

SENATE COMMITTEE ON JUDICIARY

May 25, 1999 Hearing Room C

1:00 p.m. Tapes 195 - 198

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: SB 722 ñ Possible Reconsideration and Work Session

SB 1205 ñ Work Session

HB 3576A ñ Work Session

HB 2805A ñ Public Hearing

HB 2256A ñ Public Hearing and Work Session

HB 2705A - Public Hearing and Work Session

HB 3052A - Public Hearing and Work Session

HB 2684 - Public Hearing and Work Session

HB 2474A - Public Hearing and Work Session

HB 2554A - Public Hearing and Work Session

TAPE/#	Speaker	Comments
TAPE 195, A		
003	Chair Bryant	Calls meeting to order at 1:12 p.m.
<u>HB 2554A PUBLIC HEARING</u>		
005	Rep. Max Williams	State Representative, House District 9 Testifies in support of HB 2554 that limits the civil liability of a health practitioner who provides medical services without any compensation. Indicates that the NW Medical Teams are located in his district and they brought to his attention the fact that medical practitioner volunteers must carry malpractice insurance since they are not currently exempt from suits. Indicates support for the ñA9 amendments (EXHIBIT A).
043	Chair Bryant	The House changed the negligence standard from "intentional" to "gross" negligence.
081	Rep. Williams	Although "gross" negligence is not as high of a standard as "intentional" negligence, it is still a high standard and should be supported. Discusses the benefits of NW Medical Team volunteerism overseas and in Oregon.
121	Scott Gallant	Oregon Medical Association Submits written testimony and testifies in support of HB 2554A (EXHIBIT B). Indicates support of the ñA9 amendments and the amendments to include physician assistants as medical providers.
146	Warren Schafer, DMD	Volunteer for NW Medical Teams Submits written testimony and testifies in opposition to HB 2554A (EXHIBIT C). Indicates that he finds volunteering the most satisfying work he has done and he considers carrying malpractice insurance a part of the volunteer effort. Requiring a waiver from patients in order that practitioners don't have to carry insurance is not appropriate.
239	Sen. Brown	Aren't we developing two levels of care? Those who can't afford to pay must settle for a lesser level of care.
253	Gallant	I don't believe so. Physicians and other health care workers will treat patients with the same level of care whatever their ability to pay.

263	Sen. Brown	The reality is that if the doctor is negligent with a paying patient, the patient has recourse. A non-paying patient under this bill doesn't have any recourse for negligence.
271	Gallant	We require in this bill that the patient, or their health guardian, be given clear information so they can give informed consent to treatment. I believe we are encouraging providers to deliver services that patients may not get otherwise.
297	Sen. Brown	Does the informed consent form contain the limitations on liability?
309	Counsel Tweedt	Yes. It must contain that to conform to this legislation.
311	Chair Bryant	To have a valid consent you must include this, and where needed, in Spanish.
320	Sen. Nelson	Does section 7 alleviate part of the concern that these providers be licensed?
326	Chair Bryant	Yes, but not the requirement that they be part of a non-profit organization. Most of these organizations are, however, non-profit.
339	Jeff Watkins	Oregon Society of Physician Assistants Submits written testimony and testifies in support of HB 2554A as amended with the ñA8 amendments (EXHIBIT D).
366	Sen. Burdick	Has liability insurance coverage been a problem for physician assistants?
371	Watkins	I wouldn't call it a big problem. Usually the insurance is obtained through the supervising physician.
382	Counsel Tweedt	The ñA8 amendments are to prevent a conflict with another bill currently being considered?
390	Watkins	Yes. The Board of Medical Examiners gives physicians assistants a "license." The ñA8 amendments will delete any reference in this legislation to registration and replace it with a reference to licensure.
<u>HB 2554A WORK SESSION</u>		
410	Sen. Bryant	MOTION: Moves to ADOPT HB 2554A-A8 amendments dated 5/24/99 and that the ñA8 amendments be FURTHER AMENDED on page 1, line 3, by changing "registered" to "licensed".
		VOTE: 6-0

