

SENATE COMMITTEE ON JUDICIARY

April 26, 2001 Hearing Room 343
1:00 p.m. Tapes 111 - 113

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Peter Courtney, Vice Chair
 Sen. Roger Beyer
 Sen. Ginny Burdick
 Sen. Verne Duncan
 Sen. Steve Harper
 Sen. Rick Metsger

STAFF PRESENT: **Andrea Shartel, Counsel**
 Marilyn Odell, Counsel
 Bill Taylor, Counsel
 Annola DeJong, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2216 Public Hearing**
 HB 2217 Public Hearing
 HB 2218 Public Hearing
 SB 114 Work Session
 SB 667 Work Session
 HB 2392 Public Hearing and Work Session
 HB 2386A Public Hearing

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 111, A		
004	Chair Minnis	Calls the meeting to order at 1: 19 p.m. and opens a joint public hearing on HB 2216, HB 2217 and HB 2218.
<u>HB 2216, HB 2217 & HB 2218 PUBLIC HEARING</u>		
011	Andrew Aubertine	Assistant Attorney General, Oregon Department of Justice (DOJ) Submits testimony and testifies in support of HB 2216, HB 2217, and HB 2218 (EXHIBIT A). States that HB 2216 addresses the scope and reach of the Oregon Antitrust Act to provide remedy for injuries to Oregonians as a result of conduct counter to the Oregon Antitrust Act, even in cases where there is injury to residents of other states.
060	Aubertine	Recounts a multi-state antitrust case brought against a pharmaceutical company. States that the court determined that Oregon consumers and agencies could not recover damages that did not result from conduct that could be directly connected to Oregon. Lists the reasons why the DOJ disputes the court's decision.
115	Aubertine	Remarks that most states have antitrust acts that complement the federal antitrust act. Expresses concern that future cases could prohibit Oregon from collecting damages unless the Oregon Antitrust Act is amended.
141	Chair Minnis	Asks which court heard the case discussed by Mr. Aubertine.
143	Aubertine	Replies the case in question was a federal court action filed in

		the District of Columbia.
148	Chair Minnis	Asks whether the court explained why it believed the Oregon Antitrust Act was constrained to companies doing business within the state.
151	Aubertine	Replies the court cited the plain language, ORS 646.715(2), which stipulates the purpose of the Act is to apply to interstate trade or commerce, meaning that the Act is jurisdictional and does not apply to any conduct that extends beyond Oregon's borders.
160	Chair Minnis	Presumes that HB 2216 amends the specific statute referenced by the court.
162	Aubertine	Replies affirmatively. Explains that HB 2217 allows indirect purchasers to sue a manufacturer directly for damages caused by violations of the Oregon Antitrust Act. Defines indirect purchasers.
216	Aubertine	Explains that the indirect purchaser prohibition has been applied to the Oregon Antitrust Act in the past. Indicates that 36 states and Puerto Rico have passed laws allowing indirect purchasers to seek economic relief.
275	Aubertine	References the recent vitamins antitrust settlement, of which Oregon received only a miniscule fraction due to lack of provisions for monetary relief to indirect purchasers.
330	Aubertine	Discusses the rationale for the court's decision in <i>Illinois Brick Co. V. Illinois (1977)</i> , which prompted the indirect purchaser legislation that has proliferated in many states. Explains that the motivation for HB 2217 is simply to offer Oregonians the same opportunities available to consumers in other states.
390	Sen. Beyer	Comments that Oregon received its fair share from the tobacco settlement and requests an explanation as to why that case was different.
396	Aubertine	Responds that Oregon's claim to the tobacco settlement was challenged by the <i>Illinois Brick</i> case, but DOJ countered that the Oregon Office of Medical Assistance Programs (OMAP) was the only agency to incur an overcharge.
415	Sen. Beyer	Asks whether HB 2217 presents a possible increase in cost to Oregon consumers.
431	Aubertine	Doubts there is potential for cost increases as a result of HB 2217, since many other states have already taken similar action. Submits that HB 2217 should act as a deterrent to violating the Oregon Antitrust Act.
455	Sen. Beyer	Requests evidence that the disparity in antitrust legislation between Oregon and other states has not resulted in price differences. Asserts that the potential cost of lawsuit could force manufacturers to purchase additional insurance and subsequently raise the price of their goods.
476	Aubertine	Replies he cannot speak to that issue, other than to say that he has never seen evidence of such practices.
TAPE 112, A		
043	Sen. Beyer	Opines that cost savings on the purchase of an item is preferable to the ability to receive a large settlement in the event of a successful antitrust lawsuit.
049	Aubertine	Reiterates that he has seen no evidence that prices for goods were higher in states with antitrust laws immune to the <i>Illinois</i>

058 Chair Minnis *Brick* challenge than in Oregon. Asks how such a case comes to the attention of the Attorney General and what sorts of activities might be construed as violating antitrust laws.

