

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 17, 1999 Hearing Room 357

8:30 a.m. Tapes 197 - 198

**MEMBERS PRESENT:** Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

**STAFF PRESENT:** John Horton, Counsel

Patsy Wood, Administrative Support

### **MEASURE/ISSUES HEARD:**

SB 735A Public Hearing and Work Session

SB 865 Public Hearing and Work Session

SB 1229 Public Hearing and Work Session

SB 848 Public Hearing

HB 2238A Public Hearing

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 197, A		

006	Chair Mannix	Calls the meeting to order at 8:35 a.m.
<b><u>HB 2238A PUBLIC HEARING</u></b>		
009	Chair Mannix	HB 2238A permits the Employment Department representative and hearing referee and Employment Appeals Board to address issues in unemployment compensation eligibility cases, notwithstanding how issues are characterized by parties. Discusses the ñA7 amendments to HB 2238A a proposed compromise on the majority report ( <b>EXHIBIT A</b> ).
028	<b>Annette Talbott</b>	<b>Legislative Coordinator, Employment Department</b>  Testifies and submits written testimony in opposition to HB 2238A ( <b>EXHIBIT B</b> ). Discusses the importance between a "quit" and a layoff with regards to unemployment insurance. Discusses subsection 11 on page 3 relating to voluntary layoff and subsection 12 on page 3 stating that domestic violence would be considered a "quit with good cause". Testifies in opposition to the ñA7 amendments because they would still exclude the temporary pharmacist.
106	Rep. Prozanski	Are there other amendments we will be considering for HB 2238A?
109	Chair Mannix	No.
110	Talbott	The Employment Department could support HB 2238A if Sections 4 through 6 were deleted and Section 7 was amended to apply only to the first part of the bill.
125	<b>Nancy Kaib</b>	<b>Kaibís Roving Pharmacy</b>  Testifies and submits written testimony in support of HB 2238A ( <b>EXHIBIT C</b> ). States that the Employment Department wants everyone to be an employee, not an independent contractor. Discusses the history of the statute on independent contractors that began around building contractors.
168	Chair Mannix	HB 2238A is prospective, not retroactive. What happened in the federal litigation regarding an independent contractor vs. employee?
178	Kaib	I won that case and have been cleared by the Revenue Department of Oregon that the pharmacists brokered through me can work as independent contractors.
181	Chair Mannix	Does the Employment Department have a position as to why the Revenue Department is wrong?
183	Kaib	They feel they should be able to make their own decisions.
197	<b>Rich Peppers</b>	<b>Oregon Public Employees Union</b>  Testifies and submits written testimony in opposition to HB 2238A ( <b>EXHIBIT</b>

		<b>D).</b> Discusses his concerns with Section 4 through Section 6 relating to independent contractors.
210	Chair Mannix	Discusses ways to achieve independent contractor status, and the rationale for the specific exemption of temporary pharmacists.
260	<b>Carleton Grew</b>	<b>Attorney for Oregon Public Employees Union</b>  Testifies in opposition to HB 2238A. The professional status amendments would change the focus of the law from the nature of the employment relationship to the type of employee or the type of education and training and insurance of the worker. This bill would set up a disincentive for people to carry professional liability insurance.
295	<b>Mary Botkin</b>	<b>American Federation of State, County, and Municipal Employees</b>  Testifies in opposition to HB 2238A. Discusses the type of people her organization represents and the concerns they have with this bill.
324	<b>Irv Fletcher</b>	<b>Oregon American Federation of Labor/Congress of Industrial Organizations</b>  Testifies in opposition to HB 2238A.
340	<b>Bob Shiprack</b>	<b>Unemployment Advisory Committee Council</b>  Testifies in opposition to HB 2238A. Discusses the rewriting of Oregon's independent contractor laws and the independent contractor's test that has gained national recognition.
<b>TAPE 198, A</b>		
018	<b>Tricia Smith</b>	<b>Oregon School Employees Association</b>  Testifies in opposition to HB 2238A. School employees are one exception to unemployment insurance. We oppose Section 4 and Section 6 because they would change the definition of independent contractor for the Employment Department as compared to the definition used by other agencies.
101	Talbott	Discusses the 8-part "test" administered by the Employment Department to determine independent contractor status.
111	Chair Mannix	Would the Employment Department support me now in a proposal I made four years ago that each of the agencies subject to ORS 670.600 be bound by a determination of one of the other agencies subject to that statute?

