

SENATE COMMITTEE ON
HEALTH AND HUMAN SERVICES

Hearing Room
Tapes - 92

MEMBERS PRESENT:

Sen. Stan Bunn, Chair
Sen. William McCoy, Vice-Chair
Sen. Lenn Hannon
Sen. Bill Kenemer
Sen. Randy Leonard

MEMBERS EXCUSED:

STAFF PRESENT:

Art Wilkinson, Committee Administrator
Mary Gallagher, Committee Assistant

MEASURES HEARD:

SB 1117 Work Session
SB 152 Work Session
SB 979 Reconsideration and Work Session
HB 2067 Reconsideration and Work Session
HB 3142 Public Hearing and Work Session

HB 3340

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 , A

002 CHAIR BUNN: Calls the meeting to order at 3:07 P.M. Announces the order that the bills will be taken in.
Opens WORK SESSION on SB 1117

013 KEITH PUTMAN, Committee Liaison/Researcher: Hands out and discusses the -23 amendments; a proposed change to the -22's. [EXHIBIT A] In the -22's, there was language which exempted a pregnant woman from having to participate in certain activities for a period of time prior to delivery of the baby, and then it exempted her from participation for 90 days after the birth of the child. Then there were additional exemptions through the end of the first year of that baby's life. What this amendment does is exactly that, but it protects the woman from participation only for the first 180 days after the baby is born, not for the first full year.

033 MCCOY: Where does this language come from?

034 CHAIR BUNN: I believe that Sen. Kenemer, in some discussions, felt that we needed to have language that went in this direction.

035 MCCOY: This language is even more restrictive than the other language.

038 CHAIR BUNN: That's correct; it is.

039 KENEMER: To Sen. McCoy: I guess you had language that I thought was way too loose. Frankly, I still am not very pleased with this, because I think this represents a more generous standard than a good deal of working Oregonians have. I see a lot of woman who are back in the work force very quickly after their baby is born, because they have the misfortune of having a job instead of being on public assistance. I was willing to go to this point, but the year [after the baby is born, during which time the mother would not be required to participate] is totally unrealistic, and I even have a hard time accepting this 10 hours per week. It just seems to me that the concept behind this is to get people back into the work force.

053 MOTION: SEN. KENNEMER: Moves that the -23 amendments be ADOPTED.

054 VOTE: ROLL CALL: VOTING NO: SEN. MCCOY. Motion CARRIES 3-1. Sen. Leonard
is EXCUSED.

055 PUTMAN: Clarifies the other minor amendment, regarding the words "who"
and "shall" in the Jobs Plus portion.

059 CHAIR BUNN: Discussion (addresses Sen. McCoy). While I am very pleased
with the work we've done on this bill overall, there are a few limited
areas where I have needed to assist committee members in trying to develop
consensus, and this is one of those. I will support Sen. Kennemer's
amendments.

070 VOTE: ROLL CALL: VOTING NO: SEN. MCCOY. Motion CARRIES 3-1. Sen. Leonard
is EXCUSED.
Motion CARRIES 3-1.

078 MOTION: SEN. HANNON: Moves that the -22 amendments be ADOPTED.

080 VOTE: ROLL CALL: There being no objection, motion CARRIES 4-0. Sen.
Leonard is EXCUSED.

085 MOTION: SEN. HANNON: Moves that SB 1117, as amended, be sent to the
Floor with a DO PASS recommendation.

086 VOTE: ROLL CALL: VOTING NO: SEN. MCCOY. Motion CARRIES 3-1. Sen. Leonard
is EXCUSED.
CHAIR BUNN will CARRY the bill on the Floor.

095 CHAIR BUNN: Closes WORK SESSION on SB 1117
Opens WORK SESSION on SB 152
The committee will recall that in our last meeting, we narrowed down SB 152
to a substantially reduced piece of legislation, adopted it, passed it to
the Floor, but then held it in committee. It appears to me that there is
not funding to do more than this piece of legislation; that if we hold the
legislation longer, we will endanger its success in the process because of
the late date, and I would recommend that we simply reaffirm our action of
sending it to the Floor.

107 MOTION: SEN. HANNON: Moves that SB 152, as amended, be sent to the Floor
with a DO PASS recommendation.

109 CHAIR BUNN: I'm going to take that as a motion simply reaffirming our
earlier action, for the reason that Sen. Leonard had voted for it before,
and he will be reflected as an "aye" vote in that earlier vote.

