

SENATE COMMITTEE ON JUDICIARY

February 11, 1999 Hearing Room 343

3:00 pm Tapes 34 - 35

**MEMBERS PRESENT:** Sen. Bryant, Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

**MEMBER EXCUSED:** Sen. Courtney

**STAFF PRESENT:** Anne Tweedt, Counsel

Judy Minnich, Administrative Support

**MEASURE/ISSUES HEARD:** Public Hearing and Work Session

SB 50

SB 145

SB 493

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 34, A		
006	Chair Bryant	Calls the meeting to order at 3:15 pm. Opens public hearing on SB 145.
<u>SB 145 PUBLIC HEARING</u>		
022	Doug Schmor	Oregon State Bar, Business Law Section Submits written testimony and

		testifies in support of SB 145 <b>(EXHIBIT A)</b> . SB 145 authorizes the conversion to, and merger of, one or more business entities and details the procedures for these actions. Discusses history of the drafting of SB 145 and indicates the procedures under SB 145 will save money and time for businesses in Oregon.
062	<b>Robert Art</b>	<b>Oregon State Bar, Business Law Section</b>  Testifies in support of SB 145. The draft of SB 145 was intended to be policy neutral. A fairly extensive commentary has been prepared to indicate the intent of the legislation <b>(EXHIBIT B)</b> .
096	Chair Bryant	By allowing these mergers can we do this in a method that is tax free?
102	Art	No effect on the taxes. Each type of business combination will have to address that separately.
105	Chair Bryant	Closes the public hearing and opens the work session on SB 145.
<b><u>SB 145 WORK SESSION</u></b>		
<b>108</b>	<b>Sen. Bryant</b>	<b>MOTION: Moves SB 145 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Sen. Courtney</b>
	<b>Chair Bryant</b>	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. BRYANT will lead discussion on the floor.</b>
115	Chair Bryant	Closes the work session on SB 145 and opens the public hearing on SB 50.
<b><u>SB 50 PUBLIC HEARING</u></b>		

123	Stacy Hankin	<p><b>Oregon State Bar, Practices and Procedures Committee</b></p> <p>Submits written testimony and testifies in support of SB 50 <b>(EXHIBIT C)</b>. Indicates that SB 50 modifies the law requiring court to award attorney fees to prevailing plaintiff in actions of damages for personal injury or property damage where the amount pleaded is \$7500 or less. Establishes similar increase for award of attorney fees to defendant on counterclaim. Discusses how the \$7500 figure was established.</p>
216	Chair Bryant	Currently, mandatory arbitration takes over in these ranges. Do we know how many are appealed and therefore would constitute the caseload we are talking about?
230	Hankin	I don't have those statistics.
227	Chair Bryant	The determination of attorney fees would have initially been made by the arbitrator. Have there been any other changes in this statute since 1985?
239	Hankin	Yes, one change. When the district and circuit courts merged, there was a change in a reference to a statute.
245	Chair Bryant	What about if we changed this to be a prevailing party statute instead of the plaintiff who prevails? What would you think of that?
254	Hankin	Discusses the effect of this change. Believes the unique quality of this statute is that before an issue gets to court there is negotiation going on.
276	Sen. Tarno	Asks question regarding effective dates of SB 50.
282	Chair Bryant	Provides explanation.
292	Sen. Burdick	I believe it means that the action may have happened before this law takes effect but the lawsuit has to be filed after the effective date.
300	Sen. Nelson	Will most of these lawsuits be personal injury claims?
303	Hankin	Potentially, there are probably more property damage cases, but actually,

