

SENATE COMMITTEE ON
LABOR AND GOVERNMENT OPERATIONS

February 8, 1995 Hearing Room B
8:00 AM Tapes 34 - 37

MEMBERS PRESENT:

Sen. Gene Derfler, Chair
Sen. Bob Kintigh
Sen. Neil Bryant
Sen. Bill McCoy
Sen. Randy Leonard

MEMBER EXCUSED:

Sen. Brady Adams, Vice-Chair

STAFF PRESENT:

Rita Thomas, Committee Counsel
Henry Tilghman, Research Assistant
Glenda Fields, Committee Assistant

MEASURES HEARD:

SB 369 - Public Hearing

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 34, A

001 CHAIR DERFLER: Calls meeting to order at 8:15 AM

 Opening PUBLIC HEARING on SB 369

002 VIRLENA CROSLEY: Administrator, Workers' Compensation Division. Testifying on SB 369. WCD is not in support or against SB 369. Providing a technical view for the Committee. (EXHIBIT A)

040 VIRLENA CROSLEY: Exclusive Remedy: Section 5, page 6, lines 9-11.

090 VIRLENA CROSLEY: Section 38 - death benefits.

100 SEN. KINTIGH:: Is this new language?

110 VIRLENA CROSLEY: Retroactive reserve.

150 VIRLENA CROSLEY: Physician notification of release to work. (EXHIBIT A,

page 5)

200 VIRLENA CROSLEY: We recommend that the language be amended to extend the insurer's responsibility.

250 VIRLENA CROSLEY: Major contributing cause denials.

300 VIRLENA CROSLEY: Authority of the director.

350 VIRLENA CROSLEY: SAIF/non complying employers.

395 VIRLENA CROSLEY: Cents-per-day assessments.

TAPE 35, A

015 CHAIR DERFLER: Does this cents-per-day exempt farm people?

020 SEN. KINTIGH: I assume the self insureds pay the cents-per-day.

030 VIRLENA CROSLEY: Proposed bills would not have to be heard.

040 CHAIR DERFLER: We appreciated all the work the Department has done and we are incorporating the Department's ideas in SB 369.

050 SEN. MCCOY I notice that you had already anticipated the changes in SB 369.

060 SEN. LEONARD:: Are you prepared for questions on the practical impact of SB 369?

085 SEN. LEONARD:: Are we going to have anyone from the Department that can address the impact of this bill?

105 LORI OTTO: Testifying in support of SB 369 (EXHIBIT H)

150 LORI OTTO: New evidence be presented.

161 LORI OTTO: Support of Amendment to SB 369 (EXHIBIT C)

170 SEN. LEONARD:: What you are proposing is that if there is any evidence in support of the denial, the denial is not unreasonable?