152-25 Amendments [EXHIBIT B]
Joel Ario's testimony [EXHIBIT C]

125 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 4-0. Sen.
Leonard is EXCUSED.
CHAIR BUNN will CARRY the bill on the Floor.

127 CHAIR BUNN: Closes WORK SESSION on SB 152
Opens WORK SESSION on SB 979

130 MOTION: SEN. HANNON: Moves the rules be suspended for the purpose of
reconsidering the vote on SB 979.

140 CHAIR BUNN: Explains why the bill has been brought back to committee for
reconsideration.

149 VOTE: ROLL CALL: All members are present and vote AYE.
Motion CARRIES 5-0.

157 PUTMAN: After we had passed out SB 979, the Dept. of Consumer & Business
Services indicated that there was certain technical language which they
felt they needed as part of the insurance code. These sets of amendments
are their version of how that language should read. There has been some
concern expressed by Legislative Counsel that the wording may run into
potential constitutional difficulties because of the so-called delegation
of authority provisions between the federal and state governments, but in

talking with the Department and the people who are working on this bill, they seem satisfied that the language is either sufficient now or that they would fix it at some later date. I believe they all would like to see the bill move out of committee.

177 CHAIR BUNN: (Asks Joel Ario, Gwen Dayton and Scott Gallant to come forward.) I want the committee to be aware of this issue clearly before we take potential action on the amendments. Would one of you give a brief recap of the amendments and why they're needed?

183 JOEL ARIO, Dept. of Consumer & Business Services: The amendments are simply to do a technical incorporation of certain sections of the bill which should be part of the insurance code, and put those sections into the insurance code. That is all that our amendments do, and on the constitutional issue, we don't state a view, but Legislative Counsel does have a view on that.

190 GWEN DAYTON, Legislative Counsel: The problems arise in section 4, subsections 3 and 4. The problem is a potential unlawful delegation of state legislative power to the federal government. Subsection 3 makes reference to the adoption of federal guidelines, and if federal guidelines are adopted, then the state law will be "x," if not, it will be "y." That's

a simple way of putting it. That allows the federal government to make a decision that will impact or change state law. That poses a potential constitutional problem. The same thing with subsection 4. (Continues comments.)

SB 979-7 Amendments: [EXHIBIT D]

208 CHAIR BUNN: To Scott Gallant: Though there may or may not be a problem as Gwen has outlined, you're satisfied to continue having the bill moved as it would be with the amendments?

210 SCOTT GALLANT, OMA: We will address potential constitutional issues on the House side if that's acceptable to the committee, so that we can move this through the process.

218 MCCOY: What do you mean, you will take care of the constitutionality question on the House side?

220 CHAIR BUNN: Let me suggest this: I think one of the things we need to do is resolve whether or not there is really a serious constitutional question.

225 ARIO: This issue comes up quite often in bills that we work on, and we try to work with LC to avoid this sort of delegation on the argument that Gwen is making, but with a bill of this nature, it's not enough of a problem for us to object to the bill overall.

234 MOTION: SEN. HANNON: Moves the committee reconsider the vote by which SB 979, as amended, was sent to the Floor with a DO PASS recommendation.

243 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 5-0.

250 MOTION: SEN. HANNON: Moves that the -7 amendments be ADOPTED.

251 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 5-0.

253 MOTION: SEN. HANNON: Moves that SB 979, as amended, be sent to the Floor with a DO PASS recommendation.

257 VOTE: CHAIR BUNN: OBJECTING: SEN. MCCOY. Motion CARRIES 4-1. SEN. KENNEMER will CARRY the bill on the Floor.

274 MOTION: SEN. HANNON: Moves the rules be suspended for the purpose of reconsidering the vote on HB 2067.

278 VOTE: ROLL CALL: All members are present and vote AYE. Motion CARRIES 5-0.

285 MOTION: SEN. HANNON: Moves that the committee reconsider the vote by which HB 2067 was sent to the Floor with a DO PASS recommendation.

290 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 5-0.

291 CHAIR BUNN: Let me mention that this is a bill that, as we passed it out of committee, no one on the committee expressed enthusiasm for it. It was a bill that required that in certain cases, funds be taken from the estates of senior citizens because the federal government required it. Since that time, we had received a letter from one or more sections of the Bar Association, expressing concern about this policy and indicating that they would be suing the federal government to try to have that policy changed. The amendments that were brought up would indicate that in the event the federal government policy changed, the portion of this policy that we're putting into effect by this bill would also be changed. (Continues comments.)

