

SENATE COMMITTEE ON JUDICIARY

June 22, 1999 Hearing Room B

7:30 a.m. Tapes 248 - 249

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HB 3044 ñ Work Session

HB 2417 ñ Work Session

HB 3492 ñ Work Session

HB 3630 ñ Work Session

HB 2758 ñ Work Session

HB 2805 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.

TAPE/#	Speaker	Comments

Tape 248, A

003

Chair Bryant

Calls the meeting to order at 7:40 a.m.

HB 3492A WORK SESSION

024

Counsel Tweedt

HB 3492A aligns state law with the federal cigarette labeling and advertising act. Discusses the 11 amendments that specify the time line for the notice required to retailers and distributors (**EXHIBIT A**).

033

Sen. Courtney

MOTION: Moves to ADOPT HB 3492A-A11 amendments dated 6/17/99.

VOTE: 6-0

EXCUSED: 1 - Nelson

Chair Bryant

Hearing no objection, declares the motion CARRIED.

037

Sen. Courtney

MOTION: Moves HB 3492A to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 6-0

EXCUSED: 1 - Nelson

Chair Bryant

Hearing no objection, declares the motion CARRIED.

SEN. COURTNEY will lead discussion on the floor.

HB 3630A WORK SESSION

044

Counsel Tweedt

HB 3630A establishes the Women, Infants and Children (WIC) program in statute. The 3 amendments supply an emergency clause in order to meet

		federal funding requirements (EXHIBIT B).
051	Sen. Brown	MOTION: Moves to ADOPT HB 3630A-A3 amendments dated 6/21/99.
		VOTE: 6-0 EXCUSED: 1 - Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
066	Sen. Brown	MOTION: Moves HB 3630A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor.
<u>HB 3044A WORK SESSION</u>		
091	Brian DeLashmutt	Oregon Council of Police Associations, Association of Oregon Corrections Employees and Federation of Oregon Parole and Probation Officers Testifies in support of HB 3044A. Discusses the reasons for needing HB 3044A which provides the process for an expedited hearing under certain circumstances when public safety personnel request testing of source person. Discusses current procedures when exposure to HIV has been verified as a possibility. Testifies in opposition to the ñA5 amendments (EXHIBIT C).
186	Chair Bryant	Discusses his inability to support the ñA5 amendments that attempt to outline a procedure to ensure due process.
195	Sen. Burdick	Isn't there another bill out there that does the same thing?
200	DeLashmutt	It is a similar bill, but it is not the same.

206	Sen. Burdick	In that bill, if you ask the person to be tested and they say no, then you can go ahead and test anyway.
211	DeLashmutt	HB 3044A has the same process in essence as long as the ñA5 amendments are not adopted.
227	Sen. Burdick	Would it make sense to have only one bill?
230	DeLashmutt	I would not have a problem with that.
235	Chair Bryant	The relating clause would probably not apply to both situations.
247	Sen. Duncan	MOTION: Moves HB 3044A to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. DUNCAN will lead discussion on the floor.
252	Chair Bryant	Recesses hearing at 8:00 a.m.
260	Chair Bryant	Reconvenes hearing at 8:25 a.m.
276	Sen. Bryant	MOTION: Moves to RECONSIDER the vote by which HB 3492A was sent to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED.

HB 3492 WORK SESSION

283	Chair Bryant	Discusses the ñA10 amendments (EXHIBIT D).
276	Mark Nelson	7-11 Convenience Stores Testifies in support of the ñA10 amendments to HB 3492A that make it illegal for minors to attempt to purchase tobacco products. Possession is currently illegal, but attempting to purchase is not. The ñA10 amendments would make tobacco illegal for minors in the same way alcohol is now illegal, both attempting to purchase and possession are against the law (EXHIBIT E).
330	Chair Bryant	As part of the penalty, a judge can order suspension of the minorís driving privileges for up to one year?
334	M. Nelson	Thatís correct and could also impose a fine.
338	Chair Bryant	Is there a fiscal statement associated with this bill?
338	M. Nelson	Not that Iím aware of.
343	Sen. Duncan	My concern is that we may have more instances of unlicensed and therefore uninsured drivers on the road.
360	Sen. Tarno	I think this is intended to be more of a deterrent against purchasing tobacco products.
370	Chair Bryant	Discusses the implications of the loss of a driverís license.
376	Gary Oxley	Safeway, RiteAid, Fred Meyer, Oregon Neighborhood Stores Association Testifies in support of HB 3492A with the ñA10 amendments. Indicates that U. S. Tobacco has no position on this bill.
384	M. Nelson	Indicates that he represents RJ Reynolds Tobacco and they have no position on HB 3492A.
391	Tom Novack	Oregon Health Leadership Against Tobacco Testifies in support of HB 3492A and indicates he has not had much time to review the ñA10 amendments. Suggests the Health Division should be consulted regarding the potential loss of federal funds should HB 3492A be passed.

