

HOUSE COMMITTEE ON
JUDICIARY

Hearing Room 357
Tapes - 34

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Kate Brown, Vice-Chair
Rep. Chuck Carpenter
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Bryan Johnston
Rep. Leslie Lewis
Rep. Lisa Naito
Rep. Floyd Prozanski
Rep. Eileen Qutub
Rep. Veral Tarno
Rep. Bob Tiernan

STAFF PRESENT:

Holly Robinson, Committee Counsel
Milt Jones, Committee Counsel
Sarah Watson, Committee Assistant

MEASURES HEARD:

SB 943A - Public Hearing
SB 493A - Public Hearing
SB 869A - Public Hearing and Work Session
SB 868A - Public Hearing and Work Session
SB 362A - Public Hearing and Work Session

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.

TAPE , SIDE A

002 CHAIR PARKS: Calls the meeting to order at 8:38 am. HB 3265 will not
be heard in committee today. All sides of this issue need to come together

and work out their differences and we will hear the bill next week.

PUBLIC HEARING ON SB 943A & 493A

036 MILT JONES, COMMITTEE COUNSEL: SB 943A creates civil cause of action
for physical or fiduciary abuse of elderly or incapacitated person. SB
493A creates Elder Abuse Prevention Act. (EXHIBITS A, B, C)

Witnesses: Sen. Neil Bryant, District 27
Lisa Bertalan, Harley, Bryant Attorney at Law
Aileen Kaye, Senior disabled Services Division
Jennifer Wright, United Seniors of Oregon, Oregon State Council of Senior
Citizens
Stephen Schneider, Department of Justice
Jim Carlson, Oregon Health Care Association
Rep. Kate Brown, District 13

042 SEN. NEIL BRYANT, DISTRICT 27: Testifies in support of SB 493A & 943A.

Comments on SB 61.

082 LISA BERTALAN, HARLEY, BRYANT: Testifies and submits written testimony
in support of SB 943A. (EXHIBIT D)

139 AILEEN KAYE, SENIOR DISABLED SERVICES DIVISION: Testifies in support of
SB 943A & 493A.

152 REP. QUTUB: Asks if Arizona and Florida have similar laws.

155 BERTALAN: Yes, explains that when this statute was written, they looked
at the Arizona and Florida laws.

163 JENNIFER WRIGHT, UNITED SENIORS OF OREGON, OREGON STATE COUNCIL OF
SENIOR CITIZENS: Testifies in support of SB 943A & 493A.

173 REP. BROWN: Do we need to address the issue of failing to withhold
medical care based on spiritual practice and whether that could be an issue
for the elderly that are in someone else's care?

180 WRIGHT: That is a broad issue that would effect more than the issue in
SB 943A. Discusses what the current Elder Abuse statutes define and
address.

185 BERTALAN: We discussed that issue in the AG task force committee where this bill was created. We feel that this bill is narrow enough that it will not deal with that issue.

197 STEPHEN SCHNEIDER, DEPARTMENT OF JUSTICE: Testifies in support of SB 943A & 493A. Discusses conceptual amendment.

232 CHAIR PARKS: Would it be better if we amended the bill with your conceptual amendment? Would it be better if we put something directly in the bill rather than rely on legislative history?

238 SCHNEIDER: We feel that the wording is adequate.

244 JIM CARLSON, OREGON HEALTH CARE ASSOCIATION: Testifies in support of SB 943A & 493A.

263 CHAIR PARKS: Discusses what Rep. Brown will be testifying on.

277 REP. KATE BROWN, DISTRICT 13: Testifies in support of SB 943A & 493A. Proposes conceptual amendment.

294 LEWIS: Have you discussed this with Sen. Bryant?

297 REP. BROWN: No, I have not.

299 CHAIR PARKS: I object to the conceptual amendment, and want it submitted in writing next week when we hear the bill again.

307 REP. BROWN: The class B felony would also apply to adults, particularly the elderly that are mentally incapacitated due to illness.

PUBLIC HEARING ON SB 869A & 868A

(SB 868A allows challenge to juror for cause based on actual bias on part of juror in reference to action, party to action, sex of party or racial group. SB 869A establishes procedure for objecting to exercise of peremptory challenge when party believes that peremptory challenge is being exercised on basis of juror's sex, race, or ethnicity.)

Witnesses: Paul DeMuniz, Supreme Court Implementation Committee
Brenda Rocklin, Department of Justice , Oregon District Attorney Association

339 PAUL DEMUNIZ, SUPREME COURT IMPLEMENTATION COMMITTEE: Testifies and submits written testimony in support of SB 868A & 869A. (EXHIBIT E)

392 CHAIR PARKS: Discusses Mr. Demuniz's video tape on SB 1. One thing that I don't understand is how you are going to demonstrate that the challenge is based upon bias?

