, as insurance companies have the resources to contest providers in court.
239	Heatherington	Remarks it is often difficult to discern motive in such cases, as some are honest mistakes while others are not.
247	Rep. Garrard	Asks if other insurance companies support the bill.
250	Bauer	Indicates that the insurance lobby supports HB 3785.
256	Rep. Bates	Recalls that there is a \$10,000 limit to Personal Injury Protection (PIP). Says some major trauma necessarily allows exceeding that limit and asks whether the bill allows that as well.
264	Heatherington	Says that PIP coverage must have a minimum of \$10,000 protection. Says that if a person is up against the limit this measure helps to ensure that the medical charges will be reasonable, which in turn helps to maintain some level of coverage.
281	Rep. Bates	Suggests that some clients may not know that the limit will preclude payment past a certain level.
296	Joy Ketchum	Testifies in opposition to HB 3785 (EXHIBIT M). States that the measure, if enacted, will decrease the already insufficient funds available to care for motor vehicle trauma patients. Says the measure provides inappropriately low compensation, especially for catastrophically injured patients who impose significant demands on physician time.
358	Ketchum	Comments on the recruitment problems, especially for bringing trauma surgeons to rural areas, and says the bill could further hinder recruitment.
386	Bill Long	Legacy Trauma Service. Testifies in opposition to HB 3785 (EXHIBIT N). Says the PIP was raised from \$5,000 to \$10,000, despite the fact that both medical expenses and the number of cases have increased substantially. Notes that a significant number of victims have no insurance despite mandatory insurance requirements for motor vehicle operation. Asserts it is difficult to persuade doctors to see patients when there is such a high likelihood that there will be no payment.
TAPE 115, B 010	Long	States that for those patients coming to the emergency room with catastrophic injuries the expenses are considerably higher than the \$10,000 the PIP provides. Offers as an illustration the bill for a broken leg totaling \$23,000. States the Oregon trauma system has improved greatly and is now one of the most complete in the nation. Agrees that this is a statewide problem,

		as accidents occur everywhere, and accidents in rural areas sometimes require costly transportation.
060	Long	Says that Medford hospital facilities often treat patients from California for whom they receive little or no reimbursement. Supports reasonable charges but says that in the post-managed care era there are fewer providers for many rural communities. Predicts that passage of the bill would be an immediate disaster in rural areas and eventually become one in urban areas as well.
078	Ketchum	States she has worked in all areas of health care. Opines that codes are already rampantly abused and that regulation and penalties are already severe. Indicates there are already consequences for inappropriate billing.
095	Rep. Johnson	Asks what other approaches may be able to address the concerns of the bill's proponents.
103	Long	Responds that OHD ensures high levels of care by reviewing care at every trauma center in the state. Says payment should be commensurate so long as there is verification that care is necessary and the charge is reasonable. Asserts it is difficult to address abuse in chiropractic treatment. Comments that many want to see the issue resolved but that this bill is not the appropriate vehicle for doing so.
122	Rep. Krummel	Asks how many trauma centers there are statewide.
124	Long	Replies there are approximately 38 trauma centers throughout Oregon.
130	Rep. Krummel	Asks how many orthopedic surgeons treat trauma cases.
136	Long	Replies there are a handful in the Portland area and a few in Eugene, but says most are general orthopedic surgeons who refer the most difficult cases to the few trauma surgeons.
147	Rep. Krummel	Refers to the charges in the handout and asks why radiology was performed twice on the same patient.
155	Long	Describes the different levels of radiology examinations that are performed at different facilities depending on the level of injury diagnosis.
177	Rep. Bates	States that there has been an increase in trauma loads in all rural areas, but that there are currently only five trauma surgeon orthopedists. Remarks that patients are being shipped out routinely from Medford to other areas for treatment. Laments that physicians often leave rural areas because the conditions and pay are better elsewhere. Agrees that the PIP is woefully low and is past due for an increase. Requests an estimate as to what might be a reasonable level for the PIP.
200	Long	Replies that the PIP is a real bargain for a minimal amount of insurance coverage. Says cost shifting is occurring because payment is being assigned to a third party.
216	Rep. Bates	Remarks that physicians leaving results in additional cost shifting. Says this problem could be countered by increasing the PIP.
231	Rep. Devlin	Asks if Dr. Long would support the bill if it provided an increase to the PIP.
236	Long	Replies that he may support such an amendment.
240	Rep. Monnes-Anderson	Notes that the focus seems to be on trauma centers, which are frequent users of the PIP. Refers to the bill and notes that billings issued by similarly licensed providers will be impacted. Says rates charged by trauma centers will come out relatively