061 Aubertine States that the most common instance is price fixing. Says that such cases often come to the attention of the Oregon Attorney General through an interstate network called the National Association of Attorneys General. Indicates that federal enforcement agencies sometimes solicit the participation of states in pursuing these cases.

084 Chair Minnis Requests an explanation of the relationship between federal and state actions and antitrust laws.

087 Aubertine Describes the complementary relationship between federal and state antitrust laws.

110 Chair Minnis Requests confirmation that antitrust cases typically end in negotiated settlements.

112 Aubertine Replies affirmatively. Describes the difference between models of *Illinois Brick*-related state antitrust legislation.

145 Counsel Taylor Asks whether a class action lawsuit is permitted.

146 Aubertine Answers yes. States that HB 2218 is a modified version of HB 2217 in that it clarifies restitution and disgorgement, the latter being the removal of profits unlawfully gained through price gouging. Reiterates that it would be helpful for state law to clarify that both direct and indirect purchasers have access to that remedy.

178 **Jim Gardner** **Microsoft Corporation**
 Testifies in support of HB 2217 and HB 2218. Recalls legislation brought before the Oregon Legislature in 1979 to repeal the *Illinois Brick* decision. Asserts that Oregon's antitrust laws should parallel federal antitrust law to the greatest extent possible. Warns against the risk of multiple liability for defendants.

226 Gardner Comments that treble damages could be awarded at each level of distribution, meaning that a company could find itself responsible for paying nine times the damages. Points out that a minority of the states have passed legislation allowing indirect purchaser recovery and that there are wide disparities between the types that have been passed. Asks for the opportunity to work on compromise amendments.

266 Chair Minnis States that he will investigate the matter further. Closes the joint public hearing on HB 2216, HB 2217 and HB 2218 and opens a work session on SB 114.

SB 114 WORK SESSION

309 **Rep. Richard Devlin** **House District 24**
 Submits testimony and testifies in support of SB 114 (**EXHIBIT B**). Recalls passage of SB 937 (1999), which established the Genetics Research Advisory Committee (GRAC) and allowed for anonymous research.

360 Rep. Devlin Asserts that SB 114 keeps Oregon up-to-date with advances in the protection of genetic privacy.

392 Vice Chair Courtney Refers to the SB 114 –6 amendments (**EXHIBIT C**) and asks whether Rep. Devlin is supportive of them.

398 Devlin Replies affirmatively.

406	Rep. Jeff Merkley	House District 16 Testifies in support of the -7 amendments (EXHIBIT D) to SB 114. Mentions that there is legislation moving through the House that provides a much broader ban on the use of genetic information, specifically related to insurance. States that the formation of an advisory committee is consistent with the work in the House.
TAPE 111, B		
025	Chair Minnis	Requests the number for the House bill related to genetic privacy.
027	Counsel Odell	Replies that the bill number is HB 2917.
030	Rep. Merkley	Clarifies that HB 2917 addresses the use of genetic information in the insurance industry, specifically the balance of research to privacy.
040	Sen. Duncan	Asks whether the purpose of the -7 amendments is to bring SB 114 in line with HB 2917.
041	Rep. Merkley	Replies that the -7 amendments appear to be a good way to bring the two bills in line.
046	Vice Chair Courtney	Requests confirmation that Rep. Merkley is not testifying against the bill itself, only in support of the -7 amendments.
056	Rep. Merkley	Replies affirmatively.
061	Sen. Duncan	Asks whether the two measures are compatible.
063	Rep. Merkley	Answers that the bill in its original form is likely incompatible with HB 2917, but says it should not be problematic to reconcile the problems.
070	Chair Minnis	Laments the possible need for amendments to resolve conflicts between the two bills later on in the process. Requests an estimate as to when HB 2917 may come before the committee.
074	Rep. Merkley	Replies the House committee that has HB 2917 under consideration may take action as early as the current week. Suggests that conflict amendments may be avoided by removing the references to insurance from SB 114.
085	Counsel Odell	States that segregating the insurance provisions may be problematic, as the insurance provisions within HB 2917 contain a 6-year sunset. Mentions a work group considering HB 2917.
102	Rep. Merkley	Asserts that SB 114 could be amended once it moves to the House in order to avoid conflicts.
114	David Fidanque	American Civil Liberties Union (ACLU) Testifies as neutral on SB 114. Discusses the -3 amendments (EXHIBIT E) and the -6 amendments to SB 114. Suggests conceptual changes to the -3 amendments related to the Oregon Genetic Privacy Advisory Committee (OGPAC).
151	Sen. Harper	Asks whether the proposed change would add members to OGPAC.
153	Fidanque	Replies affirmatively. Notes problems with the -6 amendments that should be addressed before the amendments are adopted. Expresses confidence that the issue can be worked out once the bill moves to the House. Asserts that individuals should consent to the use of genetic material prior to its use and that they should be able to opt out of such an agreement.
204	Bob Shoemaker	OGPAC Testifies in support of SB 114. Provides background information on OGPAC.