		EXCUSED: 1 - Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
413	Sen. Bryant	MOTION: Moves to ADOPT HB 2554A-A9 amendments dated 5/24/99.
		VOTE: 6-0 EXCUSED: 1 - Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
415	Sen. Bryant	MOTION: Moves HB 2554A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. DUNCAN will lead discussion on the floor.
Tape 196, A		
<u>HB 2474A PUBLIC HEARING</u>		
012	Dave Hunnicutt	Oregonians in Action Testifies in support of HB 2474A which allows the applicant for a land use decision, limited land use decision, or permit to accept a condition imposed by a local government and also file a challenge to the condition.
081	Pat Turnidge	Salem, Oregon

		Testifies in support of HB 2474A. Discusses current processes regarding development charges. Indicates that local governments change the rules as they go along and developers deserve to know the charges before they decide to go ahead with a project. Submits suggested amendments (EXHIBIT F).
125	Tim Sercombe	Attorney, represents local governments Submits written testimony and testifies as neutral on the bill (EXHIBIT G). Discusses a development case in which he represented the City of Sherwood. Discusses the concept of estoppel. Suggests ways in which HB 2474A could be improved.
248	Chair Bryant	Indicates amendments will be requested.
<u>HB 2805A PUBLIC HEARING</u>		
287	Rep. Kurt Schrader	State Representative, House District 23 Testifies in support of HB 2805A that provides some civil immunity for statements made by a person in the course of participating in administrative, quasi-judicial or legislative proceedings conducted by a public body. It does not protect people who make knowingly false but not material statements on the issue being considered. A Strategic Lawsuit Against Public Participation (SLAPP) suit is a civil claim filed against a person or group as a result of their communications on an issue of public interest or concern. ORS 171.530 deals with the immunity given to citizens who testify in front of legislative committees and specifies that immunity is not given to knowingly false but immaterial statements.
386	Sen. Burdick	Where did the concept "immaterial" come from?
400	Dave Heyndrickx	Office of Legislative Council Discusses the use of "material" and "immaterial" in the law. If a statement were made which has nothing to do with the issue in front of the public body, that statement would not be protected.
443	Sen. Burdick	Are grounds for lawsuits under this statute related to slander?
445	Heyndrickx	That's correct. The great majority of the SLAPP suits are defamation actions. Discusses the difference between libel and slander.
476	Sen. Burdick	Do you think this bill applies the same standard as was specified in <i>New York Times v. Sullivan</i> ?
Tape 195, B		
030	Heyndrickx	It's slightly different, because the press standard requires actual malice.

032	Sen. Burdick	Yes, it requires reckless disregard of whether the facts were true or not.
034	Heyndrickx	Correct. This bill will require ascertaining if you knew or should have known your statement to be false and if it was material to the proceedings.
049	Portia Foster	Friends of the Historic 804 County Road and Hiking Trail Submits written testimony and testifies in support of HB 2805A (EXHIBIT H).
085	Liz Frenkel	League of Women Voters Submits testimony and testifies in support of HB 2805A (EXHIBIT I).
118	Joe Kuehn	Friends of Marion County Submits testimony and testifies in support of HB 2805A (EXHIBIT J).
145	Howard Paine	Alliance for Responsible Land Use, Deschutes County Submits written testimony and testifies in support of HB 2805A (EXHIBIT K).
167	Evan Manvel	1000 Friends of Oregon Submits written testimony and testifies in support of HB 2805A (EXHIBIT L). Discusses the intimidation factor inherent in SLAPP lawsuits.
190	Daniel Reyes	Linn County Testifies in support of HB 2805A. Discusses the potential economic damage to his family through a SLAPP suit as they are active in a group from Albany that participates in local government.
238	Sen. Burdick	Asks if the "false and immaterial" standard in the bill is preferable to the <i>New York Times v Sullivan</i> standard that is in the 8 amendments (EXHIBIT M).
249	Manvel	Indicates he believes the current standard is better for a variety of reasons.
259	Dennis Venable	Linn County Testifies in support of HB 2805A.
270	Jerry Scott	Citizen Submits written testimony and testifies in support of HB 2805A (EXHIBIT N).
328	Jeffrey Lamb	Oregon Communities for a Voice in Annexations

