

SENATE COMMITTEE ON JUDICIARY

March 11, 1999 Hearing Room 343

3:00 pm Tapes 70 - 71

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

MEMBER EXCUSED: Sen. Brown

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: Public Hearing and Work Session

SB 562

SB 839

HB 2264

HB 2451

HB 2481

HB 2191

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 70, A

003

Chair Bryant

Calls meeting to order at 3:14 p.m.

HB 2451 PUBLIC HEARING

008

Kirk Hall**Oregon State Bar, CEO, Professional Liability Fund**

Testifies and submits written testimony on HB 2451 (**EXHIBIT A**). Oregon is the only state that requires malpractice insurance in order to practice. We assist lawyers in loss prevention. We have established confidential programs to deal with stress, burnout, career change and the alcohol and drug problems that may ensue. We would like a firmer basis ensuring confidentiality in the law. HB 2451 would include programs such as ours in the existing ORS 9.545 that grants confidentiality when assisting lawyers with different issues than the ones concerning us here. Additionally, Section 7 specifies minor amendments concerning the timing of payment of annual Bar membership fees. This timing would be left to the Board of Governors of the Oregon State Bar.

051

Chair Bryant

Why was February 1 chosen in 1983?

052

Hall

I think that may have been 1935, but I don't know why the date was chosen.

HB 2451 WORK SESSION

075

Sen. Courtney**MOTION: Moves HB 2451 to the floor with a DO PASS recommendation.****VOTE: 5-0****EXCUSED: 2 - Brown, Nelson****Chair Bryant****Hearing no objection, declares the motion CARRIED.****SEN. BRYANT will lead discussion on the floor.****SB 839 PUBLIC HEARING**

084

Tim Martinez**Oregon Banker's Association**

Testifies and submits testimony in support of SB 839 (**EXHIBIT B**). SB 839 will solve the issue of how to get into a safe deposit box when the last owner has died. SB 839 will allow a third party to access the safe deposit box by presenting

		<p>a death certificate and an affidavit. The affidavit must assert that the person presenting the request has reason to believe that the will or information related to the wishes of the deceased owner can be found in the safe deposit box. This person must also be an interested person such as a spouse, heir or legal representative. SB 839 also seeks some liability protection for the bank for allowing this access.</p>
144	Chair Bryant	<p>Enters a letter from Ron D. Bailey into the record (EXHIBIT C). When the inventory is taken, and the IRS asks about the value, what is the bank's response since your inventory is generic?</p>
159	Mary Chaffin	<p>U.S. Bank</p> <p>The inventory will not be very helpful in establishing value. Testifies and submits written testimony in support of SB 839 (EXHIBIT D).</p>
181	Alan Bennett	<p>Pioneer Trust Bank, Oregon Bankers Association</p> <p>Indicates that nothing in SB 839 absolves the personal representative from providing a detailed inventory when the trustee is actually settling the estate.</p>
198	Sen. Tarno	<p>Does this bill require that a witness observe opening the box?</p>
203	Martinez	<p>If an employee of the bank qualifies as an unbiased witness.</p>
205	Sen. Burdick	<p>Are you concerned about fraud?</p>
211	Martinez	<p>They must have a certified copy of the death certificate and sign an affidavit. Nothing can be taken out of the box. Only a copy of relevant material found in the safe deposit box will be released.</p>
222	Chaffin	<p>This gives protection to the banks for what they are already doing.</p>
234	Sen. Burdick	<p>What if something is missing or is thought to be missing? Aren't you concerned about the liability of the bank?</p>
244	Chaffin	<p>I think that is covered by Section 2, Subsection (7). This holds the bank harmless if the provisions allowing access under this bill have been met and intentional acts of misconduct have not occurred.</p>
255	Pam Leavitt	<p>Oregon Credit Union League</p> <p>Testifies and submits written testimony in support of SB 839 including the 11 amendments (EXHIBITS E and F). Indicates that the credit unions have also had problems with the issue SB 839 is designed to fix.</p>

271	Martinez	Indicates that Dave Barrows of the Oregon League of Financial Institutions is in support of the bill and the ñ1 amendments.
276	Jenifer Robison	Division of State Lands Testifies and submits written testimony in support of SB 839 (EXHIBIT G).
<u>SB 839 WORK SESSION</u>		
300	Sen. Courtney	MOTION: Moves to ADOPT SB 839-1 amendments dated 3/10/99.
		VOTE: 4-0 EXCUSED: 3 - Brown, Nelson, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
304	Sen. Courtney	MOTION: Moves SB 839 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 EXCUSED: 2 - Brown, Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED . SEN. BURDICK will lead discussion on the floor.
<u>SB 562 PUBLIC HEARING</u>		
313	Patricia Gibford	Executive Director, Central Oregon Independent Practice Association Testifies in support of SB 562. Indicates that SB 562 is intended to correct an error made in the 1997 legislative session.
350	Chair Bryant	Declares a possible conflict of interest indicating that he is on the Board of Central Oregon Independent Health Services.

