

## SENATE COMMITTEE ON JUDICIARY

February 25, 1999 Hearing Room 343

3:00 p.m. Tape 49 - 50

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

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

**STAFF PRESENT:** William Taylor, Counsel

Anne Tweedt, Counsel

Judith Minnich, Administrative Support

**MEASURE/ISSUES HEARD:** Possible Measure Introduction

SB 236 Public Hearing and Work Session

SB 204 Public Hearing and Work Session

HB 2329A 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.

TAPE/#	Speaker	Comments
Tape 49, A		
003	Chair Bryant	Calls the meeting to order at 3:13 p.m.

004	Counsel Bill Taylor	<p>Introduces:</p> <p>LC 3694, relating to victimis rights.</p> <p>LC 3166, relating to insurance for rental vehicles.</p> <p>LC 3903, relating to justice courts.</p> <p>LC 3392, relating to peer support counseling sessions.</p> <p>LC 3567, relating to personnel evaluations.</p> <p>LC 3665, relating to laser pointers.</p> <p>LC 2239, relating to access rights in service roads.</p> <p>LC 3168, relating to safe deposit boxes.</p> <p>LC 3167, relating to title to real property.</p> <p>LC 2027, relating to corporations; creating new provisions; and amending ORS 60.001.</p> <p>LC 1636, relating to school safety zones, amending ORS 166.025.</p>
038	Sen. Bryant	<b>MOTION: Moves LC's: 3694, 3166, 3903, 3392, 3567, 3665, 2239, 3168, 3167, 2027, 1636 BE INTRODUCED as committee bills.</b>
		<p><b>VOTE: 5-0</b></p> <p><b>EXCUSED: 2 - Burdick, Qutub</b></p>
Chair Bryant		<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>HB 2329A PUBLIC HEARING</u></b>		
042	Bob Castagna	<p><b>Oregon Catholic Conference</b></p> <p>Submits written testimony and testifies in support of HB 2329A (<b>EXHIBIT A</b>). HB 2329A prohibits examination in court of a clergy member as to any confidential communication made to the clergy member, if the clergy member has an absolute duty not to disclose the communication under the tenets or discipline of the clergy memberis church. Discusses the history of the issue addressed by HB 2329A. Places into the record letters from the Christian Science Committee on Publication for Oregon (<b>EXHIBIT B</b>) and from the Northwest District of the Lutheran Church ñ Missouri Synod (<b>EXHIBIT C</b>).</p>
066	Sen. Courtney	Is the definition of "member of the clergy" acceptable to all parties?

076	Castagna	Indicates that "member of the clergy" is defined in the current law and there has been no objection to the current definition.
079	Chair Bryant	Closes the public hearing and opens the work session on HB 2329A.
<b><u>HB 2329A WORK SESSION</u></b>		
081	Sen. Courtney	<b>MOTION: Moves HB 2329A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 5-0</b>  <b>EXCUSED: 2 - Burdick, Qutub</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. COURTNEY will lead discussion on the floor.</b>
<b><u>SB 236 PUBLIC HEARING</u></b>		
098	Chair Bryant	Discusses SB 235 from the 1997 session. SB 236 was originally introduced as technical amendments to the 1997 legislation based upon an attorney general's opinion. Several interested parties have now suggested amendments.
116	Kevin Shuba	<b>Assistant Attorney General, Oregon Department of Justice</b>  Testifies in support of SB 236. Indicates that SB 236, as originally printed, will make three changes. It will permit the boards covered by the legislation to share information with law enforcement and other regulatory agencies, make explicit that they can disclose information as necessary to investigate a complaint, and will permit disclosure of emergency suspension orders. The ñ 3 amendments give the Board discretion to describe to complainants the reasons for their complaints being dismissed. The ñ3 amendments would also make the process for obtaining records, and the review of requests for records, uniform with the process used by other state agencies.
295	Shuba	Discusses the ñ2 amendments that are intended to allow disclosure of information as it is discussed in Executive Session to persons other than board members. Boards often need to have a confidential discussion and include persons other than board members. Since SB 235 also addresses the need for confidentiality, the two statutes overlap, and an explicit exception should be made to address this issue.

