

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 27, 1999 Hearing Room 357

8:30 a.m. Tapes 210 - 211

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Rachel Short, Administrative Support

MEASURE/ISSUES HEARD:

HB 2010A Public Hearing and Work Session

SB 944A Work Session

SB 1071A Work Session

SB 482A Work Session

SB 740A 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 210, SIDE A		

005	Chair Mannix	Opens meeting at 8:30 a.m.
<u>HB 2010A PUBLIC HEARING</u>		
018	Tom Holt	Executive Director, Oregon State Pharmacists Association, Testifies and submits written testimony in support of HB 2010A that allows pharmacist, pharmacy owner or pharmacy operator to refuse to fill or actively refer particular type of prescription on ethical or religious grounds (EXHIBIT A). References a <i>Pharmacy Today</i> article by Daniel Hussar (EXHIBIT B). Submits Oregon Health Sciences University (OHSU and Doernbecher Children's Hospital) policy regarding employees conscientiously objecting to a practice (EXHIBIT C). Introduces the "A4 amendments that substitute for the original bill (EXHIBIT D).
073	Chair Mannix	How does HB 2010A differ from what originally came out of the House Human Resources Committee and failed on the House floor?
074	Holt	Discusses the changes between the original bill and what is now the "A4 amendments to HB 2010A.
107	Rep. Prozanski	What faith do we have that if the "A4 amendments pass that they will be implemented as you have described them?
123	Holt	These amendments require that a prior arrangement be made if a pharmacist objects to filling a prescription for particular medications and a referral for a patient is necessary.
129	Rep. Prozanski	When are these arrangements for a referral made? At the time the patient comes in with the prescription, prior to anyone looking for this particular medication, or after a request has been made?
133	Holt	The intent of this legislation is that prior to being asked to fill prescriptions for the objectionable medications, the pharmacist has to state a conscientious objection twice verbally and once in writing to his supervisor.
139	Rep. Prozanski	If a pharmacist has not had these verbal conversations and presented an objection in writing to the his supervisor, and a person comes into the pharmacy for one of these objectionable medications, is the pharmacist obligated to fill that prescription?
144	Holt	That pharmacist would not have the protection of this legislation, but a pharmacist always has the ability to deny a prescription.
150	Rep. Prozanski	Are you stating that a pharmacist could come up with some other reason to not fill that prescription?

154	Holt	Gives an example of when a pharmacist might use his professional judgement in denying a prescription.
168	Chair Mannix	Does this bill protect the individual who summarily refuses to fill a prescription?
170	Holt	No.
171	Chair Mannix	The individual has to twice have a verbal communication with supervisory authority and give advance notice in writing before they are covered by this bill, is that correct?
172	Holt	Yes.
182	Rep. Prozanski	This legislation pertains to objectionable medications for abortion or death with dignity. Are there any other medications or purposes that pharmacists would want to be exempted from filling?
190	Holt	I don't see any others right now, but there may be some as new drugs are developed in the future.
197	Rep. Bowman	If a pharmacist chooses not to fill a prescription, how long does it take for the patient to get a referral to another pharmacist?
205	Holt	It should take only the amount of time to call over another staff pharmacist or refer the patient to the nearest pharmacy.
242	Rep. Hansen	Is this practice already taking place in some pharmacies?
245	Holt	I don't know.
253	Rep. Hansen	What assurances do you have that a prescription could be filled in a timely manner when it occurs in rural Oregon or small communities where there may not be two pharmacists in the same pharmacy?
262	Holt	In those instances, we reference using dispensing health care providers to fill those prescriptions.
273	Rep. Prozanski	Some of these objectionable medications have been used in other countries, like the abortion medication. What type of conscientious-objection provisions have been set up in those countries if a pharmacist might object to filling those prescriptions?