417	Chair Bryant	Discusses federal mandates and whether the ñA10 amendments would conflict with federal mandates. Indicates that taking a driverís license or car is widely acknowledged by law enforcement to be an effective deterrent.
482	Sen. Bryant	MOTION: Moves to ADOPT HB 3492A-A10 amendments dated 6/8/99.
		VOTE: 6-0 EXCUSED: 1 ñ Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
492	Sen. Bryant	MOTION: Moves to ADOPT HB 3492A-A11 amendments dated 6/17/99.
		VOTE: 6-0 EXCUSED: 1 ñ Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
494	Sen. Bryant	MOTION: Moves HB 3492A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 ñ Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED . SEN. COURTNEY will lead discussion on the floor.
<u>HB 2805A WORK SESSION</u>		
043	Chair Bryant	HB 2805A provides civil immunity for statements made by a person in the

		course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body. We were discussing the ñA9 amendments to HB 2805A and would like a discussion of the meaning of quasi-judicial body and immunity as it relates to current law (EXHIBIT F).
059	Dave Heynderickx	<p>Legislative Counsel</p> <p>The issue that was raised by the ñA9 amendments was the extent to which statements made in a quasi-judicial proceeding are already protected under the law. Discusses the meaning of quasi-judicial body as compared with a legislative body. Case law has granted immunities, both in quasi-judicial, legislative and administrative hearings. These immunities are slightly different. Discusses absolute immunity from defamation suits in quasi-judicial hearings. Discusses the standard of "material and false" statements that receive immunity in these hearings. Explains that only statements that are immaterial to the proceedings and false are not protected from prosecution.</p>
115	Chair Bryant	In a judicial proceeding there are remedies for lying. In a quasi-judicial hearing what is the remedy?
123	Heynderickx	I don't think there is one. The policy is there to permit free and open discussion.
136	Chair Bryant	Even if the statements are libelous, the person who has been defamed has no cause of action. If someone is under oath, then they would be liable.
142	Heynderickx	Discusses land use proceedings. Indicates some immunity is available under the law now. Discusses qualified privilege versus absolute privilege.
213	Sen. Burdick	If quasi-judicial hearings are wrapped in into the bill, would it be strengthening the protections?
216	Heynderickx	It would give a little more protection. Discusses the reasons for this.
232	Sen. Burdick	Would you say this would increase the likelihood of a summary judgment?
235	Heynderickx	Not much, with respect to legislative and quasi-judicial proceedings.
268	Chair Bryant	When does qualified privilege apply?
271	Heynderickx	It applies to non-judicial or quasi-judicial proceedings currently.
276	Chair Bryant	Exceptions require that actual malice must be shown.
282	Heynderickx	There are several ways in which abuse of the privilege can be shown.

290	Chair Bryant	Discusses the "New York Times" standard for qualified privilege.
294	Heynderickx	Oregon has established this through case law.
299	Chair Bryant	In HB 2805A, we are talking about absolute immunity?
302	Heynderickx	Yes.
305	Chair Bryant	If we pass this bill as it stands, qualified privilege would not apply, is that correct?
306	Heynderickx	That's correct.
308	Chair Bryant	The ñA9 amendments, which did away with the application of immunity in quasi-judicial proceedings, have no effect because of the case law?
314	Heynderickx	Under existing case law, quasi-judicial proceedings enjoy absolute immunity. Right now, if you don't fall within the definition of absolute immunity, if you make an irrelevant statement, you are wide open for a suit.
330	Chair Bryant	Discusses the concept of "false and immaterial" statements in a hearing versus "false and material" statements that may be made. If the statement is false and material there would be absolute immunity. If the statement is false and immaterial, then there would not be immunity.
345	Heynderickx	That is correct, perhaps there would be a little more immunity under this bill for the false and immaterial statement since you must prove the statement was knowingly false.
367	Sen. Burdick	Discusses why the "false and immaterial" standard should apply.
405	Chair Bryant	What if the person making the statement knew it was false?
410	Sen. Burdick	In order for us to prove that, we must go to court. We are trying to err on the side of open discourse. The people who lie become very ineffective in these arenas. We don't need these suits to uncover lies.
Tape 248, B		
010	Chair Bryant	What would be the remedy for someone who is trying to develop his property and is unable to because of a lie?

015	Sen. Burdick	The remedy is to prove the lie in the public forum.
017	Chair Bryant	Discusses the ñA10 amendments (EXHIBIT G).
033	Sen. Courtney	Discusses the bill from the private citizenís standpoint. Indicates the technicalities of the law are confusing. Many statements are made in public hearings which may not be material.
052	Heynderickx	Relates an example of a person in a public hearing making an immaterial statement.
067	Sen. Courtney	Discusses a slightly different example of immaterial.
080	Sen. Tarno	Discusses another situation in which a false statement might cause a problem.
087	Heynderickx	The last example has facts that are easily verified. The false and immaterial standard is used by the legislative committees now.
106	Chair Bryant	Discusses another example including the alleged character of an individual developer. Discusses the ñA8 amendments (EXHIBIT H).
126	Heynderickx	The -A8 amendments include malice, so the plaintiff must prove actual malice. A false statement is not the same as malice. These would give less protection to the plaintiff.
140	Sen. Duncan	Is the concern that the developer has been damaged by the charge, even though he could prove it false?
149	Chair Bryant	Yes. This ñA8 amendments would give him a cause of action.
159	Sen. Burdick	There is another remedy. This scenario assumes that the public body is just sitting there, not trying to get at the truth. Public bodies are obligated to get at the truth and require proof. <i>The New York Times</i> standard requires a court case, which is a cumbersome way to do it.
181	Chair Bryant	But your ability to acquire damages for the defamation would be limited.
183	Sen. Burdick	If the defamation is refuted, has actual damage occurred?
189	Chair Bryant	That would be up to the court.
191	Sen. Burdick	There are remedies under libel law for these cases in which someone is widely defamed in the media.