340	Chair Bryant	Indicates that SB 235 was legislation that took twenty-one regulatory boards and made their rules and procedures uniform. Generally, the boards are pleased with the system established in 1997.
415	Sen. Brown	Would allowing others to attend Executive Session include legislators who might be interested in monitoring the workings of a board?
426	Shuba	That is correct.
<b>Tape 50, A</b>		
019	<b>Kathleen Haley</b>	<b>Board of Medical Examiners (BME)</b>  Submits written testimony and testifies in support of SB 236 ( <b>EXHIBIT D and E</b> ). Describes the work of the BME. Indicates that the intent of SB 235, the previous legislation, is appropriate. SB 236 is needed to correct certain unforeseen difficulties in carrying out that intent. Discusses the ñ1 amendments and the reasons for them. Voiced concern about the complainant's identity being revealed if portions of the ñ2 and ñ3 amendments are passed.
120	Counsel Tweedt	Indicates that the Oregon Board of Nursing is concerned about their inability to share confidential information with another health professional licensing board as well as with law enforcement entities and recommends certain wording changes to achieve this ( <b>EXHIBIT F</b> ).
145	<b>Mike Crew</b>	<b>Attorney, Oregon Medical Association (OMA)</b>  In general, the OMA supports SB 236 with amendments. The amendments the OMA have suggested appear as the ñ1 amendments in the hand-engrossed bill ( <b>EXHIBIT G</b> ). The OMA does not object to the ñ2 and ñ3 amendments. Given the attorney general's opinion on SB 235, some action must be taken to allow for information sharing. Discusses the intent of the ñ1 amendments.
214	Sen. Brown	You're suggesting that no one who participates in the hearing process should be questioned regarding the hearing, including the investigator?
219	Crew	No, just invited guests should not be questioned. Continues discussing the ñ1 amendments. Discusses the confidentiality issue as it relates to a licensee obtaining information regarding the charges to be heard by the BME.
265	Chair Bryant	Asks if the OMA understands that redaction to maintain the anonymity of the complainant might mean that they would not get any information.
267	Crew	Indicates that they understand that Board discretion may mean they don't get access to a given file. Continues discussing the hand-engrossed SB 236 ( <b>EXHIBIT G</b> ). Indicates that, in situations where no action is taken by a licensing board, the OMA doesn't object to a summary of the reasons for no action being provided to the complainant, but not the source documents. Discusses the attorney general's opinion on SB 235 that led to the need for SB

		236. Discusses the reason certain information should be provided to the licensee in order to prepare for a contested case hearing.
338	Sen. Burdick	How would you address the problem of confidentiality for the complainant?
342	Crew	We are just asking for a summary. I think it is possible to do this without revealing the identity of the complainant.
353	Chair Bryant	Discusses the relating clause and whether Sections 6 and 7 suggested by the OMA fit under that clause or should be handled separately.
364	Crew	Indicates that in crafting SB 235 it was clearly the intent to authorize depositions to be taken by the licensee as part of the discovery process. The BME has, as a matter of policy, decided to not allow these depositions under the current legislation. We need to allow a licensee to conduct some fundamental discovery.
402	<b>Connie McKelvey</b>	<p><b>Attorney</b></p> <p>Indicates that she has a practice in which she often represents doctors. Indicates that her clients are rarely given access to any of the charges against them, and find the proceedings by the BME very distressful. Even if the charges go all the way to a contested hearing, little if any information is provided regarding the charges.</p>
<b>Tape 49, B</b>		
010	Chair Bryant	When information is provided at a hearing, do you then need to ask for a continuance in order to review that information?
012	McKelvey	Discusses a case she had in front of the Board of Medical Examiners and the discovery problems that were experienced in her representation of the licensee. Indicates the BME has a policy of not allowing depositions. Indicates her support of amendments to open up the hearing process.
073	Sen. Courtney	Asks about the possibility of issuing a subpoena to obtain the information.
079	McKelvey	Indicates that the BME has the subpoena power and would not exercise it on her behalf.
097	<b>John Brenneman</b>	<p><b>Oregon Funeral Directors Association (OFDA)</b></p> <p>Submits written testimony and testifies in support of SB 236 as amended in the hand-engrossed bill (<b>EXHIBIT H</b>).</p>
123	Shuba	Regarding the amendments suggested by the OMA, much of the subject matter deals with procedures in contested cases that are covered under the Administrative Procedures Act (APA). This is an entirely different chapter of the