282	Holt	I don't know what is happening in other countries.
285	Rep. Hansen	Wouldn't it be easier for a pharmacist with conscientious objections to certain medications to check with the pharmacy about their policies on filling these prescriptions before taking a position?
292	Holt	The particular medications in this bill are very new, and many people have been practicing pharmacy for many years who are suddenly confronted with this issue of objecting to these medications.
303	Rep. Hansen	Haven't most of these drugs been in design or testing for many years?
305	Holt	The abortion medication has resulted from many years of research.
314	Pat Amedeo	Oregon Community Pharmacy Council Testifies in opposition to HB 2010A stating that most of these issues should be handled between the employer and the employee rather than in law.
407	Chair Mannix	Would your organization support this legislation in any form?
411	Amedeo	No, because we don't believe this legislation is necessary.
428	Rep. Gianella	Points out that line 21, page 1 of the A4 amendments state a pharmacist "may" be required to contact a pharmacist who is on-call for filling such prescriptions, rather than "shall".
TAPE 211, A		
002	Amedeo	Discusses the issue of liability if another pharmacist or dispensing health care provider is not made available to the patient.
004	Chair Mannix	A card could be printed up with the referral.
006	Amedeo	What do we do if no one from the on-call list is available?
007	Chair Mannix	This legislation is requiring a referral that could be handled by printing the appropriate information on a card and giving that to the patient.
022	Scott Gallant	Oregon Medical Association Testifies in opposition to HB 2010A stating that this is unique legislation by setting out specific medications as conscientiously objectionable.

043	Chair Mannix	With the revolution in medicine, won't we have to address these issues of conscience and ethics more routinely in the future?
048	Gallant	Yes, but I am not sure addressing these issues in statute addresses all the possible implications.
063	Chair Mannix	Discusses controversial medical issues including death with dignity, medical marijuana, abortion medication, and genetic manipulation.
080	Gallant	Describes instances when a pharmacist may be asked to make medical determinations regarding prescriptions that they are not qualified to make. Discusses the possibility of a physician being held liable for wrongful birth because the prescription for abortion medication was refused to be filled by a pharmacist.
200	Chair Mannix	This bill does not intend nor assume that a physician is ever responsible for what a pharmacist or pharmaceutical company does.
202	Gallant	I hope the courts will agree with you.
211	Chair Mannix	Closes the public hearing on HB 2010A.
<u>HB 2010A WORK SESSION</u>		
219	Rep. Gianella	MOTION: Moves to ADOPT HB 2010A-4 amendments dated 05/26/99.
237	Rep. Hansen	Discusses reasons why he opposes HB 2010A.
285	Rep. Prozanski	Where does it state in the ñA4 amendments that a person would not be receiving the immunity under this legislation if they failed to do the referral?
301	Counsel Horton	I don't see that stated.
302	Rep. Prozanski	Based upon that answer, I cannot support the ñA4 amendments.
332		VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski

	Chair Mannix	The motion CARRIES.
339	Rep. Gianella	MOTION: Moves HB 2010A to the floor with a DO PASS AS AMENDED recommendation.
340	Rep. Prozanski	Do we have a fiscal impact on this bill?
347	Counsel Horton	I do not have a fiscal impact on the ñA4 amendments.
352	Rep. Prozanski	Objects on procedural grounds that this bill cannot be moved to the floor without a fiscal impact statement on the ñA4 amendments.
371	Chair Mannix	Recesses the work session on HB 2010A.
<u>SB 482A WORK SESSION</u>		
383	Counsel Horton	Discusses the ñA3 and ñA4 amendments to SB 482A that creates liquidated damage award of \$1,000 for sports official that is subjected to offensive physical contact during sporting event (EXHIBITS E & F).
409	Rep. Al King	State Representative, House District 44 Testifies in support of SB 482A and the subsequent amendments.
TAPE 210, B		
001	Rep. Sunseri	The instances of abuse toward sports officials that we heard about in earlier testimony seem like cases of assault that should be covered under current law. If current laws are not being enforced, why will creating a new law help?
005	Rep. King	States that the ñA4 amendments make this type of harassment a Class A misdemeanor which gives the police more authority and gives the impression that this behavior will not be tolerated.
015	Chair Mannix	Discusses the ñA3 amendments that allow liquidated damages in a civil suit.
032	Rep. Bowman	Can you currently sue someone in civil court for this offense?
033	Chair Mannix	Yes, but you only get actual damages. The proposed liquidated damages of between \$500 and \$1,000 will be more of a penalty and a more meaningful deterrent to this behavior.

