

SENATE COMMITTEE ON  
JUDICIARY

May 3, 1993 Hearing Room C  
1:00 p.m. Tapes 138 - 139

MEMBERS PRESENT: Sen. Dick Springer, Chair  
Sen. Bob Shoemaker, Vice-Chair  
Sen. Jeannette Hamby  
Sen. Karsten Rasmussen  
Sen. Gordon Smith  
Sen. Catherine Webber

VISITING MEMBERS: Sen. Bill Kennemer  
Rep. Ken Baker

STAFF PRESENT: Karen Quigley, Legislative Counsel  
Kate Wrightson, Committee Administrator  
Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing & Possible Work Session on SJR39, SB  
499 ,  
SB 500.

Work Session on SB 301, SB 621, SB 461.

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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.

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TAPE 138, SIDE A

003 CHAIR SPRINGER: Opens hearing at 1:17 p.m.

PUBLIC HEARING & POSSIBLE WORK SESSION

SB 499:

Requires that certain disciplinary proceedings of professional  
licensing  
boards be public, including records.

SB 500: Defines "custodian" of public record.

012 PHIL KIESLING, SECRETARY OF STATE: Submits and reviews written  
testimony

in support of SB 499 and SB 500. (EXHIBIT A, B, C, D)

- Each bill is now independent of one another.
- Gives presentation of the eleven key areas
- We have deleted the offending implementing amendments
- Section 5 requires agencies to invoke the personal privacy

exemption for medical records. The medical records would be more protected than under current law.

- Request for non-disclosure of home address and personal phone number.

245 SEN. HAMBY: In Section 5, 8 (1A) I don't see anything that speaks  
to genetics. I can foresee someone coming forward with clear and convincing evidence that something of such a private nature could be disclosed.

KIESLING: Section 8 (1A) was designed for that kind of consideration in mind. The presumption is if its a medical record it would be non-disclosed.

284 SEN. SHOEMAKER: The standards of proof usually have to do with whether or not a fact is true. Are we mixing standards when we have clear and convincing, which is normally a standard of proof, as opposed to a standard of persuasion.

KIESLING: What you have is existing law which does exactly that. We felt that we are on better footing continuing to use the familiar terms.

321 SEN. SHOEMAKER: Would it help to say "substantially outweighs", or  
put some measurement standard in there so it would have to be more than a slight weight on the scale in favor of disclosure?

331 LES RYES: In practice the clear and convincing standard is a very  
high standard and based on fact. Adding that modifier could add a level of comfort, but the balance is heavily weighted against disclosure.

378 SEN. BILL KENNEMER, DISTRICT 12: Testifies on SB 499.

GERALD ROTHENFLUCH, ROTHENFLUCH INSURANCE: Submits and reviews written testimony in support of SB 499 and SB 500. (EXHIBIT H)

TAPE 139, SIDE A

003 ROTHENFLUCH: Continues testimony.

037 REP. KEN BAKER, DISTRICT 10: Testifies in support of SB 499 and SB 500 .

SEN. KENNEMER: Its a problem for someone defending himself when they

don't know what they're being accused of.

060 DAVID NEBEL, OREGON COALITION AGAINST DOMESTIC AND SEXUAL  
VIOLENCE:

Submits and reviews written testimony in opposition to SB 500 and SB  
49.

(EXHIBIT J)

100 CHAIR SPRINGER: Did you have a chance to make this case with the  
working  
group of the Secretary of State's office?

NEBEL: I brought this up with Ms. Johnson.

107 STUART KAPLAN, ACLU: Submits and reviews written testimony in support  
of  
SB 499 and SB 500. (EXHIBIT K)

KAPLAN: We are proposing that there be no possible legal jeopardy to a  
third party, such as a broadcast station, that comes into possession  
of  
information through the public records law.

- Also, that protection for liability is designed.

SEN. SHOEMAKER: If an agency tilts the balance unfairly than they're  
safe? And this causes a government employee to be protected from any  
exposure for acting against the public or the private interest?

204 DAVE FIDANQUE, ACLU: Our intent is to make clear that a new tort  
remedy  
is not created by section 8 or 9 of the bill.

SEN. SHOEMAKER: Under the present law if they disclose they are  
subject?

FIDANQUE: They are not.

236 JANE MYERS, OREGON DENTAL ASSOCIATION: Submits and reviews  
written

testimony in opposition to SB 499 and SB 500. (EXHIBIT L, M)

- There is discipline in the peer review system; therefore without  
it

the system would be ineffectual. We suggest that the word

"discipline" be put back in.

- In section 3 of SB 499 you might specify that the written  
complaint

is what you're requiring to be disclosed.

- In SB 500 where ever the word " medical records" is used include  
"dental records".

291 JOHN FOOTE, DEPARTMENT OF CORRECTIONS: Testifies in support of SB  
500 .

- In Section 2 we have some concern with 137.077, which is the

Pre-Sentence Reports.

of  
- In Section 7 on pg. 6 the Public Safety Exemption is too narrow  
a definition.

read  
- On line 3, pg. 6 add "and security".  
- In section 8, pg. 6a and 6b, sec. 1a and 2a change language to  
"the privacy interests of the individual".