		law. Under ORS 183.440, when the actual hearing is set, the licensee can issue subpoenas for witnesses on their own. Under the APA, the licensee gets a description of the factual issues as well as the relevant laws. Also, expert testimony in civil action is not discoverable in Oregon. Indicates only the information that is to be relied on for pursuit of the complaint is disclosed to the licensee. States that under the APA, providing depositions is discretionary by the board involved.
243	Haley	<p>First, the BME has never allowed depositions since it would take too long, and cost too much. We do provide a copy of transcript of licensee's testimony before the board.</p> <p>Second, I can only remember one request for a subpoena in five years and we issued it. We would not turn one down.</p> <p>Third, I believe in the case cited, the information requested by the licensee was originally supplied by the licensee. They already had the information.</p>
271	Sen. Burdick	If you had exculpatory information from someone, would you be willing to subpoena that person if requested to do so?
277	Haley	Yes, we would. Discusses the information that would be in the transcript provided to the licensee.
321	Counsel Tweedt	Indicates her earlier description of amendments submitted by the nursing profession was taken from a letter received from the Board of Nursing <b>(EXHIBIT F)</b> . Indicates it is the Oregon Nurse's Association that is represented here today and states that staff was unaware of their suggested amendments until this afternoon. Places them in the record <b>(EXHIBIT J)</b> .
331	Chair Bryant	Closes the public hearing on SB 236 and opens the public hearing on SB 204.
<b><u>SB 204 PUBLIC HEARING</u></b>		
342	Counsel Tweedt	SB 204 deals with the actual information that a board can keep confidential, which is the bulk of what was covered by SB 235 from the 1997 session. SB 236 addresses to whom the information can be disclosed. If SB 204 is approved, then consideration should be given to conforming amendments to address the disclosure of this information.
352	<b>Elaine Hamm</b>	<p><b>Oregon Board of Investigators</b></p> <p>Submits written testimony and testifies in support of SB 204 <b>(EXHIBIT K)</b>. SB 204 establishes that certain information obtained as a part of licensing investigators or registering operatives or as a part of investigation of complaints regarding investigators, operatives or applicants is confidential and not subject to disclosure. Discusses the complaint procedure and the disclosure laws in relation to those complaints filed. Indicates the OBI has need for some confidentiality provisions to be in place. Their applicants have concerns about personal information being released and used by the criminal element.</p>

**Tape 50, B**

054	<b>Ron Morraccini</b>	<b>Oregon Association of Licensed Investigators</b>  Testifies in support of SB 204. They have received requests to conduct investigations for other licensing boards. The confidentiality of the information gathered in these investigations is in question without confidentiality provisions in place. Sixty-seven percent of the Association's members are former law enforcement personnel and they are quite concerned about personal information being released.
086	<b>Tom Mann</b>	<b>Licensed Private Investigator</b>  Testifies in support of SB 204. Discusses the need for confidentiality and the need to have a mechanism to delete frivolous complaints.
117	Chair Bryant	Discusses the public record laws.
123	Sen. Brown	Aren't frivolous complaints just a part of doing business?
125	Mann	I don't necessarily think they should be.
132	Sen. Brown	Shouldn't the public have a right to know about complaints, frivolous or not?
142	Mann	Discusses the elements of proper disclosure and the right to privacy.
186	Counsel Tweedt	Indicates that the Oregon Association of Hospitals and Health Systems sent written testimony on SB 236 ( <b>EXHIBIT I</b> ) and two letters were received in opposition to SB 204 ( <b>EXHIBITS L and M</b> ).
196	Chair Bryant	Adjourns hearing at 4:48 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,  
Administrative Support Counsel

## **EXHIBIT SUMMARY**

**A ñ HB 2329A, written testimony, Robert J. Castagna, Oregon Catholic Conference, 21 pp**

**B ñ HB 2329A, written testimony, Bruce Fitzwater, Christian Science Churches, 1 pp**

**C ñ HB 2329A, written testimony, Warren Schumacher, Lutheran Church, Missouri Synod, 1 pp**

**D ñ SB 236, written testimony dated February 25, 1999, Board of Medical Examiners, 5 pp**

**E ñ SB 236, Sample documents, Board of Medical Examiners, 11 pp**

**F ñ SB 236, written testimony dated February 17, 1999, State Board of Nursing, 4 pp**

**G ñ SB 236, hand engrossed bill dated 2/25/99, prepared by staff, 8 pp**

**H ñ SB 236, written testimony, John Brenneman, Oregon Funeral Directors Association, 1pp**

**I ñ SB 236, written testimony dated February 17, 1999, Oregon Association of Hospitals and Health Systems, 2 pp**

**J ñ SB 236, recommended changes to SB 236 dated February 25, 1999, Oregon Nurses Association, 1 pp**

**K ñ SB 204, written testimony dated February 25, 1999, Elaine Hamm. Oregon Board of Investigators, 1 pp**

**L ñ SB 204, written testimony dated 2/25/99, Ronald J. Miller, 4 pp**

**M ñ SB 204, written testimony, Thia Bell, 3 pp**