175 LORI OTTO: Yes. Physician changing his mind.

200 RICH PEPPERS: OPEU, testifying on SB 369 (EXHIBIT D)

245 RICH PEPPERS: Sen. Kitzhaber is also on the record addressing "Objective findings".

270 RICH PEPPERS: We ask the Committee to reject the amendments in Section 1 (19) of SB 369.

280 APRIL HARTLINE GARREN: Testifying on SB 369. Senior theses on pain. (EXHIBIT E)

320 APRIL HARTILINE GARREN: At time pain does not occur until after the physician has done manipulating.

360 CHAIR DERFLER: Are you saying you can have pain without an injury?

380 SEN. LEONARD:: Tendentious is an injury but not detectable or verifiable.

430 SCOTT GALLANT: Testifying against SB 369. (EXHIBIT F)

462 David Silver: Neurosurgeon, testifying against SB 369.

TAPE 34, B

042 DAVID SILVER: Doctors need to have freedom to carry out the care of their patients.

088 DAVID SILVER: Decisions on the care of a patient are the physicians and the patients, not the worker's comp system.

120 CHAIR DERFLER: Do you object to getting a 2nd opinion.

131 SEN. BRYANT: The director would decide if a surgeon was paid for a non-approved surgery?

151 SCOTT GALLANT: Reprimand and dismissal are the only recourse the MCO's have toward physicians.

179 DAVID SILVER: Physicians should have access to the State Administrative Director.

200 DAVID SILVER: Open mind about the value of managed care organizations.

250 CHAIR DERFLER: A lot of surgery is performed that is not needed.

260 DAVID SILVER: Would like to see peer review working.

270 SCOTT GALLANT: Board of Medical Examiners does not do peer review.

296 SCOTT GALLANT: Appropriate balance between managed care and physicians judgment calls.

320 SEN. BRYANT: I know you have submitted some amendments. Have you discussed these with MCO's?

330 SCOTT GALLANT: We submitted information but have not heard from the MCO?

338 SEN. LEONARD:: Question about objective findings.

360 DAVID SILVER: Unless we have something objective it is just a matter of belief.

TAPE 35, B

020 SEN. LEONARD:: Preexisting conditions?

070 TOM COONEY: OMA General Counsel, interpreting new language on preexisting conditions.

110 SEN. LEONARD:: Would a 50 year old be more likely suffer injury?

120 DAVID SILVER: A physician can always get around this kind of language.

140 TOM COONEY: Attorney, testifying against SB 369. Along with OMA has drafted amendments to SB 369.

163 TOM COONEY: Peer review. (EXHIBIT F, page 14)

190 CHAIR DERFLER: We have included these recommendations in our amendments.

220 TOM COONEY: Indemnity and hold harmless. Recommends physicians not to sign agreements, but MCO requires signatures.

245 SEN. BRYANT: Is this change enforceable?

275 TOM COONEY: Physicians complying with undecided decisions.

310 TOM COONEY: Would like to see the director of the MCO be a physician.

320 CHAIR DERFLER: Does the Department have input to MCO contracts?

355 TOM COONEY: Worker could stay with there own physician when he has a acute injury.

400 TOM COONEY: Disputed claim.

421 CHAIR DERFLER: I am not sure we could help negotiate contracts.

440 Rita Thomas: Attorney General opinion. Sections 27 and 36.

TAPE 36, A

059 CHAIR DERFLER: Please turn in proposed amendments by tomorrow.

075 HERMAN SIMPSON: Injured worker testifying against SB 369. Concerns with the part of bill that denies worker a hearing.

120 HERMAN SIMPSON: Continuing testimony.

155 SEN. LEONARD:: What section of the bill is Mr. Simpson referring to?

158 LINDA LOVE: Attorney, testifying on SB 369. 656.27 page 25 section 40

192 LINDA LOVE: This bill greatly broadens the language of this section.

220 SEN. LEONARD:: You want the ability to represent your client at an appeal to the Director?

254 Michael Quinn: Injured worker testifying on SB 369.

300 MICHAEL QUINN: Continuing testimony.

350 MICHAEL QUINN: Has seen 11 doctors. All concurred but 2. One of the none concurring doctors was an IME.

400 MICHAEL QUINN: Continuing testimony.

430 R. C. A. MOORE: Finishing testimony for Michael Quinn.

TAPE 37, A

030 CHAIR DERFLER: Why was Social Security denied?

050 KENNETH M. FITZSIMON: Oregon Nurses Association, testifying against SB 369. (EXHIBIT G)

100 KENNETH FITZSIMON: Please consider the impact both to injured workers, and cost to the system.

120 CHAIR DERFLER: Taking recess

121 MARI MILLER: WCD, testifying on SB 369. Line 15 on Page 2 - responding to Court cases and tightening up language.

155 SEN. LEONARD:: Reading current language in section 3.

180 MARI MILLER: This to me is new language that elaborates on existing proposed language.

215 CHAIR DERFLER: Explaining current language in section 3.

258 RICHARD ZIELSDORF: Injured worker testifying against SB 369.

290 RICHARD ZIELSDORF: Limiting access if he should be reinjured.

316 RICHARD ZIELSDORF: Port of Portland carrier. System had no intent to take care of his injuries.

340 RICHARD ZIELSDORF: Covered under Argonaut. Was not informed that coverage would be under the self insured Port of Portland.