		close to the actual cost of treatment.
264	Rep. Bates	Clarifies that the percentile is the billing level charged by 80 th percentile of providers.
270	Ketchum	Says there are relatively few qualified providers in some areas, meaning that those few are diluted into the larger number statewide..
286	Rep. Monnes-Anderson	Asks if those at different levels will be assigned the same code.
296	Ketchum	Clarifies the charge is similar but that there will be more low-code cases than high-code cases.
304	Rep. Monnes-Anderson	Notes that there are different codes for different levels of patient injury.
309	Ketchum	Responds that there will still be a dilution effect.
314	Rep. Krummel	Observes that PIP is not intended to replace health insurance. Remarks that Washington state has a significantly tax structure, which makes comparisons difficult.
326	Verne Saboe	Neurologist, Albany. Testifies in opposition to HB 3785. States he is the only board-certified chiropractic neurologist in Oregon. Acknowledges that insurance carrier need to save money but says HB 3785 is clearly anti-consumer and will result in inappropriate denials of treatment. Remarks that health care providers have little time to spend in arbitration.
378	Saboe	Says there is no mention as to where the data for the software is taken from. Describes the services that justify a \$625 charge for chiropractic examination. Reiterates that very few physicians are qualified to provide many of the services he offers.
TAPE 116, A		
020	Saboe	Contrasts his charges to those of the defense examiner used by insurance companies in legal proceedings. Mentions that he chaired a committee that looked into independent medical examinations, which determined that more objective examinations were necessary.
078	Rep. Krummel	Asks whether the reasonable necessity of care standard should be used instead of the 80 th percentile.
083	Saboe	Acknowledges that could work, depending on how it was used. Comments that the language of the reasonable necessity of care standard would need to be tightened.
096	Rep. Johnson	Requests the standards of care as set by the Oregon Board of Chiropractic Examiners (OBCE).
100	Saboe	Offers to provide the information to the committee in the future.
109	Richard Yugler	Private Practice lawyer, Portland. Testifies in opposition to HB 3785. States he is involved in the class action suit against Farmers Insurance. Says he opposes the bill for scientific, economic, legal, and moral reasons. Argues there is no basis for the 80 th percentile standard. Says every code is different and has different participation rates. Adds that there will always be 20 percent of providers who are not fully reimbursed.
152	Yugler	Explains how different insurance companies approach the problem and says there is a wide variety of practices that would be preempted by the bill. Opines that competition among insurers should determine the standard used. Indicates that Farmers Insurance abandoned the 80 th percentile, which was originally adopted as a profit-making mechanism, due to

199	Yugler	customer dissatisfaction. Calls the PIP insurance system is a patient indemnity scheme and says that in the event of a dispute the patient can still be billed for out-of-pocket expenses. Asserts that HB 3785 keeps patients in a disadvantaged position. Describes the class action case and the instance that prompted its being brought forth. Illustrates how the 80 th percentile is arbitrary and leaves out those who fall above it. Mentions that the average charge levied through arbitration is approximately \$200.
264	Yugler	Lists other problems with the bill. Says there is no direct relationship between doctors and PIP insurers, which keeps the patient in the middle. States that the bill imposes a universal and artificial floor.
308	Chair Witt	Disagrees that patients are kept in the middle of disputes by the bill, as Section 8 clearly prohibits providers from pursuing collection.
313	Yugler	Responds that the bill does not prohibit lawsuits seeking payment, adding that the PIP statute does not clarify the issue either.
329	Chair Witt	Concedes that the bill may require wordsmithing but says the intent is clear.
335	Yugler	States he would support some version of the bill that effectively creates a contractual relationship between providers, insurers, and patients. Restates his opposition to indemnity schemes that keep providers out of the equation.
365	Chair Witt	Concludes that Mr. Yugler is misconstruing Mr. Heatherington's testimony. Says the bill overrides the contractual relationship of the PIP.
383	Yugler	Responds that providers are already prohibited from charging excessive rates and reiterates that the bill does not succeed in removing patients from the middle.
396	Tom D'Amore	West Linn. Testifies in opposition to HB 3785. States that if arbitration is between patients and insurers the providers do not have the right to go to arbitration for amounts not deemed reasonable or necessary.
TAPE 117, A		
006	Chair Witt	Reminds Mr. D'Amore that the bill sets the appropriate level at the 80 th percentile.
012	D'Amore	Asserts that the bill reverses the assumption as to the necessary and proper charge for service.
016	Chair Witt	Presumes that parties would bring suit as necessary.
025	D'Amore	States it is unclear whether the provider can commence a collection action.
028	Chair Witt	Agrees the bill does not authorize collection action against patients but says it is allowed against insurers.
031	D'Amore	States that a collection action cannot commence against an entity that is not party to the contractual agreement. Asserts that the 80 th percentile is strictly a way for insurers to make more money without increasing rates, adding that the increased profits go straight to the bottom line. Compares the practice to price fixing of medical care, which is inappropriate for any profession. Submits that the bill would force out those who are best and brightest of their profession. Mentions that the software