315 PUTMAN: Augments Chair Bunn's remarks.

327 MOTION: SEN. HANNON: Moves that the -A2 amendments be ADOPTED.

330 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 5-0.

332 MOTION: SEN. HANNON: Moves that HB 2067, as amended, be sent to the Floor with a DO PASS recommendation.

336 VOTE: CHAIR BUNN: There being no objection, motion CARRIES 5-0.
CHAIR BUNN will CARRY the bill on the Floor.

HB 2067-A2 Amendments: [EXHIBIT E]

347 CHAIR BUNN: Opens Public Hearing and Work Session on HB 3142

359 STATE REP. LISA NAITO, Dist. #15: Speaking IN SUPPORT OF HB 3142.
[EXHIBIT F]

393 AHNA EDWARDS, Owner, Attitudes Incorporated/Professional Body Piercer:
Speaking IN SUPPORT OF HB 3142.

403 SUE WILSON, Health Division: Speaking IN SUPPORT OF HB 3142. [EXHIBIT G]

TAPE 92, A

005 KENNEMER: Previously we've worked on electrologists and tattoo artists. How's that working? That would give us an idea about whether this is worth doing.

007 WILSON: I think it's working quite well. We have inspections on a regular basis.

Discussion between Kennemer/Edwards.

020 NAITO: Ahna has talked to me about incidents where she's seen improper piercing techniques, piercing guns being used on inappropriate places, etc.

This bill may help to stop that, or at least inform the consumers whether or not the person working on them is registered or not. The OMA is also in support of this legislation.

030 ART WILKINSON, Committee Administrator: There is a fiscal impact on this legislation. It will be fee-supported. The fees are spelled out in section 6 of the bill.

036 LEONARD: I want to be very careful that we're not opening the doors as we have for registration of EMT's in this state, which has caused problems.

I'm concerned about some of the criteria, when we talk about the kinds of things that a body piercing technician must comply with (section 2), and then have a catch-all on page 2...that seems to be quite a catch-all. What does that mean? What is the intent?

054 WILSON: I believe the intent of the bill was primarily just to regulate and ensure that sterilization was occurring, and there was no other motivation beyond that.

DISCUSSION.

096 CHAIR BUNN: Why don't we take a moment and put it on the record that our legislative intent that personal questions will not be a portion of the

application. Is there any committee member that objects to that as legislative intent being reflected as part of the record? (No objections registered.) If not, it is so ordered.

101 LEONARD: Another thing I would ask, is that in section 7, the intent is not to ask of individual licensees that they maintain a current address or phone number, nor do you intend to draft rules to require that?

105 WILSON: No, that was not the intention, just the facility. We want the facility and the technician to understand that the facility needs to be licensed in using sterilized tools.

108 LEONARD: But as the Division promulgates rules, you'll make sure that this is something that's not required?

109 WILSON: That's correct.

110 CHAIR BUNN: Let me re-state for the record that the legislative intent is, that the type of record on the home address and phone number is not to be kept. Is there any objection to that clear statement of intent by the committee? (No objections registered.) If not, it's so ordered.

116 HANNON: What would happen if a teenager came to your place, you're licensed, you did an ear piercing on them and they decided to go back home and do an additional ear piercing, and a couple of teenagers got together and decided to do their own ear piercing job, and an infection set in, and they brought a complaint against you with the Health Division? Do you want them coming back to you and holding you responsible for their own negligence and the fact that they did their own ear piercing?

131 EDWARDS: We have a release/withhold document that the customer signs. We do not do children under the age of 18 without parental consent. The parent must accompany the child to our facility and sign a release and consent form. If someone leaves our facility and goes out and does a piercing on themselves after they've left us, we have no control over that, and I don't feel that we should be held responsible for that.

Discussion between Hannon/Edwards.

148 CHAIR BUNN: Sue, do you have a thought on that in terms of where the break on responsibility is for Health Division review and liability?

151 WILSON: I believe the bill as written, I believe allows the Health Division under a complain circumstance, to investigate. However, I would have to agree with Ana that if there was no evidence that the facility which was licensed to give the procedure had done the procedure, then we wouldn't proceed.

170 NAITO: I don't think the passage of this bill would change what would be the current liability patterns, whatever they may be, in any way.

