

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
10:00 am Tapes - 35

MEMBERS PRESENT:
Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:
Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:
HB 2300 - Public Hearing and Possible Work Session
HB 2493 - Public Hearing and Possible Work Session
HB 2533 - Public Hearing and Possible Work Session
HB 2692 - 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 10:08 am.

WORK SESSION ON HB 2493

016 MILT JONES, COMMITTEE COUNSEL: HB 2493 requires that certain disciplinary proceedings of professional licensing boards be public, including records. Discusses and explains the amendments. (EXHIBITS A, B, C)

043 CHAIR PARKS: One of the failings of the system is that the people that are falsely accused always remain in that shadow. Discusses EXHIBIT C. This will enhance the fundamental part of the process by clearing people who were wrongly accused.

064 MOTION: REP. BROWN: Moves TO ADOPT HB 2493 -4 AMENDMENTS AS
ADDITIONAL AMENDMENT -4.

AMENDED BY

070 REP. JOHNSTON: Will the -5 amendments be considered?

074 CHAIR PARKS: If there is no objections to the -4 amendments, we will then discuss the -5 amendments.

075 REP. NAITO: I have a concern about how this works. I'm concerned that the accused does not know the identity of the accuser. Is that satisfied in these -4 amendments?

088 REP. BROWN: Lines 16-23 allow the person who is making the complaint to be confidential if there is a personal interest in maintaining confidentiality and the identity of the complainant is not material to the investigation. Explains and discusses language for confidentiality of a person.

102 REP. NAITO: Who decides what the compelling personal interest is? I don't think the board is equipped to make that kind of decision and I don't know if confidentiality can be guaranteed. If I was a licensee and didn't know who my accuser was, I would be concerned with that. Therefore, I will oppose these amendments.

111 MILT JONES, COMMITTEE COUNSEL: Discusses conversation with the Attorney General

119 REP. NAITO: There is more danger in telling these people that it could be confidential, when we are saying that in almost no case would it ever be. I would rather say to these people that the process is open and we can't promise them anything.

126 REP. JOHNSTON: Discusses that the -5 amendments may addresses the problem, explains.

155 VOTE: 5-1 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Qutub, Parks
NO: Naito
EXCUSED: Tiernan

162 REP. JOHNSTON: Explains -5 amendments.

204 MOTION: REP. JOHNSTON: Moves TO ADOPT HB 2493 -5 AMENDMENTS.

VOTE: 2-5 MOTION FAILS
AYE: Johnston, Naito
NO: Brown, Carpenter, Qutub, Tiernan, Parks

218 MOTION: REP. BROWN: Moves HB 2493-4 AS AMENDED TO THE FULL
with a DO PASS recommendation.

COMMITTEE

222 REP. NAITO: Although I do not like the way the amendments are set up, I will support the bill.

227 VOTE: 7-0 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None

Takes a 5 minute recess at 10:25 am.

Reopens the hearing at 10:30 am.

PUBLIC HEARING ON HB 2300

243 MILT JONES, COMMITTEE COUNSEL: HB 2300 authorize physician cooperatives for provision of health care services. (EXHIBIT D)

Witnesses: Mike Crew, Oregon Medical Association
Joyce Burnhiem, Oregon Association of Hospitals
Tom Balmer, Department of Justice

263 REP. TIERNAN: Could someone explain the bill further?

267 MIKE CREW, OREGON MEDICAL ASSOCIATION: Testifies in support of HB 2300.

303 REP. TIERNAN: When you say "providers", do you mean doctors and nurses?

306 CREW: Primarily doctors. Many of the physician groups have other people included as well, explains.

310 REP. TIERNAN: Doctors work in clinics and sometimes associate themselves with a hospital. Is that what you are talking about?

317 CREW: Explains background around HB 2300. It is necessary for people to come together in a group in order to do business with the insurance, it determines how the insurance is paid. Gives examples of independent businesses competing with each other.

359 REP. TIERNAN: You want an anti-trust exemption for those associations?

359 CREW: Yes.

360 REP. TIERNAN: Is this like the vantage health care of a couple of years ago?

365 CREW: Basically, yes.

367 REP. TIERNAN: What is an MCO?

368 CREW: That is a Managed Care Organization which is the product of the worker's compensation that was passed in 1990.

372 JOYCE BURNHIEM, OREGON ASSOCIATION OF HOSPITALS: Testifies in support of HB 2300.

TAPE 35, SIDE A

018 CHAIR PARKS: There are a lot of people who object to your proposal. Why wouldn't the people who want to operate as a joint venture form another

type of organization such as a corporation, rather than come to the legislature and seek special treatment?