411 DEMUNIZ: That is an excellent point. What this requires is that it removes from the debate that question and it gives the opportunity to point to statements, comments, answers that would be reflective of that bias state of mind. The judge would then have to make a decision about that.

427 REP. PROZANSKI: Discusses that he was challenged in court.

439 REP. BROWN: Do we need to include all of the constitutionality protective categories, if not, why not?

TAPE 34, SIDE A

009 DEMUNIZ: These bills were introduced by the implementation committee task force on racial and ethnic issues in the courts. We felt that it was inappropriate for us to include that broad range of topics.

017 REP. LEWIS: You can now challenge a juror because you don't like something about them?

022 DEMUNIZ: That would be in preemptive challenge not challenges for cause.

023 REP. LEWIS: There are already challenges for cause, and there is a list for actual bias. Can you explain why this is needed.

030 DEMUNIZ: While these bills address the same subject, they address different procedural issues. The preemptive challenges cannot be based on race. Discusses different kinds of bias.

052 REP. LEWIS: Does this include racial and gender bias?

055 DEMUNIZ: Yes.

056 REP. CARPENTER: I don't understand why you are not including what is in the statutes, for instance in public education?

061 DEMUNIZ: I would not say, that we could not do that.

062 REP. CARPENTER: Should we include that as an amendment?

063 DEMUNIZ: That is consistent and wouldn't be inappropriate.

064 REP. CARPENTER: Why wasn't that included in the first place?

067 DEMUNIZ: Explains why these issues were not included. We were following what the task force recommend be done.

074 REP. BROWN: Will this be subject to challenge because we do not include another categories?

080 BRENDA ROCKLIN, DEPARTMENT OF JUSTICE, OREGON DISTRICT ATTORNEY ASSOCIATION: Testifies in support of SB 868A & 869A. Discusses why the other categories were not included in this bill.

096 REP. NAITO: Do you believe that the implementation task force would have any objections should we chose to amend SB 868A to include the other categories?

099 DEMUNIZ: I believe they would have no objection because it would be consistent.

101 REP. NAITO: Do you know if this was discussed in the Senate and whether they consciously decided not to expand it to include the other categories?

I wouldn't want to jeopardize this bill.

104 DEMUNIZ: I don't recall this being a subject of controversy at all.

106 REP. JOHNSTON: Is it your expectation that if a prosecutor exercised a peremptory challenge and I object on the basis of SB 869, then they would then be allowed to put the prosecutor on the stand to make a showing of his bias?

113 DEMUNIZ: I think that is correct. A thorough searching of the issue could encompass that, explains.

121 REP. PROZANSKI: Discusses that he was involved in a case like this and that he was put on the stand. They are officers of the court and are sworn

to stand before the court and acknowledge whatever the judge asks. I understand your answers, but I think it has to be with the discretion of the court.

137 DEMUNIZ: It isn't prohibited by the language in the statute.

WORK SESSION ON SB 868A

147 MOTION: REP. BROWN: Moves SB 868A be sent to the floor with a DO PASS recommendation.

152 REP. NAITO: I would be interested in expanding the bias provisions to include the other categories.

155 REP. CARPENTER: I concur with Rep. Naito and would like to see the list expanded.

157 REP. BROWN: Withdraws motion. I am concerned about expanding the categories though.

166 REP. LEWIS: Can someone restate which categories would be added?

169 REP. NAITO: It would be my intention to add the categories that are now listed in the ORS statutes.

174 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses and explains list and what categories would be included.

178 MOTION: REP. NAITO: moves to AMEND SB 868A by inserting "the conceptual amendment to include the list of other categories as listed by committee counsel".

180 REP. CARPENTER: That would be in agreement with what I would like as well.

190 REP. JOHNSTON: Objects to the motion. Discusses why. The motion is philosophically correct and legally unnecessary.

198 REP. NAITO: Race and ethnicity can be problems, but so can religion. I don't think we should limit our protection for those other categories by only including one or two categories.

210 REP. CARPENTER: It would seem that by having consistency throughout our laws that these are the things we will not tolerate in discrimination. I think we should make it clear to the courts that we will not tolerate bias in the judicial system at all. Discusses that there should not be religious discrimination either.

232 REP. JOHNSTON: Discusses concern that if this list is included in SB 868A, it will be included in SB 869A. If we add these items into the peremptory challenge, it could lengthen the trial immensely. We haven't removed actual bias, we are underlying the areas where we have found the bias to exist.