		more personal injury cases are filed.
313	Sen. Nelson	What are the requirements for the payment of attorneys?
315	Chair Bryant	In these situations, the arbitrator decides what attorney fees are reasonable and those fees become a part of the judgment.
326	Sen. Nelson	Do these incentives work?
327	Chair Bryant	Without the possibility of attorney fees in these small cases most of the recovery will go to the attorney. To encourage settlement and to provide for some opportunity to recover attorney fees this system was probably devised. In fact, sometimes a damage claim would be reduced to fit in under the limit and still allow attorney's fees to be requested.
352	Sen. Burdick	So the attorney's fees don't have to fit under that cap?
353	Chair Bryant	Right. It is even possible that the attorney's fee could be more than the claim. I believe I was here when we added the section which says that if a settlement offer is made and the actual reward is less than that offer, the attorney's fees can't be awarded. We have also raised the prevailing fees to encourage settlement.
386	Hankin	Also, the enhanced fees are available.
385	Chair Bryant	Yes, if it is frivolous, either the claim or the defense of the claim, then the arbitrator can increase those fees.
409	<b>Lana Butterfield</b>	<b>SAFECO</b> Testifies against SB 50.
424	<b>John Clements</b>	<b>SAFECO</b> Submits written testimony and testifies in opposition to SB 50 <b>(EXHIBIT D)</b> . SB 50 tilts the playing field dramatically in favor of the plaintiff. It will be quite expensive for the insurance industry in general. SB 50 only allows the plaintiff to recover fees. Elucidates other possible negative impacts on the court system and the insurance industry.

**Tape 35, A**

064	Butterfield	SAFECO would support the SB 50-2 amendments ( <b>EXHIBIT E</b> ).
066	<b>Tom Kranovich</b>	<b>SAFECO</b> Testifies in opposition to SB 50. Indicates that very few of the cases which are being discussed actually make it into court. Believes the possibility of attorney fees is an incentive to file a case. Raising the judicial limit increases the possibility that carriers will appeal. Discusses the definition of prevailing party under Oregon law.
130	Butterfield	Discusses the relevance of the 1985 letter from the Department of Justice providing testimony on a bill being considered in that session ( <b>EXHIBIT F</b> ). Indicates the ñ2 amendments (Exhibit E) would bring the dollar limit to \$5000. This change would bring SB 50 into line with SB 42A, which sets the small claim limit at \$5000.
154	Sen. Nelson	In the 1985 letter, (Exhibit F), the Department of Justice indicates they just want to repeal the statute. What do you think of that?
161	Butterfield	We might like to have it repealed, but we arenít suggesting that.
177	<b>John Powell</b>	<b>State Farm and North Pacific Insurance</b> Testifies in opposition to SB 50.
182	<b>Tom Mortland</b>	<b>North Pacific Insurance</b> Testifies in opposition to SB 50. Indicates that 99.8% of claims were paid without a legal dispute. The .2% not settled cost us a lot of money. Claims under \$4000 are almost always paid because paying the attorney fees is not cost effective. Raising the level to \$7500 will increase costs more than it appears on the surface.
232	Chair Bryant	You must challenge some claims, even if they are under \$4000.
235	Mortland	We donít litigate those. The cost to us is almost as much as paying the claim. If we lose, then we will pay even more. It is just not a good

		economic decision.
264	Powell	I realize that we overpay at times in order to avoid attorney's fees. This effects the cost of the insurance.
300	Hankin	Indicates that the average personal injuries claim is about \$7000. Assumes the premiums reflect this average cost, not the lower \$4000 which is currently in the law. If fault is an issue, the defendant is allowed to file a counterclaim.
332	Sen. Brown	Is there any value in keeping the \$5000 limit consistent with the small claims ceiling?
342	Hankin	No, they weren't consistent before. We were more concerned with the appropriate level.
366	Sen. Brown	Verifies earlier testimony regarding the membership of the procedures and practice committee.
381	Chair Bryant	Closes public hearing on SB 50 and opens public hearing on SB 493.
<b><u>SB 493 PUBLIC HEARING</u></b>		
400	<b>Doug Barber</b>	<b>Peace Health Medical Group</b> Submits written testimony and testifies in support of SB 493 <b>(EXHIBIT G)</b> . SB 493 amends the medical service lien law to save time and money for medical providers without compromising the protections for individuals and insurance providers which exist under current law. Notes the Oregon Medical Association supports this bill.
<b>Tape 34, B</b>		
008	<b>Win Calkins</b>	<b>Attorney, Sacred Heart Medical Center</b> Submits written testimony and testifies in support of SB 493 <b>(EXHIBIT H)</b> . Discusses the five basic changes to the medical lien law made by SB 493. Weid like to offer two minor amendments. The first one would be on page 1, line 19, Section 1. Add, after the word "insurance", "but not including health insurance." In drafting the bill, the Legislative Counsel