390 RICHARD ZIELSDORF: Needed knee surgery. Insurance company did not respond. No time loss.

420 RICHARD ZIELSDORF: Needed a denial from Argonaut in order for his medical insurance to cover knee operation.

TAPE 36, B

035 RICHARD ZIELSDORF: Selected new doctor. Continual complications.

070 RICHARD ZIELSDORF: Continuing testimony.

095 RICHARD ZIELSDORF: IME can diagnose without even seeing a patient.

120 RICHARD ZIELSDORF: Committee is willing to expose worker to hazardous situations without being willing fix their injuries.

165 RICHARD ZIELSDORF: Will never vote for another Democrat.
200 Janice Biamont: Injured worker testifying against SB 369.
240 Janice Biamont: Physician did surgery without approval and was eventually paid.
249 CHAIR DERFLER: Taking recess.
256 JANICE BIAMONT: Continuing testimony. Was continually referred to CareMart even though CareMart had no jurisdiction over her.
300 JANIE BIAMONT: Her doctor has been eliminated from CareMart.
340 JANIE BIAMONT: Hopes that Committee will take into consideration the injured workers that need care.
352 MITCH LEBERT: Testifying against SB 369. (EXHIBIT I)
400 MITCH LEBERT: Retraining as a legal assistant after injury.
450 MITCH LEBERT: Part time employment at minimum wage will not restore employee.

TAPE 37, B

044 MITCH LEBERT: Revising the language and shifting the burden of proof. Section 28, page 28, lines 13 through 19.
080 MITCH LEBERT: Section 5, page 6, lines 9 - 11.
110 Lonnie Burson: WCIW Local 2949, Roseburg, testifying against SB 369.
125 Chuck Bennett: Chiropractic Association, testifying on SB 369. (EXHIBIT J)
140 CHUCK SIMPSON: Testifying on SB 369. (EXHIBIT K)
190 CHUCK SIMPSON: Time off work - Critical Pathway
240 CHUCK SIMPSON: The experience in Ontario was that 93% returned to work.
266 CHAIR DERFLER: Closing PUBLIC HEARING on SB 369
Meeting adjourned at 12:15 PM.

Submitted by, Reviewed by,

Glenda Fields Rita Thomas
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

- A - Testimony on SB 369 - Virlena Crosley, WCD - 122 pages
- B - Testimony on SB 369 - May Yih - 1 page
- C - Proposed Amendment to SB 369 - 1 page
- D - Testimony on SB 369 - Rich Peppers, OPEU - 10 pages
- E - Testimony on SB 369 - April Hartlin Garren - 5 pages
- F - Testimony on SB 369 - Scott Gallant, OMA - 51 pages
- G - Testimony on SB 369 - Kenneth Fitzsimon - 3 pages
- H - Testimony on SB 369 - Lori Otto, Oregon Freeze Dry - 3 pages
- I - Testimony on SB 369 - Mitchell Lebert - 5 pages
- J - Testimony on SB 369 - Dr. Chuck Simpson, Chiropractic Assoc. - 5 pages
- K - Testimony on SB 369 - Charles Simpson, DC - 6 pages

SENATE COMMITTEE ON
LABOR AND GOVERNMENT OPERATIONS

February 8, 1995 Hearing Room B
7:00 PM Tapes 38 -41

MEMBERS PRESENT:

Sen. Gene Derfler, Chair
Sen. Brady Adams, Vice-Chair
Sen. Neil Bryant
Sen. Bob Kintigh
Sen. Bill McCoy
Sen. Randy Leonard

MEMBER EXCUSED:

STAFF PRESENT:

Rita Thomas, Committee Counsel
Amy Baker, Committee Assistant

MEASURES HEARD:

SB 369 Public Hearing

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TAPE 38, A

004 CHAIR DERFLER:: Opens PUBLIC HEARING on SB 369.

007 SEN. SORENSON: Testifying on SB 369 and the influx of negative mail he has received in his office.

065 SEN. SORENSON: Continues testimony relating to exclusive remedy.

085 SEN. ADAMS: Have you had a chance to read the bill?

115 MIKE MCCALLUM: Representing the Oregon Small Business Coalition, in favor of

SB
369.[EXHIBIT A]

181 FRED VANNATTA: Representing Oregon State Homebuilders Assoc., in favor of SB

369.

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230 FRED VANNATTA: Continues testimony on SB 369 and the vocational rehabilitation aspect of the bill.

275 FRED VANNATTA: Continues testimony related to the need to reform Workers'

Compensation.

320 FRED VANNATTA: Continues testimony on SB 369.

375 JOE GILLIAM: State Director of National Federation of Independent Business, discusses

concern regarding Workers' Compensation.

425 JOE GILLIAM: Continues testimony on SB 369.

TAPE 39, A

033 JOE GILLIAM: Discusses the contents of SB 369 and getting the system

back to the intent of

1990.

065 FRED VANNATTA: Discusses the negative response to the bill.

100 DIANA GODWIN: Representing the Oregon Physical Therapists in Independent Practice.

120 BOB BURIES: President of Oregon Physical Therapists in Independent Practice Assoc. Testifies on the medical perspective of SB 369.

169 BOB BURIES: Continues testimony related to case management and the uniqueness of the Workers' Compensation system in Oregon.

220 BOB BURIES: Continues testimony related to measurement of injury.

280 BOB BURIES: Discusses his support of the CPT codes adoption.

335 CHAIR DERFLER: What is the current time limit on the measurement of improvement?

380 DIANA GODWIN: Discusses page 20, line 41 of SB 369.

TAPE 38, B

025 DIANA GODWIN: Continues testimony regarding Section 38, page 42.

044 ROBYN BYRNE: An injured worker. Discusses pre-existing conditions.

085 ROBYN BYRNE: Discusses the difficulties workers have with the technical language in the laws and the need to have legal representation.

125 ROBYN BYRNE: Continues testimony related to the pre-existing conditions clause.

145 KAREN MCKILLOP: Testifies regarding her claim as it relates to the current changes in the law.

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190 BARBARA FRITZ: Testifies on SB 369. [EXHIBIT B].

235 BARBARA FRITZ: Continues testimony following [EXHIBIT B].

280 BARBARA FRITZ: Discusses the problems she sees with the Workers' Compensation system, from her perspective as a nurse.

305 CHAIR DERFLER: Do you believe that there are workers who are just following through the cracks?

380 BARBARA FRITZ: Continues testimony in support of the Workers' Compensation system.

400 DARLENE YOUNG: Testifies on SB 369 [EXHIBIT C].

TAPE 39, B

020 DARLENE YOUNG: Continues testimony following [EXHIBIT C].

060 DARLENE YOUNG: Discusses 'compensable injuries'.

110 CHAIR DERFLER: How would you respond to those who say that the system has not treated them fairly?

175 CHAIR DERFLER: How do we write legislation so that everyone is honest? We tried to write legislation that is more specific.

220 DARLENE YOUNG: Testifies on the MCO(s)/HMO(s).

300 ANNETTE TALBOT: Test)ifies for Robert Duehmig, who represents the Oregon
Federation
of
Teachers, Education and Health Professionals.lEXHIBIT D]
350 ANNETTE TALBOT: Continues testimony following [EXHIBIT D].
360 DAVID JORLING: Representing the City of Portland. [EXHIBIT E] lEXHIBIT
F1
400 DAVID JORLING: Continues testimony.
467 DAVID JORLING: Discusses the legal environment's hold on Workers'
Compensation laws.