		Submits written testimony and testifies in support of HB 2805A (EXHIBIT O).
Tape 196, B		
014	Sen. Duncan	Discusses the difficulty of allowing endless debate regarding any issue.
032	Lamb	I appreciate this concern and am grateful for the time the committee has allowed.
041	Sen. Brown	I have received correspondence and e-mail on this issue from many sources but I don't have time to answer each one.
<u>HB 2474 PUBLIC HEARING</u>		
051	Merilyn Reeves	Friends of Yamhill County Testifies against HB 2474A.
<u>HB 3576A WORK SESSION</u>		
097	Counsel Tweedt	HB 3576A exempts from public disclosure information that would adversely affect public sale or purchase of electric power. The A4 amendments change slightly the language specifying the exemptions in the bill and include language to eliminate conflicts with HB 3218 (EXHIBIT P).
113	Sen. Courtney	MOTION: Moves to ADOPT HB 3576A-A4 amendments dated 5/25/99.
		VOTE: 4-0 EXCUSED: 3 - Nelson, Tarno, Bryant
Vice-Chair Courtney		Hearing no objection, declares the motion CARRIED.
132	Sen. Courtney	MOTION: Moves HB 3576A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0 EXCUSED: 3 - Nelson, Tarno, Bryant

	Vice-Chair Courtney	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BROWN will lead discussion on the floor.</p>
<u>HB 2684 PUBLIC HEARING</u>		
139	James Nass	<p>Legal Counsel, Court of Appeals</p> <p>Submits written testimony and testifies in support of HB 2684 that is designed to make clearer when appellate judges may participate in hearings (EXHIBIT Q). Discusses the provisions of the bill.</p>
<u>HB 2684 WORK SESSION</u>		
190	Sen. Brown	MOTION: Moves HB 2684 to the floor with a DO PASS recommendation.
		<p>VOTE: 4-0</p> <p>EXCUSED: 3 - Nelson, Tarno, Bryant</p>
	Vice-Chair Courtney	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. COURTNEY will lead discussion on the floor.</p>
<u>HB 2256A PUBLIC HEARING</u>		
202	Lynn Larson	<p>Attorney General's Office</p> <p>Testifies in support of HB 2256A that establishes disincentives to discourage frivolous prisoner lawsuits in state courts (EXHIBIT R).</p>
224	Counsel Tweedt	Indicates the A2 amendments resolve conflicts (EXHIBIT S).
<u>HB 2256A WORK SESSION</u>		
226	Sen. Courtney	MOTION: Moves to ADOPT HB 2256A-A2 amendments dated 5/25/99.
		VOTE: 6-0

		EXCUSED: 1 - Nelson
	Vice-Chair Courtney	Hearing no objection, declares the motion CARRIED.
230	Sen. Brown	MOTION: Moves HB 2256A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Nelson
		Vice-Chair Courtney
		Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
<u>HB 2705A PUBLIC HEARING</u>		
254	Barbara Hutchison	Oregon Liquor Control Commission (OLCC) Testifies in support of HB 2705A. Indicates that the Commission has a little trouble with the ñA5 amendments because of the wording (EXHIBIT T).
270	Pat Egan	Oregon Wine Growers Association Testifies in support of HB 2705A. Indicates that the ñA5 amendments would keep the intent of Section 8 of the A-engrossed version, but would not allow establishments to serve liquor gratis.
300	Paul Romain	Oregon Beer and Wine Distributors Association Testifies in support of the ñA4 amendments (EXHIBIT U). Indicates the original HB 2705 was aimed at treatment for young people who are having difficulties with alcohol. In the House, amendments were added to bar the giving away of alcohol to patrons of an establishment such as SCORES. We believe that the current law doesn't allow giving away alcohol but have no objection to clarifying that further. Discusses the ñA4 amendments and the history of noise as a disqualifier for a liquor license. Indicates the OLCC just yesterday released a rule, regarding noise. We would like to define in the statutes the general parameters of unacceptable noise and then have the OLCC and local jurisdictions make rules around those parameters.
Tape 197, A		

