

SENATE COMMITTEE ON JUDICIARY

April 29, 1999 Hearing Room 343

3:00 p.m. Tapes 154 - 156

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: SB 236 ñ Work Session

SB 504 ñ Work Session

SB 937 ñ Work Session

SB 1008 ñ Work Session

SB 1019 ñ Work Session

SB 1125 ñ Work Session

SB 1215 ñ 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.

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TAPE/#	Speaker	Comments
Tape 154, A		
003	Chair Bryant	Calls the meeting to order at 3:10 p.m.
<u>SB 504 WORK SESSION</u>		
019	Brian Boe	National Association of Independent Insurers Testifies in support of SB 504 as amended with the ñ1 amendments (EXHIBIT A).
030	Tom Mortland	North Pacific Insurance Company Submits written testimony and testifies in support of SB 504 as amended with the ñ1 amendments (EXHIBIT B). SB 504 solves a problem that occurred following a series of decisions by the Oregon Appellate Courts. Persons claiming uninsured, underinsured or personal injury protection benefits now have a strong incentive to litigate rather than settle their claims. Discusses the reasons for this incentive to litigate and the provisions of SB 504, as amended, which would correct this bias.
146	Chair Bryant	Recesses work session on SB 504 and opens work session on SB 1215.
<u>SB 1215 WORK SESSION</u>		
152	Sen. Marylin Shannon	State Senate District 15 Testifies in support of SB 1215. Indicates that in Kansas City the divorce rates fell 35% in two years when covenant marriage was chosen. In Modesto, California, in ten years it dropped 40%. Emphasizes the voluntary nature of SB 1215.
180	Pastor Gary Hutt	Sunrise Church, McMinnville, Oregon Testifies in support of SB 1215. Discusses the development of covenant marriage in Yamhill and elsewhere in Oregon. Notes that there has been a dramatic decrease in divorces with a covenant marriage. Cites statistics from areas that have implemented such marriages.
264	Chair Bryant	What percentage of the people that you counsel decide not to get married?
270	Hutt	This is a new process in Yamhill County. We plan to cover many issues in the pre-marital counseling. At least one pastor in our group has had a couple decide they were incompatible.

289	Rep. Shannon	In Corvallis, two of the three counseled decided they were not ready to marry. We have amendments that will ensure the county clerk will not have an extra burden from this bill. We can take of this issue in the House.
301	Sen. Brown	This would get rid of no fault divorce for people who enter this type of marriage. They can only obtain a divorce by proving adultery, felonies, and so on. What is the burden of proof you would use to prove this?
311	Rep. Shannon	For many years no-fault divorce was not an option in Oregon. Perhaps we would just go back to the previous procedures. We didn't specify a burden of proof in SB 1215.
315	Sen. Brown	Under SB 1215, you may also file for divorce if you can prove that the other party has abused one of your children. Abuse of a child who is not a child of one of the married partners is not grounds for divorce.
323	Sen. Shannon	If you are abusing any child, it is a felony.
326	Sen. Brown	What if the district attorney office doesn't have the ability to prove it?
331	Sen. Shannon	What has been done before? Evidence must always be presented and accusations proven.
338	Chair Bryant	Discusses the process of divorce in Oregon before no-fault divorce was enacted.
350	Sen. Shannon	Emphasizes that SB 1215 specifies a process that it totally voluntary.
361	Sen. Brown	Asks the meaning of "habitual intemperance" as used in SB 1215.
364	Sen. Shannon	That's a term for a drunk, don't you think?
375	Sen. Burdick	Sentenced to death or imprisonment at hard labor is grounds for divorce? I wasn't aware that we had imprisonment at hard labor in Oregon.
389	Sen. Shannon	A lesser offense would probably not qualify.
401	Sen. Courtney	MOTION: Moves SB 1215 to the floor with a DO PASS recommendation.
		VOTE: 6-1 AYE: 6 - Brown, Courtney, Nelson, Qutub, Tarno, Bryant

		NAY: 1 n Burdick
	Chair Bryant	<p>The motion CARRIES.</p> <p>SEN. SHANNON and SEN. STARR will lead discussion on the floor.</p>
416	Chair Bryant	Reconvenes work session on SB 504.
<u>SB 504 WORK SESSION</u>		
425	Susan Youngstrom	<p>Allstate Insurance</p> <p>Submits written testimony and testifies in support of SB 504 (EXHIBIT C). Outlines the current situation without SB 504. Removes uninsured, underinsured and medical claims from a statute that was designed to address property damage.</p>
Tape 155, A		
085	Mick Alexander	<p>Oregon Trial Lawyers Association</p> <p>Submitted written testimony and testifies in opposition to SB 504 (EXHIBIT E). Indicates if SB 504 is approved, an insured seeking what is due under his contract is assured of less than a complete recovery because he must bear the cost of litigation.</p>
159	Chair Bryant	You are saying that prior to <i>Carrier v. Hicks</i> and <i>Foltz v. State Farm</i> the claimant would be entitled to attorney's fees if you filed in circuit court?
165	Alexander	Although those cases clarified the law, it would always have been the law. Those cases established that the insurance company couldn't force binding arbitration. Requiring binding arbitration was what eliminated the right to attorney's fees.
182	Chair Bryant	If someone has an uninsured motorist claim they can choose to settle, but attorney's fees must come out of that settlement, or, they can sue and recover the attorney's fees also. There are very few clients who wouldn't prefer the lawsuit.
189	Alexander	You may file it, but that presupposes that all these cases are going to trial driven by recovery of attorney's fees. Settlement is preferable for everyone.
204	Chair Bryant	You mentioned the work group from 1997 and I don't remember whether this issue was discussed.