262 REP. LEWIS: I think adding religion is very important.

267 REP. CARPENTER: I think that it is important to add all of those categories to make it consistent.

271 REP. NAITO: We have found that there is a problem. In discussions with the task force, their goal is to eliminate bias in all categories for everyone, long term.

291 VOTE: 5-6 MOTION FAILS
AYE: Brown, Carpenter, Courtney, Lewis, Naito,
NO: Grisham, Johnston, Prozanski, Qutub, Tarno, Parks
EXCUSED: Tiernan

308 MOTION: REP. BROWN: Moves SB 868A be sent to the floor with a DO
PASS recommendation.

VOTE: 10-1 MOTION PASSES
AYE: Brown, Carpenter, Courtney, Johnston, Lewis, Naito, Prozanski, Qutub,
Tarno, Parks
NO: Grisham
EXCUSED: Tiernan

319 CHAIR PARKS: Rep. Parks will carry the bill.

WORK SESSION ON SB 869A

322 MOTION: REP. BROWN: Moves SB 869A be sent to the floor with a DO
PASS recommendation.

VOTE: 11-0 MOTION PASSES
AYE: Brown, Carpenter, Courtney, Grisham, Johnston, Lewis, Naito,
Prozanski, Qutub, Tarno, Parks
NO: None
EXCUSED: Tiernan

335 CHAIR PARKS: Rep. Parks will carry the bill.
PUBLIC HEARING ON SB 362

348 MILT JONES, COMMITTEE COUNSEL: SB 362 provides immunity from civil actions to architects, certified inspectors, certified building evaluators and engineers who provide certain free services in relief effort within 60 days after declaration of state of emergency by Governor. Discusses -2, -3, -4 amendments. (EXHIBITS F, G, H)

361 REP. TOM BRIAN, DISTRICT 9: Testifies in support of SB 362. Discusses his support of -3 amendments.

TAPE 33, SIDE B

WORK SESSION ON SB 362A

014 MOTION: REP. TARNO: Moves to ADOPT SB 362A-2 amendments dated 04/17/95.

018 CHAIR PARKS: Discusses what the -2 amendments do.

022 MILT JONES, COMMITTEE COUNSEL: One year, in the case of a death, is the notice.

025 VOTE: Hearing no objections the amendments are ADOPTED.

027 MILT JONES, COMMITTEE COUNSEL: Discusses -3 and -4 amendments.

031 MOTION: REP. JOHNSTON: Moves to ADOPT SB 362A-4 amendments dated 05/08/95.

033 REP. JOHNSTON: Discusses and explains the -4 amendments.

046 REP. NAITO: Would "counselor" be included in the health care provider definition?

047 REP. JOHNSTON: I don't know.

050 REP. BROWN: Discusses her concern about setting up two sets of health standards for the low income people.

058 REP. NAITO: I agree with the underlying philosophy, yet this instance is for volunteers. Some care is better than none and in that sense this is a good amendment.

064 REP. JOHNSTON: All of the organizations that provide this care, value their reputations as well.

069 REP. COURTNEY: Discusses a bill that become law that concerned volunteers in the school districts.

078 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses the types of practitioners who would be covered.

085 VOTE: Hearing no objections the amendments are ADOPTED.

087 REP. QUTUB: Discusses conceptual amendment in section 2, subsection 4 to state that "no immunity applies under these provisions to the provision of abortion or sterilization procedures". Discusses her amendment.

101 REP. BROWN: I object.

103 HOLLY ROBINSON, COMMITTEE COUNSEL: Restates motion with appropriate language to be included in the -4 amendments.

114 MOTION: REP. QUTUB: moves to AMEND SB 362A by inserting "conceptual amendment, as stated by counsel".

120 REP. PROZANSKI: Discusses what the -4 amendments would include.

126 MILT JONES, COMMITTEE COUNSEL: That would be actionable under the -4 amendments as they are currently stated.

131 VOTE: 5-7 MOTION FAILS
AYE: Grisham, Lewis, Qutub, Tarno, Tiernan
NO: Brown, Carpenter, Courtney, Johnston, Naito, Prozanski, Parks

139 CHAIR PARKS: Adjourns the hearing at 10:05 am.

Submitted by, Reviewed by,

Sarah Watson Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Proposed Amendments to SB 493A - Staff - 1 page
- B. Proposed Amendments to SB 493A - Sen. Hamby - 1 page
- C. Proposed Amendments to SB 493A - Sen. Hamby - 1 page
- D. Testimony on SB 943A - Lisa Bertalan - 13 pages
- E. Testimony on SB 868A & 869A - Paul DeMuniz - 3 pages
- F. Proposed Amendments to SB 362 - Staff - 3 pages
- G. Proposed Amendments to SB 362 - Staff - 1 page
- H. Proposed Amendments to SB 362 - Staff - 1 page