026	Chair Bryant	On line ten of the ñA4 amendments should "and" be "or"?
029	Romain	Yes, thatís correct.
032	Barb Hutchison	Oregon Liquor Control Commission (OLCC) Indicates that rule making by the OLCC is a better alternative than placing these issues into statute. States that the OLCC began the process in April and established a noise rule yesterday.
038	Marge Kafoury	City of Portland Indicates that OLCC has agreed to undertake the process of rule making and they should be allowed to do this.
066	Sen. Burdick	Asks if the rule making currently taking place in the OLCC will address the type of situation that occurs when someone moves into a commercial area and then complains about the noise that naturally occurs in such an area.
076	Hutchison	I would hope that would be the outcome. The OLCC is in an awkward position because they have other priorities that donít include rule making about noise. We think we can do this through rule making and have started the process.
082	Chair Bryant	The temporary rule the OLCC has adopted is the same standard as is in the ñA4 amendments, is that correct?
084	Hutchison	Yes, thatís correct.
090	Chair Bryant	Recesses meeting due to a Call of the Senate at 3:20 p.m.
099	Sen. Burdick	Reconvenes the meeting at 3:55 p.m.
<u>HB 3052A PUBLIC HEARING</u>		
103	Dale Penn	Oregon District Attorneyís Association Testifies in support of HB 3052A. Indicates that HB 3052 came out of a workgroup composed of representatives of law enforcement and various interest groups. The goal was to implement the will of the voters regarding the medical use of marijuana, while preventing illegal commercial abuse of the law (EXHIBIT V). Indicates that on page 2 and page 3 of the bill, the provision that a person could be a medical guardian for only one person should have been stricken. This oversight requires an amendment.
140	Kevin Campbell	Oregon Police Chiefs

		Testifies in support of HB 3052A.
146	Amy Klare	Oregonians for Medical Rights Submits written testimony and testifies in support of HB 3052A (EXHIBIT W). Indicates agreement that the conceptual amendment outlined by Dale Penn should be adopted. Should this not be done, they would be opposed to the bill.
154	Leland Berger	Voter Power Testifies in opposition to HB 3052A. Indicates his group believes the law works fine without alteration. Discusses the changes made to the original medical marijuana act by HB 3052A.
414	Grant Higgenson	State Health Officer, Deputy Administrator for the Health Division Testifies in support of HB 3052A as conceptually amended. The registration system to obtain marijuana for medical purposes will be administered by the Health Division.
434	Sen. Burdick	What is the basis for the \$150 fee to register?
436	Higgenson	The act allows us to collect fees and that is the only way we have to recoup the cost of keeping the registration lists. We have attempted to find other budgetary sources, but have been unable to find any. We agree this is a high fee, but if we don't do it we won't be able to keep these registrations.
<u>HB 2805A PUBLIC HEARING</u>		
475	Larry DeBates	Amity, Oregon Submits written testimony and testifies in support of HB 2805A (EXHIBIT X).
Tape 198, A		
042	David Engen	Salem, Oregon Testifies in support of HB 2805A with no further amendments.
061	Henry Reeves	Amity, Oregon Submits testimony and testifies in support of HB 2805A (EXHIBIT Y).
065	Merilyn Reeves	Friends of Yamhill County Testifies in support of HB 2805A.

069	Terry Fleming	Banks, Oregon Testifies in support of HB 2805A. Discusses an incident in Minnesota that involved a friend who testified against a housing development and was hit with a SLAPP suit by the developer. Believes that when citizen participation is limited, everyone suffers.
289	Charlotte Mills	Yachats, Oregon Submits testimony and testifies in support of HB 2805A (EXHIBIT Z). Suggests conceptual amendments to protect news media. Discusses the ramifications of a SLAPP suit against her.
Tape 197, B		
018	Dave Hunnicutt	Oregonians in Action Submits written testimony and testifies in opposition to HB 2805A (EXHIBIT AA). Indicates he believes an error has occurred in the language of the bill on page 1, lines 10, 11 and 12. The language states that immunity is given for all statements except those which are both false and immaterial to the proceedings. Discusses this issue.
096	Mitch Rohse	Oregon Department of Land Conservation and Development (DLCD) Submits written testimony and testifies in support of HB 2805A (EXHIBITS BB & CC). Indicates there is little opposition to the bill and a great deal of active support. Discusses false and material statements that may be made by people who testify and the safeguards in the hearing process which exist to sort out these statements.
219	Counsel Tweedt	As I read this bill, a person will be immune for any statement that is both false and material to the issue. Immunity is not granted for a statement that is knowingly false but immaterial to the proceedings.
228	Sen. Burdick	Discusses the concept of false and material.
246	Genoa Ingram	Oregon Association of Realtors (OAR) Testifies in opposition to HB 2805A as written. Indicates the ñA8 amendments were requested by OAR. These amendments represent the New York Times standard for liability.
271	Andrea Bushnell	Oregon Association of Realtors (OAR) Discusses the ñA8 amendments that would not grant immunity to any statement that was known to be false or is made with reckless disregard for the truth or falsity of the statement regardless of whether it was material or immaterial to the proceedings.