175 MOTION: SEN. LEONARD: Moves that HB 3142-A be sent to the Floor with a DO PASS recommendation.

179 VOTE: CHAIR BUNN: OBJECTING: SEN. HANNON. Motion CARRIES 4-1. SEN. LEONARD will CARRY the bill on the Floor.

192 CHAIR BUNN: Calls 10-minute recess.

193 Re-convenes at 4:05 P.M.
Opens Public Hearing and Work Session on HB 3340

210 KATHLEEN HALEY, Executive Director, Oregon BME: Speaking IN SUPPORT OF HB 3340, with proposed BME amendment. [EXHIBIT H]

230 CHAIR BUNN: If we're not able to deal effectively with this amendment and the bill today, we can bring it back Wednesday, but here's the concern I have: medicine, as many other professions, tends to be conservative to some degree in what kind of treatment is appropriate and effective, and historically, the people who have proposed new procedures have had to fight, struggle and work to bring those about and to have those recognized and accepted. I can see a scenario by which you determine rules on what is effective alternative medicine, and say beyond that you can't do it without

tight restrictions, when part of what we're exploring is how we allow legitimate alternative medicine to have the freedom to move forward in the

state of Oregon in ways it ought to be done, without that very restriction.

So, how do we get there, with the kind of amendment you propose?

248 HALEY: I think the Board is interested in stepping into the 21st century. I do not see that the Board wants to maintain the status quo, but wants to move forward in a thoughtful and concerned way, and I think that's

why we have the Administrative Rule process in Oregon, that would allow everyone to come forward and talk about their area of expertise and provide

the background and information that we need.

261 Discussion between Hannon/Haley about BME "witch hunts" for alternative providers.

305 CHAIR BUNN: This committee has a variety of views on this issue. Don't be offended that we have strong feelings.

309 HALEY: I'm not offended; I just want a chance to respond. In terms of the intractable pain bill, we did not have any opposition to the bill because that's the way the Board conducts its business.

315 HANNON: That's not the way the doctors and the patients perceive it, because they're having to go outside the state to find other people who can

treat them, because they can't get that kind of treatment in Oregon, because the doctors are under a constant state of fear the BME is going to come and do a "midnight raid" on their practice and prosecute them.

326 CHAIR BUNN: Rep. Welsh has Floor Session coming up; we'll come back to this, but at this time I'd like to ask him to come forward and give his testimony.

334 STATE REP. JIM WELSH, Dist. #43: Speaking IN SUPPORT OF HB 3340 as written, and AGAINST the BME's proposed amendment.

399 HANNON: Would you support veterinarians treating people? (Welsh responds

"No.") Continues remarks; references an AHAC study showing that 19% of the respondents in Eastern Oregon have to use veterinarians as their primary physicians because there aren't doctors available.

TAPE 91, B

474 HANNON: Continuing comments.

483 WELSH: That's why we're here today, asking that you pass the bill without this amendment.

492 KENNEMER: I think it's in the public interest, generally, to cut a lot of slack on some of these kinds of issues, because I think different Oregonians have different needs. I think that's one of the wonderful freedoms we have; to seek out the kind of treatment that we wish to have. However, I've had some questions posed to me, and I don't know the answer. I'm particularly referencing the first page, lines 11-13 or 15: does this open us up to illicit drugs or controlled substances? Does this create a loophole for that sort of thing?

503 WELSH: That was brought up as a question on the Floor of the House, also. We have laws that most certainly pertain to illicit use of drugs, and

they pertain to the medical profession under statute, as I understand it, and protect patients from having these drugs even considered.

517 LEONARD: I want to put my support behind what Sen. Hannon was saying, and what Rep. Welsh is saying. I very much oppose this amendment, and am in

full support of the bill.

526 CHAIR BUNN: I am not in favor of the amendment, but I also want to read some language from the bill that concerns me. On the front page of the bill, lines 16 and 17: (reads it) I have some concern that this is very broad language. On the other hand, I think that what the BME has proposed is far too narrow. We'll bring this bill back on Wednesday. We need to focus on the fact that while the amendment is too restrictive, the language

in the bill is too broad.

545 WELSH: I think that amendment will take us back to the "dark ages" with regard to alternative medicine, and I'm concerned that the BME brought it up at the very last minute. I think we can work through this.

555 CHAIR BUNN: To Haley: We are interested in specific legislative language as opposed to an administrative rule, and I want to suggest as Chair of the committee that I see the bill as currently too wide-open, the amendment as far too narrow, and I would challenge you to move very quickly, by 3:00 p.m. tomorrow, to come up with some kind of an amendment that you could run by Rep. Welsh and by our committee administrator on behalf of myself so that we could have something to bring back to the committee at the next hearing.