231	Peter Jacky	OGPAC Testifies in support of SB 114. Indicates that OGPAC does not favor a combination of HB 2917 and SB 114. Emphasizes the need to allow for continued use of anonymous genetic samples.
261	Chair Minnis	Mentions that the committee has also received the –4 amendments (EXHIBIT F).
285	Vice-Chair Courtney	MOTION: Moves to ADOPT SB 114-3 amendments dated 4/24/01.
288		VOTE: 6-0-1
289	Chair Minnis	EXCUSED: 1 – Metsger Hearing no objection, declares the motion CARRIED.
290	Vice-Chair Courtney	MOTION: Moves to ADOPT SB 114-4 amendments dated 4/25/01.
291		VOTE: 6-0-1
292	Chair Minnis	EXCUSED: 1 – Metsger Hearing no objection, declares the motion CARRIED.
293	Vice-Chair Courtney	MOTION: Moves to ADOPT SB 114-6 amendments dated 4/25/01.
294		VOTE: 6-0-1
295	Chair Minnis	EXCUSED: 1 – Metsger Hearing no objection, declares the motion CARRIED.
296	Vice-Chair Courtney	MOTION: Moves to ADOPT SB 114-7 amendments dated 4/25/01.
299		VOTE: 6-0-1
300	Chair Minnis	EXCUSED: 1 - Metsger Hearing no objection, declares the motion CARRIED.
309	Greg Fowler	Executive Director, GeneForum
343	Adam Davis	Describes his group’s involvement with genetic privacy issues. Davis and Hibbits, Inc. Submits testimony related to SB 114 (EXHIBIT G). Describes a questionnaire designed to gauge public opinion regarding genetic research and privacy.
392	Davis	Reviews the findings from the questionnaire. States that the survey demonstrates that the public desires options when it comes to how to protect genetic privacy.
461	Sen. Burdick	Asks how the Gene Forum study was able to judge the seriousness of the crimes in question.
474	Davis	Refers to the exhibit and says that the questionnaire asked respondents to compare the crimes in question to other, more well known types of crimes.
486	Chair Minnis	Closes the work session on SB 114 and opens a work session on SB 667.
<u>SB 667 WORK SESSION</u>		
<u>TAPE 112, B</u>		
039	Counsel Odell	Provides committee members with the –2 amendments (EXHIBIT H).
052	Ann Christian	Legislative Fiscal Office Discusses the fiscal impact statement for SB 667. Comments on

107 Christian similar legislation passed in Oklahoma.
Indicates that the Oregon State Police (OSP) will be paid for every DNA test performed, but that the fiscal impact will be indeterminate until the bill becomes law.

128 **Sen. Beyer** **MOTION: Moves to ADOPT SB 667-2 amendments dated 4/20/01.**

131 **VOTE: 6-0-1**

132 **Chair Minnis** **EXCUSED: 1 - Courtney**
Hearing no objection, declares the motion CARRIED.

133 **Sen. Beyer** **MOTION: Moves SB 667 to the floor with a DO PASS AS AMENDED recommendation.**

135 **VOTE: 6-0-1**

140 **Chair Minnis** **EXCUSED: 1 - Courtney**
Hearing no objection, declares the motion CARRIED.
SEN. HARPER will lead discussion on the floor.

