

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.

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

June 13, 1991Hearing Room 357 1:00 p.m.Tapes 120 -123

MEMBERS PRESENT:Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix
Rep. Randy Miller

STAFF PRESENT: Greg Chaimov, Committee Counsel Jim Dole,
Committee Counsel Karen Edwards, Committee Assistant

MEASURES HEARD:SB 147 - Mail order vendors - PH/WS SB 1199 -
Contaminated property defenses - PH/WS SB 596 - Use of employment
address on DMV records - PH/WS SB 427 - Modifies provisions relating to
the Oregon State Bar - WS

WITNESSES:Rep. Del Parks, District 53 John Gervaic, Oregon Newspaper
Publishers Association Judson Randall, Oregon Newspaper Publishers
Association William Seely, Department of Motor Vehicles Keith Oakley,
Rep. Carolyn Oakley's Office Larry OgleSB y, Marion County Juvenile
Department Mary Loveland, Marion County Family Court Jeanine Meyer
Rodriguez, Oregon Public Employees Union Donna Kelly, Oregon Public
Employees Union Ken Otto, Department of Human Resources Chris Davie,
Saif Corporation Ruth Vandever, Board of Pharmacy Warren Robinson, Board
of Pharmacy Chuck Gress, State Pharmacies Association Thomas Stanton,
American Managed Care Pharmacy Association Nicholas Willard, AARP
Pharmacy Service Bruce Bishop, Kaiser Permanente Gary Conkling, Safeco
Proprieties Bob Olson, Oregon State Bar Justice Carson, Oregon State Bar

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TAPE 120, SIDE A

005 REP. RAY BAUM, CHAIR: Opens Subcommittee on Civil Law and Judicial
Administration at 1:37 p.m.

SB 596 - PUBLIC HEARING

023 REP. DEL PARKS, DISTRICT 53: Summarizes the SB 596-A2 amendments
(EXHIBIT A): >It stops the practice of anyone going into the Department
of Motor Vehicles, without identification, obtaining information on
individuals. >Suggests a change in the amendments, page one, line 20.
Would like to have removed. Insurers are covered under subsection (e),

starting on line 22.

085 REP. KEVIN MANNIX: DMV now has a system where you set up an account, provide information about your company, explain why the information is needed, pay the fees and make requests. Then DMV sends the requests. Why can the media or television station not set up an account?

099 REP. KELLY CLARK: Where did the proposed SB 596-A2 amendments (EXHIBIT A) come from?

REP. PARKS: Believes the amendments came from SB 1113 which did not pass last session.

106 GREG CHAIMOV, COMMITTEE COUNSEL: Summarizes SB 596: >The SB 596-A2 amendments (EXHIBIT A) would include direct mail individuals and federal government officials. >The SB 596-A3 amendments (EXHIBIT B) are from Rep. Oakley. They would add County Juvenile Counselors to the list of persons who could have their work address given out as opposed to their home address. >There is a proposed amendment (EXHIBIT C) from District Attorney Dale Penn. It essentially provides if a different mailing address is given, the DMV would not give out a home address unless the person requesting the information shows a compelling need and does not appear dangerous. >There are proposed amendments (EXHIBIT D) to SB 559 which includes other groups that could be included in SB 596.

159 JOHN GERVAIC, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: Submits SB 596 -A4 amendments (EXHIBIT E). It is a newspaper exemption which defines the kind of individual that qualifies under ORS 44.510. Strongly opposes SB 596. Prefers the amendments submitted by Rep. Parks (EXHIBIT A).

176 JUDSON RANDALL, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: Concerned with section three, subsection (e) which allows for a commercial account to be established and immediate access to account holders to obtain that information. Is unclear as to whether or not the account has to have been set up before this law is passed or can it be set up at any time in the future? Submits written testimony (EXHIBIT F).

206 GERVAIC: Would like to emphasize that phone access is very important to many newspapers who are not near a DMV to pick up the information. Also hopes that the approach for setting up an account can be done by mail.

REP. MANNIX: Does not know if SB 596 grandfathered in current account holders.