360	John Powell	Regence Blue Cross Blue Shield of Oregon Testifies in support of SB 562. The errors being corrected here were based on SB 1182 of the 1997 legislative session.
403	Scott Gallant	Oregon Medical Association Testifies in support of SB 562.
427	Bruce Bishop	Kaiser Permanente Testifies as neutral on SB 562 (EXHIBIT H). Would like to also delete Section 1 (4) found on page 2, lines 38-40 of the bill. The language is unclear and we would recommend either clarifying language or deletion of that subsection.
541	Chair Bryant	Were any of you in the hearing room when this section was discussed and adopted in 1997?
Tape 71, A		
013	Bishop	Believes it was in 1995 and although he was there, did not understand it at that time.
020	Gallant	I believe this was part of 1997 legislation and was debated over quite a period of time. It is intended to enable providers, physicians and others, to request from insurers what their standard qualifications are in order to be a member of their panels. I have not heard before that this section of the statute is a problem.
040	Chair Bryant	Who is being referenced as the "other party" in subsection 4?
047	Gallant	I believe the reference is to the person who is inquiring about these standards.
055	Chair Bryant	Do you want to delete "other party" or the whole section?
057	Bishop	My proposal is to delete the section. If there is some purpose to this section, then perhaps clarification should be made.
067	Chair Bryant	If we want to change this, we would have to send it back to the Legislative Counsel. If this is in need of change, I have no objection to that occurring on the House side.
<u>SB 562 WORK SESSION</u>		
082	Sen. Bryant	MOTION: Moves SB 562 to the floor with a DO PASS recommendation.

		VOTE: 5-0 EXCUSED: 2 - Brown, Tarno
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
<u>HB 2264 PUBLIC HEARING</u>		
101	Bob Joondeph	Oregon Advocacy Center Testifies in support of HB 2264. HB 2264 prohibits the Mental Health and Developmental Disability Services Division from collecting the cost of care from a damage award when the state is held liable for the death or injury of a resident of a state care facility.
152	Sen. Nelson	Would the effect of this bill be to take away the incentive to provide good care for patients?
162	Joondeph	We believe that is the situation now and hope this bill will change it.
<u>HB 2264 WORK SESSION</u>		
166	Sen. Courtney	MOTION: Moves HB 2264 to the floor with a DO PASS recommendation.
		VOTE: 4-0 EXCUSED: 3 - Brown, Burdick, Tarno
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. NELSON will lead discussion on the floor.
176	Sen. Qutub	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. QUTUB to BE RECORDED as voting AYE on the MOTION: Moves HB 2451 to the

		floor with a DO PASS recommendation.
		VOTE: 5-0 EXCUSED: 2 - Brown, Tarno
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
<u>HB 2191 PUBLIC HEARING</u>		
187	Bill Seely	Driver and Motor Services Division, Oregon Department of Transportation (ODOT) Testifies and submits written testimony in support of HB 2191 (EXHIBIT I). In 1997 the legislature eliminated public access to personal information held by the DMV. The changes we are asking for in HB 2191 will clarify the procedures needed to release the records to appropriate parties.
<u>HB 2191 WORK SESSION</u>		
273	Sen. Qutub	MOTION: Moves HB 2191 to the floor with a DO PASS recommendation.
		VOTE: 5-0 EXCUSED: 2 - Brown, Tarno
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. QUTUB will lead discussion on the floor.
<u>HB 2481 PUBLIC HEARING</u>		
285	Jim Nass	Department of Justice Testifies and submits written testimony in support of HB 2481 (EXHIBIT J). HB 2481 amends current requirement that the Court of Appeals schedule oral arguments within 42 days of appeal from a decision of the Land Use Board of Appeals (LUBA). Provides that the Court of Appeals must establish, by rule, an expedited schedule for oral argument. Indicates that 95% of these cases are

		scheduled for oral arguments within the current 42-day time limit. Since the Court of Appeals schedules oral argument six weeks in advance, there are some that can't fit within that 42-day limit. The Court feels that 49 days is adequate, but wants to set this by rule, rather than by statute.
334	Chair Bryant	Under this language, if the court wanted to, they could set a longer schedule?
338	Nass	Yes, but they would not. Discusses history of the Court of Appeals compliance with the intent of the legislature.
356	Chair Bryant	I'm thinking of some language which would establish a "not to exceed" time limit.
375	Sen. Burdick	What is the 91-day limit?
378	Nass	The court has 91 days after oral arguments to decide the case.
385	Sen. Burdick	I think these deadlines are here for a reason.
394	Chair Bryant	Discusses changing the time limit in the statute to 56 days.
439	Nass	I think the Court has been responsive to the legislative intent. We would like the flexibility to schedule these deadlines.
473	Chair Bryant	Closes public hearing and opens work session on HB 2481.
<u>HB 2481 WORK SESSION</u>		
480	Chair Bryant	Indicates that a "not to exceed" time of 49 days would assure the court enough time, but keep a time limit in the statute. Indicates he will have that change drafted.
494	Sen. Qutub	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. QUTUB to BE RECORDED as voting AYE on the MOTION: Moves SB 839 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 EXCUSED: 2 - Brown, Tarno

	Chair Bryant	Hearing no objection, declares the motion CARRIED.
502	Chair Bryant	Adjourns the meeting at 4:15 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 2481, written testimony dated March 11, 1999, Kirk Hall, 8 pp
B ñ SB 839, written testimony dated March 11, 1999, Tim Martinez, 3 pp
C ñ SB 839, written testimony dated March 11, 1999, Ron D. Bailey, 1 pp
D ñ SB 839, written testimony dated March 11, 1999, Mary Chaffin, 2 pp
E ñ SB 839, -1 amendment (LC 3168) dated 3/10/99, 6 pp
F ñ SB 839, written testimony , Pamela Leavitt, 1 pp
G ñ SB 839, written testimony dated March 11, 1999, Paul Cleary, 1 pp
H ñ SB 562, written testimony dated March 11, 1999, Bruce Bishop, 1 pp
I ñ HB 2191, written testimony dated March 11, 1999, Bill Seely, 1 pp
J ñ HB 2481, written testimony dated March 11, 1999, James Nass, 5 pp