377 PAUL DONHEFFNER, MARINE BOARD: Submits and reviews written testimony  
on  
SB 500. (EXHIBIT N, O)

- Section 240: The amendments would undermine the quality of the  
information submitted in boating accident reports.  
- The amendment doesn't make clear what would be subject to  
disclosure and what would remain confidential.  
- We have an amendment of our own that would add general exemptions  
and a slight modification to Section 240.

TAPE 138, SIDE B

008 CHAIR SPRINGER: How do you think the language will deter someone  
from  
fully reporting information?

DONHEFFNER: Information relating to what people were doing at the time  
of the accident would be less likely to be reported. People less  
willing to give details for fear of disclosure, even though the report  
itself won't be used in a civil case.

033 SEN. SHOEMAKER: What are the sanctions that the Marine Board now has  
if  
someone is found to be at fault in an accident?

DONHEFFNER: There might be sanctions that would arise.

039 SEN. SHOEMAKER: Are there any sanctions that come from the report  
given  
to you?

DONHEFFNER: No, other than failure to report.

046 MARY BODKINS, AFSCME: Testifies in support of SB 499 & SB 500  
- Concerned that 182.501 has been repealed.  
- We thought section 13 was clear in saying that discipline actions  
and all supporting documents wouldn't be available to the public on  
a  
general basis.  
- This bill doesn't do this. We suggest that you move Sub. 2, sub.  
b  
on pg. 6 back under Section 8, sub i.

095 SEN. G. SMITH: Its a frustrating bill. Would you agree that

other

groups would have similar, legitimate concerns about this bill?

BODKINS: I'm sure they do.

109 SEN. WEBBER: We need to protect employees home addresses and phone numbers due to threats from outsiders.

132 SEN. SHOEMAKER: Why do you use in sections 5, 6, 7 the word "may" instead of "shall" regarding the withholding of disclosure?

KIESLING: Existing law is ultimately "may".

SEN. SHOEMAKER: It seems to say that the public agency can or may disclose it without applying any test if it chooses.

KIESLING: That is current law.

- I'm not aware of any law that's premised on making it a broad "shall".

195 MARIANNE GEST, OPEU: Testifies in support of SB 499 and SB 500.

- We are concerned with Section 8 not allowing the disclosure of public employee's names and addresses for the purpose of organizing, i.e. Unions.

BODKINS: Once employees sign a recognition card, either for certification/election of a union or the opposite, the employment relations board should continue to hold those names private.

259 BILL MARBLE, DEPARTMENT OF REVENUE: Submits and reviews written

testimony on SB 499 and SB 500. (EXHIBIT P)

- Concerned with section 5A, part 2.  
- What is a delinquency?  
- We recommend wording such as "liquidated debt" instead of "delinquency".

325 THOMAS ERWIN, OREGON INSURANCE CONSUMER ADVOCATE: Testifies on SB 499 and SB 500.

392 KAPPY EATON, LEAGUE OF WOMEN VOTERS: Submits and reviews written

testimony on SB 499 and SB 500. (EXHIBIT Q)

- Concerned with section 8 and section 9.  
- We're pleased with the five year commitment to keep an individual's address and phone private.

TAPE 139, SIDE B

018 ROGER MARTIN, MARTIN AND ASSOCIATES: Testifies in opposition to SB  
500 .

- Concerned that government wants to disclose more information.
- If the raw data of insurance companies is available to the press

it

could drive them into insolvency.

087 RAY WILKESON, OFIC: Submits and reviews testimony in opposition to  
SB

500.

(EXHIBIT R)

170 SUSAN KING, OREGON NURSES ASSOCIATION: Submits and reviews  
written

testimony on SB 499. (EXHIBIT T)

- Concerned about the opening of complaint files by the regulatory  
boards.

280 CHAIR SPRINGER: Adjourns hearing at 3:00 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal  
Assistant

Karen Quigley  
Administrator

#### EXHIBIT LOG

- A - Hand-engrossed SB 499-2 amendments-Phil Kiesling-17 pgs.
- B - Proposed hand-engrossed SB 499 amendments-Phil Kiesling-2 pgs.
- C - Hand-engrossed SB 500-2 amendments-Phil Kiesling-14 pgs.
- D - Proposed hand-engrossed SB 500 amendments-Phil Kiesling-8 pgs.
- E - Testimony on SB 500-Sandra Millius-1 pg. \*
- F - Testimony on SB 499-David Myton-8 pgs. \*
- G - Testimony on SB 499 & SB 500-John Mangan-10 pgs. \*
- H - Testimony on SB 499 & SB 500-Gerald Rothenfluch-16 pgs.
- J - Testimony on SB 500-David Nebel-2 pg.
- K - Testimony on SB 500-Stuart Kaplan-3 pgs.
- L - Testimony on SB 499-Jane Myers-1 pg.
- M - Testimony on SB 499-Jane Myers-3 pgs.
- N - Testimony on SB 500-Paul Donheffner-2 pgs.
- O - Proposed Amendment to SB 500-Paul Donheffner-1 pg.

- P - Testimony on SB 500-Bill Marble-1 pg.
- Q - Testimony on SB 500-Kappy Eaton-1 pg.
- R - Testimony on SB 500-Ray Wilkeson-2 pgs.
- S - Proposed SB 500 amendments-Frank Brawner-5 pgs. \*
- T - Testimony on SB 499-Susan King-3 pgs.

\* Submitted written testimony only.