037	Rep. Bowman	Expresses her concern that current law is not prosecuting for this violation, but because you are a sports official you can go to court and get money awarded.
052	King	Describes the "hurdles" currently encountered in trying to collect punitive damages in a civil proceeding.
064	Rep. Gianella	MOTION: Moves to ADOPT SB 482A-3 amendments dated 05/26/99.
066	Rep. Prozanski	Didn't we discuss a portion of the liquidated damages going to the sports organization as well as the sports official? Are there compensatory fines that can be assessed without having to go through a civil proceeding?
096	Chair Mannix	You would still have to have a prosecutor file the case and win a conviction before a compensatory fine would be paid.
101	Jim Rice	Oregon Criminal Defense Lawyers Association Asks for clarification if this asking for damages is going to be a civil or criminal statute?
105	Chair Mannix	There is a provision for a civil action with liquidated damages, but there also is going to be a separate provision to up the criminal penalty to a Class A misdemeanor. The amendments cut the criminal part out of the bill and turns to the civil side with liquidated damages between \$500 and \$1,000 for having done the crime, but it is a civil action.
111	Rice	Describes options for recovering these damages in a civil suit.
122	Chair Mannix	The ñA3 amendments to SB 482A delete the criminal side of this legislation leaving current legislation as it is. These amendments do allow a sports official to seek liquidated damages between \$500 and \$1,000 in a civil action if a judge rules that this offensive conduct occurred.
142	Rep. Simmons	What do you intend to do with the ñA4 amendments because I thought the intent of this legislation was to increase the penalty so the law would be enforced for this type of violation?
158	Rep. Sunseri	I agree that there is no excuse for offensive behavior towards a sports official, but do you want to make someone guilty of a Class A misdemeanor for insulting someone?
162	Chair Mannix	We are debating only the ñA3 amendments to SB 482A which delete all criminal sanctions from this bill and let a sports official collect liquidated damages from \$500 to \$1,000 in a civil action.
168	Rep. King	I am not convinced that the sports officials association would support a bill that

		deleted the criminal penalty.
171	Chair Mannix	This bill would not pass out of this committee with the ñA4 amendments.
197		VOTE: 4-3 AYE: 4 - Gianella, Hansen, Simmons, Mannix NAY: 3 - Bowman, Prozanski, Sunseri
	Chair Mannix	The motion CARRIES.
205	Rep. Gianella	MOTION: Moves SB 482A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-3 AYE: 4 - Gianella, Hansen, Simmons, Mannix NAY: 3 - Bowman, Prozanski, Sunseri
	Chair Mannix	The motion CARRIES. REP. KING will lead discussion on the floor.
216	Chair Mannix	Closes the work session on SB 482A.
<u>HB 2010A RECONVENES WORK SESSION</u>		
222	Chair Mannix	Indicates the fiscal impact statement on HB 2010A shows no impact on state or local governments.
228	Rep. Simmons	MOTION: Moves the previous question Moving HB 2010A to the floor with a DO PASS AS AMENDED recommendation.

		<p>VOTE: 4-3</p> <p>AYE: 4 - Gianella, Simmons, Sunseri, Mannix</p> <p>NAY: 3 - Bowman, Hansen, Prozanski</p>
	Chair Mannix	<p>The motion CARRIES.</p> <p>CHAIR MANNIX will lead discussion on the floor.</p>
233	Rep. Bowman	Gives notice of possible minority report.
236	Rep. Hansen	Joins in notice of possible minority report.
241	Chair Mannix	Closes the work session on HB 2010A.
<u>SB 944A WORK SESSION</u>		
309	Counsel Horton	Discusses the 7 amendments to SB 944A modifies definition of forcible compulsion for purposes of sexual offenses (EXHIBIT G).
323	Rep. Prozanski	MOTION: Moves to ADOPT SB 944A-7 amendments dated 05/26/99.
328	Chair Mannix	Explains the qualifier to SB 944A on page 2, beginning at line 5.
338	Rep. Bowman	I thought we asked for an amendment that deleted line 5.
355		<p>VOTE: 5-2</p> <p>AYE: 5 - Gianella, Hansen, Prozanski, Simmons, Mannix</p> <p>NAY: 2 - Bowman, Sunseri</p>
	Chair Mannix	The motion CARRIES.