TAPE 40, A

042 DAVID JORLING: Continues testimony following [EXHIBIT E].

100 DAVID JORLING: Discusses the case that went to the Court of Appeals
where the claimant alleged that his stress claim should not be subjected to
the more stricter burdens of proof, to do so was a violation of the
Americans With Disabilities Act.

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SENATE LABOR AND GOVERNMENT OPERATIONS
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140 DAVID JORLING: Discuss the lEXHIBIT F1 which relates to potential
remedies available to
Oregon workers.
180 CHAIR DERFLER:: How does the City of Portland handle pre-existing
conditions?
185 DAVID JORLING: We handle it on a case by case basis.
200 RITA THOMAS: Enters testimony of Mark Melgard and Jerry Levasseur into
the
record.lEXHIBIT G] lEXHIBIT H1.
210 BRAD WITT: Representing the AFL-CIO, here to accompany injured workers
testifying
tonight.
235 CHRISTINE VANCURA: Injured Worker, test)ifies regarding her workers'
compensation claim.
[EXHIBIT I]
300 CHRISTINE VANCURA: Continues testimony following [EXHIBIT I].
375 CHRISTINE VANCURA: Continues testimony following [EXHIBIT I].
430 CHRISTINE VANCURA: Continues testimony following [EXHIBIT I].

TAPE 41, A

025 CHRISTINE VANCURA: Continues testimony following [EXHIBIT I]. Discusses
the referees
of the Workers' Compensation system.
085 SEN. ADAMS: Discusses the letter from Robert Ackerman, part of [EXHIBIT
I].
130 CHRISTINE VANCURA: Continues testimony following [EXHIBIT I].
160 NANCY STIMLER: Injured worker.
200 NANCY STIMLER Discusses her case, relating to employer fault injury.
245 NANCY STIMLER: Continues testimony related to compensability.
300 SEN. LEONARD: Could your condition objectively be related to your work
environment?
305 NANCY STIMLER: No.
365 BJ CAUMAN: Representing Public Choice in Health Care Coalition. [EXHIBIT
J]

TAPE 40, B

015 FARKHONDEH HURD: Test)files against SB 369, objective findings section.

056 FARKHONDEH HURD: Continues testimony discussing her workers' compensation claim.

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SENATE LABOR AND GOVERNMENT OPERATIONS

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075 SEIJI SHIRATORI: Begins testimony on SB 369. [EXHIBIT K] [EXHIBIT L] [EXHIBIT M]

105 SEN. BRYANT: Why were the Naturopathic Physicians led out of in the early law?

120 CHAIR DERFLER:: At the time there was a need to limit those who could determine the workers time loss.

151 CHAIR DERFLER:: Closes PUBLIC HEARING on SB 369.

Adjourns meeting.

Submitted by,	Reviewed by,
Amy B Rita Thomas	
Committee Assistant	Committee Counsel

EXHIBIT SUMMARY:

A - Testimony on SB 369 - Mike McCallum - 1 page
B - Testimony on SB 369 - Barbara Fritz - 1 page
C - Testimony on SB 369 - Darlene Young - 3 pages
D - Testimony on SB 369 - Robert Duehmig- 2 pages
E - ORS 656.018 (1) (a) - David Johling - 1 page
F - Testimony on SB 369 - David Johling - 5 pages
G - Testimony on SB 369 - Mark Melgard - 5 pages
H - Testimony on SB 369 - Jerry Levasseur 6 pages
I - Testimony on SB 369 - Christina VanCura- 19 pages
J- Testimony on SB 369 - BJ Cauman - 1 page
K - Leaflet on Naturopathy - Seiji Shiratori - Bklt
L - Testimony on SB 369 - Seiji Shiratori - 1 page
M - Proposed Amendment - Seiji Shiratori - 1 page
N - Testimony on SB 369 - Johnny Lake - 2 pages
O - Testimony on SB 369 - Paul Gross - 1 page
P - Testimony on SB 369 - Robyn Byrne - 8 pages

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