204	Sen. Duncan	Looking at the ñA8, do you see the opportunity to use them for frivolous lawsuits, to harass and delay?
210	Chair Bryant	Discusses legislative history of trying to remedy frivolous lawsuits.
228	Sen. Courtney	So, if someone makes a knowingly false, malicious statement they are protected by this legislation?
231	Heynderickx	As long as it is relevant to the proceedings.
240	Sen. Duncan	Has there been a problem with this standard for the legislative process?
244	Chair Bryant	No, because the legislative process is a deliberative one.
257	Sen. Tarno	We need to make it clear that lies are not acceptable. It doesn't make sense to me that we would allow someone to testify to falsehoods and expect the deliberative body to ferret out the truth.
270	Sen. Burdick	The public policy here is to make people feel safe in their testimony. If they know they're going to be sued, then it stifles discourse.
291	Sen. Tarno	Why can't we put this in the statute?
293	Sen. Burdick	A lie is a matter of opinion that must be decided by the court. People don't feel safe testifying with the potential for SLAPP suits.
312	Sen. Tarno	Can you address us on section 6?
319	Heynderickx	Discusses attorney fees in defamation actions. Currently, there is no right to recover attorney's fees.
364	Sen. Burdick	Asks what the difference is between the ñA8 and the ñA10 amendments.
367	Chair Bryant	Discusses the difference between the ñA8 and the ñA10 amendments.
<u>HB 2417A WORK SESSION</u>		
434	Brian Boe	National Association of Independent Insurers Testifies in support of HB 2417A which bars recovery of non-economic damages in a civil action under certain circumstances and indicates that the ñA5 amendments will change the grace period for a lapse of insurance from 30 days to 180 days (EXHIBIT M).

485	Sen. Bryant	MOTION: Moves to ADOPT HB 2417A-A5 amendments dated 6/14/99.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
488	Sen. Bryant	MOTION: Moves HB 2417A to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 5-1</p> <p>AYE: 5 - Burdick, Duncan, Nelson, Tarno, Bryant</p> <p>NAY: 1 ñ Courtney</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair Bryant	<p>The motion CARRIES.</p> <p>SEN. BRYANT will lead discussion on the floor.</p>
Tape 249, B		
<u>HB 2758A WORK SESSION</u>		
046	Cindy Kato	<p>Associated General Contractors</p> <p>Testifies in support of HB 2758A, which modifies the provisions relating to surety bonds for a property against which a lien has been recorded. Indicates opposition to the ñA4 amendments (EXHIBIT N). Part of the agreement reached by the work group on HB 2758A was to propose no further amendments to the bill and work during the interim to address all aspects of the lien laws.</p>

072	Steve Kafoury	Architects Council of Oregon Testifies in support of the A4 amendments to HB 2758A. Indicates that these amendments do not affect the provisions of the bill as passed, they only add provisions that address concerns of the architects and surveyors.
165	Chair Bryant	Under current law, if you prevail on your lien, you are entitled to attorney's fees?
170	Kafoury	That is correct. The problem is that it is very difficult to prevail on the lien because there are inconsistencies and ambiguities in the law.
182	Chair Bryant	Asks for more information about the difficulties in the current law.
184	Kafoury	Discusses the difficulties in current law with liens against property.
214	Chair Bryant	We will look at this again, but this is probably an issue to be considered during the interim.
243	Chair Bryant	Adjourns meeting at 9:45 a.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A A HB 3492A, -A11 amendments dated 6/17/99, 1 pp

B A HB 3630A, -A3 amendments dated 6/21/99, 1 pp

C A HB 3044A, -A5 amendments dated 6/21/99, 1 pp

D A HB 3492A, -A10 amendments dated 6/8/99, 16 pp

E A HB 3492A, written testimony submitted by M. Nelson, 2 pp

F A HB 2805A, -A9 amendments dated 6/15/99, 1 pp

G A HB 2805A, -A10 amendments dated 6/21/99, 1 pp

H ñ HB 2805A, -A8 amendments dated 5/17/99, 1 pp

I ñ HB 2805A, written testimony from Rep. Kurt Schrader, 2pp

J ñ HB 2805A, recent news articles on SLAPPís submitted by M. Rohse, 44 pp

K ñ HB 2805A, written testimony from Barbara Kemper, 1 pp

L ñ HB 2805A, written testimony from Jay Humphrey, 2 pp

M ñ HB 2417A, -A5 amendments dated 6/14/99, 1 pp

N ñ HB 2758A, -A4 amendments dated 5/26/99, 9 pp