026 BURNHIEM: What you are discussing is the joint venture defense, explains. Explains difference between this bill and the joint venture defense.

044 REP. NAITO: Discusses the process that the director has to go through,

and asks about the denial and approval process. Can you elaborate on the reasons for this process? It seems that it would automatically be denied it unless there were findings that it was in the public interest to proceed

with the arrangement.

055 BURNHIEM: The director can only approve a cooperative program if they find that the benefits substantially outweigh any detrimental effects. The order must specify exactly what activities are permitted, explains. Discusses section 4 and what the director has to find and build into the order, explains.

068 REP. NAITO: Why are they then required to specify the reasons for denial? If they find that the balancing has not been met, they should have to specify all of the reasons.

073 BURNHIEM: It is a single standard, explains. That wouldn't leave much guidance for the applicants or future applicants. In addition, it would make it more difficult to appeal a denial, explains.

088 REP. JOHNSTON: I'm concerned about the governing boards under this bill. The governing boards, as I read it, were made up of the people who are in the cooperative agreement. Was there any thought given to putting members of the public, as a condition, for the creation of this cooperative effort board?

100 BURNHIEM: We didn't consider that, explains. This bill provides for the review in the public interest by different means. By having a member of the public on the board doesn't ensure that public interest will be assured. There is a provision that the minutes of the governing board will

be submitted on a quarterly basis to the reviewing agency. That, with a mandatory review by the agency, is sufficient to ensure that the public interest will be met.

124 CREW: Because we are asking for a state exemption, we are inviting the states scrutiny, explains.

133 CHAIR PARKS: What is the Patrick case about?

134 CREW: Explains Patrick case about peer review. Discusses other cases concerning state action immunity.

147 CHAIR PARKS: You mean the United States Supreme court?

148 CREW: Yes.

152 TOM BALMER, DEPARTMENT OF JUSTICE: Testifies in opposition to HB 2300.

235 CHAIR PARKS: What combination of business forces violate the anti trust laws?

239 BALMER: Explains anti-trust statutes on the state and federal levels.

281 CHAIR PARKS: This proposed legislation is to cure a potential violation of possible restraint of trade.

284 BALMER: This would allow immunity for somethings, explains. Why couldn't the doctors who are asked submit a bid to an insurance company, form a corporation? They can, explains. Continues with testimony.

342 CHAIR PARKS: The governors office has mentioned the potential impact on the Department of Human Resources. They therefore have asked for more time to review the bill. It would help to have you in that review process.

361 REP. JOHNSTON: Can you discuss the evolution of the anti-trust legislation? There is some suggestion in the medical community, that some marketplaces have advanced beyond the concerns of anti-trust.

382 BALMER: The anti-trust laws are very broadly written. At times, the way they have been interpreted would interfere with the dynamic market we see in health care right now. The basic idea of market forces and the interplay of buyer and sellers, will lead to the less prices and a greater variety demand of what is needed. There is a realization that the anti-trust laws need to apply in a way that makes sense. Given the industry that we are dealing with, it mostly concerns the health care area.

They are not being abused or resulted in any serious problems. There really aren't very many bad cases of anti trust laws.

427 REP. JOHNSTON: We will hear antidotes about the restrictions it is causing on the marketplace as it is developing here in Oregon.

431 BALMER: I'm sure you will hear antidotes. It is important to ask how

many cases have been filed, explains.

TAPE 34, SIDE B

012 REP. TIERNAN: What other states have asked for anti-trust immunity?

014 BALMER: I know this is an issue that has been discussed for a long time

in some states. The anti-trust laws in general make a lot of sense. If they are rationally applied to the health care industry, they will promote competition and not hinder it.

022 REP. TIERNAN: Can you summarize your professional opinion on this bill?

025 BALMER: Immunity is not required. The anti-trust laws do make a difference and insure a competitive market with costs being driven down and more choices becoming available to consumers. The way the courts and enforcement authorities have looked at activities in the health care area, we have not gone after conduct that appears to be a good faith effort to meet the competitive reality.

037 REP. TIERNAN: If this bill moves, wouldn't that authority properly reside in the Attorney Generals office and not with the Department of Human

Resources?

041 BALMER: I don't know. The department of Human Resources has more everyday hands on knowledge of what happens in the health care marketplace,

than we do. That would be a policy call by the legislature.