		inadvertently left out wording regarding attorney's fees which was in old statute ORS 87.580. We would like the attorney's fees added back. It would probably fit into Section 7 (c).
083	Calkins	
116	Chair Bryant	Did you give any thought to alternate care providers in drafting this bill?
122	Calkins	No, we didn't, but it could be done.
128	Chair Bryant	Would there be confusion if they exercised their lien rights?
131	Calkins	I don't know if we have a chiropractor lien law.
133	Chair Bryant	If not, I'm surprised we haven't been asked for one. Who can file a medical lien now?
141	Calkins	Most cases involve hospitalized patients. It's too cumbersome to file a lien for a routine outpatient visit.
154	<b>Mike Crew</b>	<b>Attorney, Oregon Medical Association</b>  Testifies in support of SB 493 and agrees with the proposed amendments from Mr. Calkins. Indicates the drafting of SB 493 has been a collaborative endeavor.
180	<b>John Powell</b>	<b>Blue Cross, State Farm, North Pacific Insurance</b>  Testifies in support of SB 493. We are happy to concur in the amendments offered by Doug Barber. Discusses the reasons for needing these amendments.
245	Anne Tweedt	Mr. Calkins, we received at least one call from an attorney who was interested in why there is no discharge provision?
250	Calkin	In a real property lien we do need to remove them, but these liens just expire automatically after 180 days.
268	Chair Bryant	Closes public hearing on SB 493.
273	<b>Sen. Brown</b>	<b>MOTION:</b>

		<p><b>Requests unanimous consent that the rules be SUSPENDED to allow SEN. BROWN to BE RECORDED as voting AYE on the motion to move SB 145 to the floor with a DO PASS recommendation.</b></p>
		<p><b>VOTE: 5-0</b> <b>EXCUSED: 2 - Burdick, Courtney</b></p>
	<p><b>Chair Bryant</b></p>	<p><b>Hearing no objection, declares the motion CARRIED.</b></p>
276	<p><b>Sen. Qutub</b></p>	<p><b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. QUTUB to BE RECORDED as voting AYE on the motion to move SB 145 to the floor with a DO PASS recommendation.</b></p>
		<p><b>VOTE: 5-0</b> <b>EXCUSED: 2 - Burdick, Courtney</b></p>
	<p><b>Chair Bryant</b></p>	<p><b>Hearing no objection, declares the motion CARRIED.</b></p>
280	<p><b>Chair Bryant</b></p>	<p><b>Adjourns the meeting at 4:26 pm.</b></p>

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

**EXHIBIT SUMMARY**

**A ñ SB 145, written testimony dated February 11, 1999 from the Oregon State Bar, 4 pp**

**B ñ SB 145, written legislative commentary, Robert Art, 17 pp**

**C ñ SB 50, written testimony dated February 11, 1999 from Stacy Hankin, 4 pp**

**D ñ SB 50, written testimony dated February 11, 1999 from John Clements, 2 pp**

**E ñ SB 50, SB 50-2 amendments (LC 1179) dated 2/10/99, staff, 1 pp**

**F ñ SB 50, testimony on HB 2097 from William Cloran in 1985, 3 pp**

**G ñ SB 493, written testimony dated February 11, 1999 from Doug Barber, 5 pp**

**H ñ SB 493, written testimony dated February 11, 1999 from Win Calkins, 2 pp**

**I ñ SB 493, memo dated February 10, 1999 from Tom Heckler, 1 pp**