144 Chair Minnis Closes the work session on SB 667 and opens a public hearing on HB 2392.

HB 2392 PUBLIC HEARING

155 **Ronelle Shankel** **Child Support Division, Oregon Department of Justice (DOJ)**
Submits testimony and testifies in support of HB 2392 (**EXHIBIT I**). States that HB 2392 creates an additional exemption for child support income withholding in cases of foster and juvenile care children. Clarifies the measure applies only to cases where the child is in the custody of the Oregon Youth Authority (OYA) or State Office of Services to Children and Families (SCF).

208 Chair Minnis Closes the public hearing and opens a work session on HB 2392.

HB 2392 WORK SESSION

212 **Sen. Beyer** **MOTION: Moves HB 2392 to the floor with a DO PASS recommendation.**

215 **VOTE: 6-0-1**

217 **Chair Minnis** **EXCUSED: 1 - Courtney**
Hearing no objection, declares the motion CARRIED.
SEN. BEYER will lead discussion on the floor.

219 Chair Minnis Closes the work session on HB 2392 and opens a public hearing on HB 2386A.

HB 2386A PUBLIC HEARING

228 **David Kenagy** **Executive Director, Oregon Law Commission**
Testifies in support of HB 2386A (**EXHIBIT J**). States that HB 2386A unifies the forms and simplifies the process for debt collection. Requests that the committee also adopt the –A3 amendments (**EXHIBIT K**) to HB 2386A.

285 Dave Heynderickx **Legislative Counsel**
Provides an account of the activities of the work group. States that the –A3 amendments simply clarify the measure. Indicates that the measure makes it easier to enforce income garnishment for debtors.

333 Chair Minnis Asks who brought forth the –A3 amendments.

338 Heynderickx Remarks that the –A3 amendments deal with notices of garnishment and provide the garnishee a hearing to resolve the

		process.
370	Chair Minnis	Asks where such a hearing would take place.
374	Heynderickx	Replies that the hearing must be a due process hearing.
384	Randall Jordan	Department of Revenue
		Clarifies that the location of the hearing is dependent upon the type of garnishment and the particular agency charged with overseeing it.
409	Chair Minnis	Opines that if the goal of HB 2386A is clarification of the process then the bill should stipulate specifically the process and the location of the hearing.
435	Heynderickx	Suggests that the committee could amend the bill to specify the type of hearing that will take place, with the result being a specified location in statute.
451	Jordan	Describes the difficulty in declaring a specific procedure for the hearings process related to multiple agencies. Acknowledges that the measure could refer to individual agencies.
467	Chair Minnis	Responds that the clarification could be provided through statutory reference in order to provide clarity even to those who are not well versed in the process.
TAPE 113, A		
021	Sen. Beyer	Asks whether the problem addressed by the –A3 amendments was anticipated when the bill was in the House.
028	Heynderickx	Replies that the language in question was already in the bill, but was moved by Legislative Counsel at the request of DOJ.
036	Jordan	Adds that the issue was originally believed to be outside the scope of HB 2386A.
050	Sen. Metsger	Asks whether the lack of mention of time frame for the hearing might be problematic.
057	Jordan	Answers that the only statutory reference states that the hearing must occur promptly.
066	Kenagy	Remarks that the Oregon Law Commission takes no position on either the House Amendments or the –A3 amendments.
077	Jordan	Explains that issues such as the one Sen. Metsger raises have arisen since the bill was drafted. Says that he was uncomfortable about setting a time frame without additional input.
090	Chair Minnis	Closes the public hearing on HB 2386A and adjourns the meeting at 3:15 p.m.

Submitted By,

Reviewed By,

Annola DeJong,
Committee Assistant

Craig Prins,
Counsel

Transcribed By,

Patrick Brennan
Committee Assistant

EXHIBIT SUMMARY

- A – HB 2216/HB 2217/HB 2218, testimony and informational materials, Andrew Aubertine, 118 pp.**
- B – SB 114, testimony, Rep. Richard Devlin, 2 pp.**
- C – SB 114, -6 amendments, staff, 2 pp.**
- D –SB 114, -7 amendments, Rep. Jeff Merkley, 1 p.**
- E – SB 114, -3 amendments, David Fidanque, 1 p.**
- F – SB 114, -4 amendments, staff, 2 pp.**
- G – SB 114, informational materials, Adam Davis, 24 pp.**
- H – SB 667, -2 amendments, staff, 6 pp.**
- I – HB 2392, testimony, Ronelle Shankle, 8 pp.**
- J – HB 2386A, testimony, David Kenagy, 13 pp.**
- K – HB 2386A, -A3 amendments, David Kenagy, 1 p.**