114	Talbott	Except for Worker's Compensation that is no longer bound by that statute, we do consistently enforce the test of ORS 670.600. We are not saying that Ms. Kaib needs to change the way she does business. We are saying that her workers are employees and they deserve to have unemployment insurance coverage just like other employees. Would you like an individual to be able to use the federal common law test to establish themselves as an independent contractor?
142	Chair Mannix	Discusses an earlier test that if you met those standards, you were guaranteed independent contractor status, but it wasn't the sole and exclusive method that had to be used to establish that status.
160	Talbott	If there are things that don't work about the 8-part test, we could revisit it, but a third test is not the way to go. All the agencies have a rule that says the agencies are bound by the Employment Department's decision.
192	Chair Mannix	Would you supply us with a copy of that rule?
193	Talbott	Yes.
217	Rep. Prozanski	The Employment Department has a problem with these independent contractors because they are not going through a clearinghouse as employees, but are contracting independently on their own?
227	Talbott	One issue is that these independent contractors do not have representation to the public.
234	Rep. Prozanski	Discusses that those pharmacists acting as independent contractors have other pharmacists as exclusive clientele, not the general public.
241	Talbott	But under ORS 670.600, they have to be contracting with more than one other individual and this is one of the pieces of the test that was not met for independent contractor status.
253	Chair Mannix	Closes the public hearing on HB 2238A.
<b><u>SB 735A PUBLIC HEARING</u></b>		
259	Counsel Horton	SB 735A specifies that authorized currency possessed by inmates in work release facilities is not considered contraband.
274	<b>Rob Gates</b>	<b>Washington County Correctional Facility</b>  Testifies in support of SB 735A. Discusses the extensive record keeping involved in keeping track of inmate's money.

295	Rep. Prozanski	Who told you that currency was contraband in your community corrections facility?
297	Gates	I was so informed in a letter from our District Attorney.
300	Rep. Prozanski	Discusses that a county should be able to define contraband for their own corrections facility.
312	Rep. Bowman	Does SB 735A raise the level of crime for having contraband to a Class C felony?
315	Gates	It is currently a Class C felony.
318	Chair Mannix	Closes the public hearing on SB 735A.
<b><u>SB 735A WORK SESSION</u></b>		
320	Rep. Prozanski	<b>MOTION: Moves SB 735A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 5-0-2</b> <b>EXCUSED: 2 - Rep. Gianella, Rep. Sunseri</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. HANSEN will lead discussion on the floor.</b>
329	Chair Mannix	Closes the work session on SB 735A.
<b><u>SB 865 PUBLIC HEARING</u></b>		
335	Counsel Horton	SB 865 allows the Department of Public Safety Standards and Training (DPSST) to adopt rules establishing a program whereby honorably retired police officers can maintain certification.
345	Kevin Campbell	<b>Oregon Association Chiefs of Police</b>  Testifies in support of SB 865.

361	Rep. Prozanski	Is there any opposition from DPSST?
363	Campbell	No.
366	Rep. Prozanski	Do these employees qualify for the Public Employees Retirement System (PERS)?
370	Campbell	Yes.
379	Rep. Bowman	Does SB 865 include police officers who are asked to retire, often for dishonorable reasons?
395	Campbell	The DPSST has rules that should address that issue.
411	Chair Mannix	Closes the public hearing on SB 865.
<b><u>SB 865 WORK SESSION</u></b>		
413	Rep. Prozanski	<b>MOTION: Moves SB 865 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. PROZANSKI will lead discussion on the floor.</b>
421	Chair Mannix	Closes the work session on SB 865.
<b>TAPE 197, B</b>		
<b><u>SB 1229 PUBLIC HEARING</u></b>		
002	Counsel Horton	SB 1229 establishes record-keeping requirements for boat theft reports.
009	Paul Donheffner	<b>Director, Oregon Marine Board</b>

		Testifies and submits written testimony in support of SB 1229 <b>(EXHIBIT E)</b> . If the Marine Board does not get a report of a stolen boat, the Board in error could issue a new title.
026	Rep. Prozanski	Does the marine patrol receive a list of stolen boats to be on the lookout for?
031	Donheffner	Lines 22-24 on page 1 of SB 1229 require preparation of a list of stolen or recovered boats and they will appear in the Law Enforcement Database System (LEDS).
052	Rep. Hansen	Do boats and boat motors have identification numbers that get recorded when a boat is registered?
059	Donheffner	We do not register the motors, but there is an identification number on the hull of every boat.
066	<b>John Raichl</b>	<b>Oregon State Sheriffs Association</b>  Testifies in support of SB 1229.
075	Counsel Horton	Would the "electronic file system" on line 14 of page 1 be like business records for hearsay purposes?
081	Donheffner	Yes.
088	Chair Mannix	Closes the public hearing on SB 1229.
<b><u>SB 1229 WORK SESSION</u></b>		
<b>089</b>	<b>Rep. Prozanski</b>	<b>MOTION: Moves SB 1229 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0-1</b>  <b>EXCUSED: 1 - Rep. Sunseri</b>
		<b>Chair Mannix</b>  <b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. MANNIX will lead discussion on the floor.</b>