563 WELSH: Responds.

576 KENNEMER: Unless there's something in this that I don't see, I need something about addictive substances put in here. I want to be really careful that we find this middle ground between abuse and underutilization or over-regulation. I want to make sure that we don't open loopholes that we've been working for years to close. (Chair Bunn asks Sen. Kennemer to work with Rep. Welsh on that issue.)

591 CHAIR BUNN: We're going to stay until 4:55 P.M. in order to allow as much public testimony as possible, and then we'll bring this bill back on Wednesday. I want to specifically invite anyone in the audience to participate in the amendment process that we've been discussing.

605 KARL HUMISTON, retired physician, speaking for AARP: Speaking IN SUPPORT OF HB 3340 as written, and AGAINST the BME's proposed amendment. [EXHIBIT I]

648 CHAIR BUNN: I'd suggest you work with the Board to draft some amendments.

654 BETH HAHN, pain-sensitive patient: Speaking IN SUPPORT OF HB 3340.

679 KRISTIE BAILEY, retired RN: Speaking IN SUPPORT OF HB 3340.

691 CHAIR BUNN: Leaves momentarily; Sen. McCoy will Chair until he returns.

753 SUE HANLEY, RN: Speaking IN SUPPORT OF HB 3340 as written, and AGAINST the BME's proposed amendment.

787 KENNEMER: I don't support the Board's amendment. I just want to make sure we don't create a loophole that allows the prescription of illegal drugs.

793 HANLEY: Responds.

807 NANCY DERUE, pain sufferer: Speaking IN SUPPORT OF HB 3340.

815 CHAIR BUNN returns and resumes Chairing the committee.

858 DEL PEAKE, pain sufferer: Speaking IN SUPPORT OF HB 3340 as written, and AGAINST the BME's proposed amendment.

TAPE 92, B

475 PEAKE: Continuing testimony.

SEN. HANNON excused at 4:45 P.M.

494 PAUL DART, M.D.: Speaking IN SUPPORT OF HB 3340.

520 ANN ELLIOTT, migraine headache sufferer: Speaking IN SUPPORT OF HB 3340.

537 CAROLYN SMITH-EVANS, husband and/son have an illness: Speaking IN SUPPORT OF HB 3340. [EXHIBIT J]

SEN. LEONARD/SEN. MCCOY excused at 4:52 P.M.

582 JOHN GREEN, M.D.: Speaking IN SUPPORT OF HB 3340.

603 MICHAEL HONKEY, chronic fatigue sufferer: Speaking IN SUPPORT OF HB 3340

as written, and AGAINST the BME's proposed amendment.

627 JOHN GAMBEE, M.D.: Speaking IN SUPPORT OF HB 3340 as written, and AGAINST the BME's proposed amendment.

674 KENNEMER: So, the Board's investigation of you wasn't precipitated by a patient complaint?

676 GAMBEE: It was precipitated by Blue Cross.

681 HONKEY: Final remarks.

686 MARY VENNER: Speaking IN SUPPORT OF HB 3340.

691 CHAIR BUNN: Closing remarks about the bill.

699 Adjourns at 5:02 P.M.

WRITTEN TESTIMONY OF BETH HAHN ON HB 3340, turned in after meeting adjourned: [EXHIBIT K]

Submitted by, Reviewed by,

Mary Gallagher Art Wilkinson
Committee Assistant Committee Administrator

EXHIBIT SUMMARY:

A - -23 Amendments to SB 1117--Keith Putman--2 pages
B - -25 Amendments to SB 152--Joel Ario--47 pages
C - Section-by-Section Summary of SB 152-25--Joel Ario--6 pages
D - -7 Amendments to SB 979--Oregon Medical Association--10 pages
E - -A2 Amendments to HB 2067-A--Senator Stan Bunn--1 page
F - Written Testimony on HB 3142-A--Rep. Lisa Naito--2 pages
G - Written Testimony on HB 3142-A--Sue Wilson--1 page
H - Proposed Amendment to HB 3340-A--Kathleen Haley (BME)--1 page
I - Written Testimony on HB 3340-A--Karl Humiston--2 pages
J - Written Testimony on HB 3340-A--Carolyn Smith-Evans--2 pages
K - Written Testimony on HB 3340-A--Beth Hahn--2 pages