211	Alexander	I don't know either.
213	Chair Bryant	Maybe another option would be that before attorney's fees are recovered you have to complete a claim and the insurance company must make an offer. In order to recover attorney's fees you would have to beat that offer through litigation.
218	Alexander	You already have the statute available to make a tender offer. Under recent Supreme Court opinions, those tender offers can be made up to the time of trial in order to cut off attorney's fees.
234	Mortland	In my experience, personal injury protection cases are not arbitrated because the amounts are small and easily settled. The uninsured or underinsured motorist claims are more often arbitrated since they are larger. No one assumed that personal injury protection cases didn't have to be arbitrated.
259	Sen. Nelson	Is there a cap on uninsured motorist awards?
265	Youngstrom	The minimum insurance coverage is \$25,000.
276	Chair Bryant	Closes the work session on SB 504 and opens a work session on SB 1019.
<u>SB 1019 WORK SESSION</u>		
282	John Powell	State Farm Insurance Testifies in support of SB 1019 as amended with the ñ4 amendments and a minor conceptual amendment (EXHIBIT E). SB 1019 creates, as in the banking industry, a self-audit evaluation privilege. A highly regulated industry like banking or insurance is required to live under many rules, regulations and laws. A self-compliant audit is to make sure that the insurer is abiding by those laws. SB 1019 creates a privilege against the use of this audit as evidence. The ñ4 amendments define a self-audit.
386	Chair Bryant	Can you explain the conceptual amendment that needs to be made?
388	Counsel Tweedt	Yes, on page 5 of the ñ4 amendments, line 23, delete the reference to subsection 3. The elements for proving the privilege are contained in all of section 5, not just subsection 3.
397	Sen. Bryant	MOTION: Moves to AMEND SB 1019-4 amendments on page 5, in line 23, after "5," delete "(3)".
		VOTE: 4-0 EXCUSED: 3 - Brown, Courtney, Qutub

	Chair Bryant	Hearing no objection, declares the motion CARRIED.
403	Sen. Bryant	MOTION: Moves to ADOPT SB 1019-4 amendments dated 4/29/99 as amended.
		VOTE: 4-0 EXCUSED: 3 - Brown, Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
407	Sen. Bryant	MOTION: Moves SB 1019 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 EXCUSED: 2 - Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
<u>SB 236 WORK SESSION</u>		
433	Counsel Tweedt	SB 236 makes technical changes to the provisions of SB 235 that was adopted last session. SB 235 standardized the disciplinary practices and disclosure of information that health professional regulatory boards collect during their investigation of licensees and applicants. SB 236 was introduced to correct provisions that didn't allow the sharing of relevant information between state agencies. The 9 amendments define those entities who can share this information. They also allow a board to issue a summary of findings to a complainant.

Tape 154, B

058	Chair Bryant	We have had several meetings and exchanged information and have an agreement between the Attorney General's Office, Oregon Medical Association and the Board of Medical Examiners. The 9 amendments are a compromise between these parties.
069	Sen. Brown	Indicated she had the Legislative Counsel's Office draft amendments, the 2 amendments, which would allow certain information to be placed on the internet.
072	Chair Bryant	Suggests this might be a good amendment for the House to take up.
074	Sen. Bryant	MOTION: Moves to ADOPT SB 236-9 amendments dated 4/29/99.
		VOTE: 4-0 EXCUSED: 3 - Burdick, Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
075	Sen. Bryant	MOTION: Moves SB 236 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0 EXCUSED: 3 - Burdick, Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
<u>SB 937 & SB 1008 WORK SESSION</u>		
089	Jim Gardner	PhRMA Submits written testimony and testifies regarding SB 937 and SB 1008. Indicates through a work group they have reached substantial agreement on genetic privacy elements (EXHIBIT G). Asks that they be allowed a little more time to complete their work.