		programs available are made by businesses that are “bought and paid for by the insurance industry.” Remarks that even Farmers Insurance does not even know the source of its own software data.
085	D’Amore	Says the bill provides no standards for reconsidering decisions. Reiterates that the 80 th percentile is statistically flawed, as it will continuously be triggered downward, no matter how low the rates go. Comments that insurers get a “scary sense of euphoria” from cutting treatment received by patients in the interest of profits.
117	Chair Witt	Asks if the Medicare maximum is a form of price fixing.
119	Yugler	Responds that doctors are free to refuse treatment to Medicare patients. Mentions that the federal government is exempted from antitrust laws.
126	Chair Witt	Asks if Worker’s Compensation is a form of price fixing.
128	Yugler	Replies that is an issue that has been worked out over the years.
134	D’Amore	Replies it is not because there is a contractual agreement between provider and insurer, which is not the case here.
138	Chair Witt	Asks whether the bill takes out the human element of treatment or increase profits by denying medical care.
147	D’Amore	Replies that is the case with the bill.
151	Rep. Krummel	Says the proposal could be seen as more fair, as it allows the third party to help set charges for different procedures.
168	Yugler	Replies that Medicare is a federal entitlement, while the PIP is not, and that the two are incomparable. Improper for indemnity systems to do so, comparing apples to oranges. Restates that many physicians refuse to treat Medicare patients because reimbursement rates are too low.
202	Rep. Krummel	Says providers would be endangering themselves if they charged different rates for the same procedure performed on Medicare patients and PIP patients.
217	Yugler	Assures that is not happening. Mentions that providers also provide charity care, meaning that someone must pay more.
239	Chair Witt	Asks if there are ever charges imposed that are not necessary or proper.
241	Yugler	Acknowledges that such cases do happen but says the cure is not to create a blanket solution like the one HB 3785 imposes.
248	Chair Witt	Wonders why prices will spiral downward, as the measure does not prohibit higher charges, but instead merely states that such charges will not be fully reimbursed.
251	Yugler	Says that the 80 th percentile standard implies that rates are too high.
256	D’Amore	Adds that rates falling above the percentile may be construed as unreasonable or unnecessary.
277	Chair Witt	Mentions that the bill will be back before the committee on April 20 for a public hearing. Closes the public hearing and adjourns the meeting at 7:58 p.m.

Submitted By,

Reviewed By,

Patrick Brennan,
Committee Assistant

Dan Clem,
Committee Administrator

EXHIBIT SUMMARY

- A – HB 3500, -1 amendments, staff, 1 p.**
- B – HB 3500, testimony, Joan Smith, 1 p.**
- C – HB 3192, -1 amendments, Rep. Jeff Merkley, 1 p.**
- D – HB 3192, -2 amendments and testimony, David Hooper, 3 pp.**
- E – HB 3502, testimony, Gary Bauer, 2 pp.**
- F – HB 3502, testimony, Ron Eachus, 3 pp.**
- G – HB 3502, informational materials, Ron Eachus, 1 p.**
- H – HB 3874, testimony, Grant Higginson, 7 pp.**
- I – HB 3953, -3 amendments, staff, 1 p.**
- J – HB 3785, -1 amendments, staff, 1 p.**
- K – HB 3785, testimony, Jack Barnes, 1 p.**
- L – HB 3785, informational materials, Doug Heatherington, 1 p.**
- M – HB 3785, testimony, Joy Ketchum, 4 pp.**
- N – HB 3785, informational materials, Bill Long, 4 pp.**