361	Rep. Sunseri	MOTION: Moves to ADOPT SB 944A-3 amendments dated 05/26/99.
364	Counsel Horton	Explains the ñA3 amendments to SB 944A (EXHIBIT H).
375		VOTE: 2-5 AYE: 2 - Bowman, Sunseri NAY: 5 - Gianella, Hansen, Prozanski, Simmons, Mannix
	Chair Mannix	The motion FAILS.
383	Rep. Prozanski	MOTION: Moves SB 944A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-2 AYE: 5 - Gianella, Hansen, Prozanski, Simmons, Mannix NAY: 2 - Bowman, Sunseri
	Chair Mannix	The motion CARRIES. REP. GIANELLA will lead discussion on the floor.
400	Rep. Bowman	Gives notice of possible minority report.
407	Chair Mannix	Closes the work session on SB 944A.
<u>SB 1071A WORK SESSION</u>		
411	Counsel Horton	Describes the ñA4 amendments to SB 1071A requires 24 hour notice prior to issuing citation to homeless person for trespassing on public property or camping on public property (EXHIBIT I).
437	Chair Mannix	States that the City of Portland and the bill's sponsor, Sen. Shields, are in support of the ñA4 amendments.

TAPE 211, B		
005	Rep. Hansen	MOTION: Moves to ADOPT SB 1071A-4 amendments dated 05/26/99.
016	Chair Mannix	Notices that "trespassing" was left in the amendment.
017	Rep. Bowman	The bill contradicts itself with these amendments because we are giving these people a 24-hour notice to vacate, but telling them they can be ticketed within 2 hours of the notice being posted.
018	Chair Mannix	We could handle this through a scrivener's error because the issue was not trespassing, but unlawful camping.
021	Counsel Horton	I did not request the amendment with "trespassing".
023	Chair Mannix	MOTION: Moves to FURTHER AMEND SB 1071A-4 amendments dated 05/26/99 on page 1, line 5, by deleting "trespassing or".
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
035	Rep. Bowman	Why post a 24-hour notice if in 2 hours and 1 minute a citation can be issued?
036	Chair Mannix	I would hope that these people "camping" would move before the 2 hours has elapsed.
038	Rep. Prozanski	What if someone who lives in one of these "camps" is not there when the 24-hour notice to vacate is posted and they don't return until after the 2 hour limit for getting a ticket?
044	Chair Mannix	The intent of this legislation is to stop the teams who are posting these notices and issuing citations at the same time. They could wait for 2 hours and issue a citation, but the camp can't be cleared for 22 more hours. This is a restriction, not an empowerment.
069		VOTE: 5-2 AYE: 5 - Gianella, Hansen, Prozanski, Simmons, Mannix NAY: 2 - Bowman, Sunseri

	Chair Mannix	The motion CARRIES.
078	Rep. Prozanski	Asks that any further action on SB 1071A be postponed until tomorrow.
086	Chair Mannix	Closes the work session on SB 1071A.
<u>SB 740A WORK SESSION</u>		
100	Counsel Horton	Discusses the ñA5 amendments to resolve conflicts to SB 740A that expands group of persons required to report as sex offenders (EXHIBIT J).
105	Chair Mannix	I have had a request that minor exceptions be made to this bill regarding juveniles.
122	Chair Mannix	Closes the work session on SB 740A.
123	Chair Mannix	Adjourns the meeting at 10:07 a.m.

Transcribed By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

EXHIBIT SUMMARY

A - HB 2010A, written testimony submitted by Tom Holt, OR Pharmacist Assoc., dated 5/27/99, 2 pgs.

B - HB 2010A, Pharmacy Today article submitted by Tom Holt, OR Pharmacist Assoc., 1 pg.

C - HB 2010A, OHSU Hospital rules and regulations submitted by Tom Holt, OR Pharmacist Assoc., dated 10/96, 2 pgs.

D - HB 2010A, ñA4 amendments (LC 3649), dated 5/26/99, submitted by Tom Holt, 1 pg.

E - SB 482A, ñA3 amendments (LC 1779), dated 5/26/99, staff, 1 pg.

F - SB 482A, ñA4 amendments (LC 1779), dated 5/26/99, staff, 2 pgs.

G - SB 944A, ñA7 amendments (LC 3642), dated 5/26/99, staff, 1 pg.

H - SB 944A, ñA3 amendments (LC 3642), dated 5/26/99, staff, 1 pg.

I - SB 1071A, ñA4 amendments (LC 3859), dated 5/26/99, staff, 1 pg.

J - SB 740A, ñA5 amendments (LC 2658), dated 5/26/99, staff, 3 pgs.