109	Chair Bryant	Looking at these consensus points, it does appear you've come a long ways. Do you want to discuss the points of disagreement, or come back after further work?
121	Gardner	I would like to emphasize the positive and work a little more.
128	Jim Mattis	Counsel, Oregon Health Sciences University It has not been easy to get this far, but we want to continue to try to reach consensus.
145	Chair Bryant	Indicates that as technology changes, this issue will be back again. Suggests that work during the interim could be done.
162	Dr. Brad Popovich	Oregon Genetic Privacy Advisory Committee The genetic privacy issue needs to be addressed since sometimes people are discriminated against on a genetic basis. These laws are not designed to restrict research, just protect privacy. Both SB 937 and SB 1008 address the five consensus elements in Exhibit G, but in a different manner. We want to protect the privacy of patients but not unnecessarily restrict research.
236	Chair Bryant	Closes the work session on SB 937 and SB 1008 and opens the work session on SB 1125.
<u>SB 1125 WORK SESSION</u>		
259	Don Palmer	Real Estate Appraiser Indicates that SB 1125 provides a good opportunity to make changes to the law to re-establish a good balance between property owners and a condemning entity.
286	Donald Stark	Attorney, Portland, Oregon Submits written testimony and testifies in support of SB 1125 with amendments (EXHIBIT H). Discusses his work as a condemnation attorney representing both the landowner and the condemning entity. Discusses the seven areas in which changes are proposed.
Tape 155, B		
030	Thomas Tongue	Attorney, Portland, Oregon Testifies in support of changes 1 through 7 as outlined on the last page of Exhibit H. Indicates he represents small landowners in condemnation cases. Discusses the current bias in the condemnation laws against the small landowner.

126	Chair Bryant	Discusses the condemnation process as it relates to smaller properties. If the value is less than \$100,000, perhaps we could deviate from the current law. Would that take care of most of the problem?
149	Tongue	It would help, however, I think we should be consistent whatever the value of the property. Whose value would be taken to determine whether the property is over \$100,000? The landowner or the condemning authority? Mediation that would require full disclosure is a good process. All appraisals should be disclosed.
181	Sen. Brown	Compares it to custody cases in which experts were chosen by each side based on their testimony. Asks how choosing appraisals which favor one side or the other is different than choosing expert testimony in other types of cases.
195	Tongue	Traditionally, you do get to choose your expert. If the idea is to promote settlement by putting all the cards on the table, then it should be done with equity. The condemning authority would still have the choice of which appraiser to hire.
215	Stark	The condemning authority must divulge the identity of their appraiser at the time of the appraiser's first property examination.
222	Don Palmer	I don't think what has been proposed will add huge dollar amounts to the taxpayers. I think this will just achieve a balance between the two parties.
238	Al Lightner	Oregon Department of Transportation, Right of Way Project Administration Submits written testimony and testifies in opposition to SB 1125 (EXHIBIT I & J). Discusses SB 1036 from the 1997 session and indicates the changes which would be made by SB 1125 to current law would result in a loss to Oregonians.
263	Sen. Brown	Did the Department of Transportation oppose SB 1036 last session?
265	Lightner	We were neutral on the original bill but in its final form we did support it. Discusses the process of condemnation as it now exists. Notes that there are two areas of statute which address condemnation, ORS Chapter 281 and Chapter 35. Both areas must be considered when administering the condemnation process. Notes only one percent of condemnations go to trial. The rest are settled. Indicates SB 1036 from the 1997 session has proven to be very beneficial to the process.
Tape 156, A		
021	Chair Bryant	What would you think about raising the arbitration to \$50,000?
023	Lightner	The Department of Transportation would have no objections.

032	Chair Bryant	I never intended that there would be depositions taken from the appraisers. Do you object if we clarify that?
035	Lightner	It seems to me that appraisers should have to defend their evaluations but I'm not an attorney.
040	Chair Bryant	The written appraisal would provide the basis for the evaluation. Also, do you have any objection to providing all appraisals?
049	Lightner	I can't think of any case in which an appraisal we obtained would damage us. Perhaps we should be cautious about the timing of the provision of these appraisals. It seems that we provide the appraisal months in advance, so I'm not certain what the problem is.
073	Chair Bryant	The proposal is that a condemning entity would file a written offer at least 40 days before court filing and the offer would be accompanied by all appraisals. In an emergency, it could be 20 days before court filing.
082	Lightner	I'd be willing to look at this again. I'm not clear on which offer is specified.
091	Chair Bryant	Discusses the process of immediate possession of property under the condemnation process.
104	Lightner	Indicates that changing the process for immediate possession just adds another layer to the process. Public hearings have already been held much earlier in the process.
112	Bill Penhollow	Association of Oregon Counties Testifies regarding SB 1125 and indicates they would like more time to discuss the issues with their members.
132	Chair Bryant	We can hold off on this bill today and give the work group another time to meet.
144	Chair Bryant	Adjourns meeting at 5:30 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

EXHIBIT SUMMARY

A ñ SB 504, -1 amendments dated 4/21/99, 2 pp

B ñ SB 504, written testimony from Tom Mortland, 3 pp

C ñ SB 504, written testimony from Susan Youngstrom, 6 pp

D ñ SB 504, written testimony from M. Alexander, 1 pp

E ñ SB 1019, -4 amendments dated 4/29/99, 6 pp

F ñ SB 236, -9 amendments dated 4/29/99, 9 pp

G ñ SB 937 & SB 1008, written testimony from Jim Gardner, 1 pp

H ñ SB 1125, written testimony from J. Junkin, 3 pp

I ñ SB 1125, written testimony from A. Lightner, 1 pp

J ñ SB 1125, written testimony from A. Lightner, 3 pp