342	Richard Angstrom	Oregon Concrete Aggregate Producers Association Testifies in support of the ñA8 amendments or any amendment that would eliminate immunity for those who make false and material statements.
377	Sen. Burdick	The wording in this bill comes out of existing statutes, which grant immunity to witnesses who testify in front of this committee today.
387	Jeff Lamb	Oregon Communities for a Voice in Annexation Indicates that those in opposition to this bill are those who are using SLAPP suits to intimidate the opposition. It is the job of the public entities that are holding the hearing to separate out truth and falsity and require that statements be supported and proven by those making the statements.
421	Sen. Burdick	Adjourns the hearing at 5:15 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 2554A, -A9 amendments dated 5/24/99, 1pp

B ñ HB 2554A, written testimony submitted by Scott Gallant, 8 pp

C ñ HB 2554A, written testimony submitted by Warren Schafer, 2 pp

D ñ HB 2554A, written testimony submitted by Jeff Watkins, 2 pp

E ñ HB 2554A, written testimony submitted by Dick Roland, 1 pp

F ñ HB 2474A, proposed Senate amendments to A-engrossed HB 2474 submitted by P. Turnidge, 1 pp

G ñ HB 2474A, written testimony submitted by Tim Sercombe, 14 pp

H ñ HB 2805A, written testimony submitted by Portia Foster, 1 pp

I ñ HB 2805A, written testimony submitted by Liz Frenkel, 1 pp

J ñ HB 2805A, written testimony submitted by Joe Kuehn, 1 pp

K ñ HB 2805A, written testimony submitted by Howard Paine, 1 pp

L ñ HB 2805A, written testimony submitted by Evan Manvel, 7 pp

M ñ HB 2805A, -A8 amendments dated 5/17/99, 1 pp

N ñ HB 2805A, written testimony submitted by Jerry Scott, 14 pp

O ñ HB 2805A, written testimony submitted by Jeff Lamb, 2 pp

P ñ HB 3576A, -A4 amendments dated 5/25/99, 8 pp

Q ñ HB 2684, written testimony submitted by James Nass, 5 pp

R ñ HB 2256A, written testimony submitted by Tim Wood, 1 pp

S ñ HB 2256A, -A2 amendments dated 5/25/99, 3 pp

T ñ HB 2705A, -A5 amendments dated 5/25/99, 1 pp

U ñ HB 2705A, -A4 amendments dated 5/14/99, 1 pp

V ñ HB 2705A, written testimony from the League of Oregon Cities, 1pp

W ñ HB 2705A, written testimony from D. Shaw, 1 pp

X ñ HB 2705A, -A6 amendments dated 5/25/99, 2 pp

Y ñ HB 3052A, written testimony from Dale Penn, 1 pp

Z ñ HB 3052A, written testimony from Amy Klare, 1 pp

AA ñ HB 2805A, written testimony from Larry DeBates, 2 pp

BB ñ HB 2805A, written testimony from Henry Reeves, 2 pp

CC ñ HB 2805A, written testimony from Charlotte Mills, 5 pp

DD ñ HB 2805A, written testimony from David Hunnicutt, 1 pp

EE ñ HB 2805A, written testimony submitted by Mitch Hohse, 98 pp

FF - HB 2805A, written testimony submitted by Mitch Hohse, 57 pp

GG ñ HB 2805A, written testimony from Ellen Twist, 1 pp

HH ñ HB 2805A, written testimony from Alice Blatt, 2 pp

II ñ HB 2805A, written testimony from Dee White, 1 pp

JJ ñ HB 2805A, written testimony from Peggy Lynch, 2 pp

KK ñ HB 2805A, written testimony from Richard Gorringer, 1 pp

LL ñ HB 2805A, written testimony from Callie Jordan, 1 pp

MM ñ HB 2474A, written testimony from Charlie Swindells, 2 pp