097	Chair Mannix	Closes work session on SB 1229.
<b><u>SB 848 PUBLIC HEARING</u></b>		
099	Counsel Horton	SB 848 creates a Class A misdemeanor for pointing a light from a laser at a police officer.
112	<b>Jim Botwinis</b>	<b>President, Oregon State Police Officers' Association</b>  Testifies and submits written testimony in support of SB 848 ( <b>EXHIBIT F</b> ). The emission of red light, whether from a laser sighted weapon or a laser pointer, is the same and requires a split-second decision made by a police officer.
145	Rep. Prozanski	Why are we limiting using laser pointers just to police officers?
149	Botwinis	We originally hoped that this bill would cover a larger area where crime is concerned. Discusses incidents where a laser pointer was used and temporarily blinded drivers.
161	Chair Mannix	If we broaden the bill, will this create a fiscal impact?
168	Rep. Prozanski	I think this is a large-enough problem to see if there is a fiscal impact.
176	Rep. Simmons	I am in favor of adopting the ñ2 amendments that have been expanded to include private security officers who are on duty ( <b>EXHIBIT G</b> ) and moving the bill to the floor.
185	Rep. Prozanski	Why not include general citizens in this bill?
193	Rep. Simmons	I am concerned that someone will recklessly use a laser pointer and find themselves with a misdemeanor charge.
201	Chair Mannix	I think "recklessly" needs to be taken out of the bill. It could be made a violation for citizens to do this to other citizens and the higher sanction if done to police officers.
221	Botwinis	We have no objection to expanding this legislation.
234	<b>Officer Roger Greenfield</b>	<b>Salem Police Department</b>  Testifies in support of SB 848. Discusses an assignment with the Gang Response Team and how he became acquainted with laser pointers. Gang members reported that carrying a laser light was like carrying a gun. Laser lights can be pointed into someone's eyes to blind them and then the person is shot. Discusses having a laser light pointed at him in a mall and did not know if a weapon was



		involved or not. Through education we can get the message out to not point a laser light at anyone especially a police officer. I would like to see this law expanded to include firefighters and Emergency Medical Technicians.
318	Chair Mannix	What do you think of making this crime a Class A misdemeanor for police officers, paramedics, firefighters and uniformed security officers and a Class C misdemeanor if a laser light is pointed at citizens?
328	Greenfield	I support that idea. It doesn't mean taking everyone to jail; citations could be written.
340	Rep. Prozanski	Agrees with the concept stated by Chair Mannix and suggests removing "intentionally" because that is included in "knowingly".
374	<b>Sgt. Curt Curtis</b>	<b>Oregon State Police</b>  Testifies in support of SB 848. Suggests adding public officials to the list that a laser light cannot be pointed at. Demonstrates laser pointers in pens and on a weapon and states that officers are trained to react instantly to laser lights being pointed at them.
<b>TAPE 198, B</b>		
024	Rep. Gianella	How is the red light on the weapon activated?
026	Sgt. Curtis	Describes how the laser light is activated on a weapon.
032	Rep. Simmons	Are there health hazards associated with laser pointers?
034	Curtis	Explains that prolonged exposure to the eye can cause damage.
042	Rep. Simmons	Is the damage like a bright photography flash or worse?
046	Counsel Horton	Laser pointers can cause permanent damage to the retina.
058	Rep. Bowman	Expresses her concern about criminalizing items that are not illegal.
078	Rep. Hansen	Pointing a laser light at someone armed creates a dangerous potential, but I don't want 13 year olds playing tag with these pens getting into trouble. Is shining a laser light in someone's car while they are driving already in statute? Discusses limiting the discussion to police officers this session and coming back next session to define it more carefully.
114	<b>Brian DeLashmutt</b>	<b>Oregon Council of Police Associations</b>

		Testifies in support of SB 848. Discusses the danger of a laser light being pointed at an armed officer.
164	Rep. Prozanski	Discusses statutes that this could be included now, rather than create a new law. We need to get a serious message out about people who are trained to instantly react to laser lights.
187	Chair Mannix	Describes possible amendments that could be made to SB 848 when it next comes back for work session.
242	Chair Mannix	Closes the public hearing on SB 848.
242	Chair Mannix	Adjourns the meeting at 10:25 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2238A, -A7 amendments (LC 639), dated 5/17/99, staff, 1 pg.**

**B - HB 2238A, written testimony submitted by Annette Talbott, Employment Department, 5 pgs.**

**C - HB 2238A, written testimony submitted by Nancy Kaib, 3 pgs.**

**D - HB 2238A, written testimony submitted by Rich Peppers, dated 5/17/99, 1 pg.**

**E - SB 1229, written testimony submitted by Paul Donheffner, Marine Board, 1 pg.**

**F - SB 848, written testimony submitted by Jim Botwinis, OSP Assoc., dated 5/17/99, 6 pgs.**

**G - SB 848, -2 amendments (LC 3665), dated 4/27/99, staff, 1 pg.**