WORK SESSION ON HB 2692

058 CHAIR PARKS: Cites concern on of wording on -2 amendments.

067 REP. BROWN: Discusses HB 2692 -2 amendments. (EXHIBITS E, F)

103 MILT JONES, COMMITTEE COUNSEL: The -2 amendments do not contain the Class A misdemeanor, explains.

107 REP. TIERNAN: Is this going to effect people that are producing, not possessing, videos?

115 MILT JONES, COMMITTEE COUNSEL: Assuming that the material involves the abuse of children, it would be covered under section 2 of the bill.

117 REP. BROWN: It would be a Class B felony.

118 REP. TIERNAN: Can you explain that?

119 REP. BROWN: If you knowingly develop a video tape that involves sexually explicit conduct involving a child with the intent of displaying it, and that you knew the recording of the sexually explicit conduct involved child sexual abuse, you could be convicted under section 2.

124 REP. TIERNAN: What is your definition of "sexually explicit"?

126 MILT JONES, COMMITTEE COUNSEL: That definition is included in section 4, lines 2-20, explains.

138 REP. BROWN: We modified that.

139 REP. NAITO: We changed that to "lewd exhibition of sexual or other intimate parts"?

140 MILT JONES, COMMITTEE COUNSEL: Correct.

141 REP. TIERNAN: Would that line encompass a "Jim Spagg" of having little boys showing parts of their body?

144 REP. BROWN: I believe so.

146 REP. TIERNAN: What part was that rewritten in?

147 REP. BROWN: It is in the -2 amendments. It would be a proof problem as to whether or not it was a lewd exhibition of sexually intimate parts.

150 REP. JOHNSTON: "For the purpose of", would allow a person to escape prosecution under this bill. I don't think you could prove it was to arouse or gratify the sexual desires of that, or other people. He would have a defense in that he was doing it for another purpose.

157 MILT JONES, COMMITTEE COUNSEL: That language was added to the bill at the suggestion of Rep. Naito.

160 REP. TIERNAN: Mr. Spagg has stated that he is doing it for educational purposes.

162 CHAIR PARKS: This only allows him the opportunity to persuade a jury.

164 REP. JOHNSTON: Perhaps we are missing someone under the class B felony.

It doesn't include someone who "produces". Cites conceptual amendments and withdraws concern.

176 REP. QUTUB: Does it lessen the ability to prosecute someone?

185 REP. JOHNSTON: These words provide a broader net.

188 REP. BROWN: By having a class A misdemeanor we would also catch people that didn't have actual knowledge that it was child abuse, but those who "should have been aware of", but failed to do so.

195 MOTION: REP. BROWN: Moves TO ADOPT HB 2692-2 CONCEPTUAL AMENDMENTS.

197 REP. NAITO: We are discussing the -2 amendments with the conceptual amendments?

199 REP. BROWN: Yes.

213 CHAIR PARKS: We are going to be really careful in moving this bill because no matter what we do, it will be better than what we have now.

219 MILT JONES, COMMITTEE COUNSEL: Rep. Brown's conceptual amendments contain the language of the -2 amendments and also adds the third offense which is the Class A misdemeanor.

225 VOTE: Hearing no objection the AMENDMENTS are ADOPTED.

242 MOTION: REP. BROWN: Moves HB 2692 AS AMENDED TO THE FULL COMMITTEE with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Parks
NO: None
EXCUSED: Tiernan

CONTINUATION OF PUBLIC HEARING ON HB 2300

Witnesses Continued: Susan King, Oregon Nurses Association
Brian Delashmutt, Oregon Nurses Association

260 SUSAN KING, OREGON NURSES ASSOCIATION: Testifies in opposition to HB 2300.

291 CHAIR PARKS: What section is that?

292 BRIAN DELASHMUTT, OREGON NURSES ASSOCIATION: That is section 5, page 9.
Testifies in opposition to HB 2300.

359 CHAIR PARKS: Adjourns the hearing at 11:34 am.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Proposed Amendments to HB 2493 - Staff - 2 pages
- B. Proposed Amendments to HB 2493 - Staff - 2 pages
- C. Proposed Amendments to HB 2493 - Rep. Parks - 1 page
- D. Proposed Amendments to HB 2300 - Staff - 17 pages
- E. Proposed Amendments to HB 2692 - Rep. Brown - 1 page
- F. Proposed Amendments to HB 2692 - Rep. Brown - 1 page