224 RANDALL: The points that have been presented are dealt with, it would greatly increase the Association's comfort level.

CHAIMOV: Rep. Parks, is it the intention of your amendments (EXHIBIT A) that the DMV be able to decide that a person's reason for obtaining the information was insufficient?

245 REP. PARKS: No it really is not. The intention is to provide a methodology for tracking people who do request information and provide a time interval to slow them down so that there is not an immediate action.

254 REP. MANNIX: Could we not establish a system where the DMV notifies individuals that request information about them? Or is that getting too

burdensome at this point?

REP. PARKS: Thought that was a great idea. But, it would require a financial impact statement.

271 REP. BAUM: Mr. Seely, are you familiar with the SB 596-A2 amendments (EXHIBIT A)?

WILLIAM SEELY, DEPARTMENT OF MOTOR VEHICLES: Yes.

274 REP. JIM EDMUNSON: Refers to page two, line 3 of the HB 596-A2 amendments (EXHIBIT A). Does not see why there should be a confidentiality law with an exception for junk mail. Do you know what the rationale would be behind that?

SEELY: It is conducted in a normal business sense and is all done by mail.

297 REP. EDMUNSON: Why should we allow junk mail advertisers to have the lists?

SEELY: That has been a topic of a lot of debate. The approach taken in the 1989, which became law, allows individuals to mark their record to not have their name included on direct mail advertising lists.

321 REP. MANNIX: Will you still be setting up accounts in the future?

SEELY: Yes. Nothing will change.

328 KEITH OAKLEY, REP. CAROLYN OAKLEY;S OFFICE: Summarizes the HB 596-A3 amendments (EXHIBIT B).

REP. CLARK: What is the rationale for having access for having residences included in DMV records? What is the policy behind the statute that people are asking to be exempted from?

CHAIMOV: Does not know.

366 SEELY: The Division's need for it is to determine DEQ requirements in obtaining certificates of compliance, determining a person's county of residence, and all the distribution of monies from the highway fund to the counties is based on the prorated share of vehicles registered in the county. For the purpose of our records and other industries there are as many reasons as there industries for having that information.

396 LARRY OGLESB Y, MARION COUNTY, JUVENILE DEPARTMENT: Submits and summarizes written testimony (EXHIBIT H). Would like to include juvenile department workers as people whose addresses would not be given out. They are subject to threats from clients.

MARY LOVELAND, MARION COUNTY, FAMILY COURT: Submits written testimony (EXHIBIT I) on behalf of probation officers. Would like to be included with eligible public employees as defined by the statute.

429 REP. MANNIX: What amendments are you in support of?

OGLESB Y: We are suggesting the SB 596-A2 amendments (EXHIBIT A).

TAPE 121, SIDE A

023 JEANINE MEYER RODRIGUEZ, OREGON PUBLIC EMPLOYEES UNION: Does not have a problem with the SB 596-A2 amendments (EXHIBIT A).

040 DONNA KELLY, OREGON PUBLIC EMPLOYEES UNION: Submits and reads written testimony (EXHIBIT J).

099 KEN OTTO, DEPARTMENT OF HUMAN RESOURCES: Submits and summarizes written

testimony (EXHIBIT K).

REP. MANNIX: Are you required to do anything under this bill now?

OTTO: Understands the Department of Human Resources is required to notify employees and notify the DMV when an employee leaves the agency.

114 REP MANNIX: My understanding is that if we are changing just the definition of the eligible public employee to include Human Resources employees, it is up to the employee to make a request to the Division for the switch in address listing. Is notifying the Division once the employee is no longer employed the problem?

OTTO: That is part of the problem.

REP. MANNIX: There could be a rule making-process, under this bill, to require your employees who request eligibility to notify you when employment ceases.

128 OTTO: We would feel more comfortable if we had rule-making authority.

REP. BAUM: Have you reviewed the SB 596-A2 amendments (EXHIBIT A)?

OTTO: No.

152 REP. MANNIX: Would like to hear from the DMV to find out if they have any problems with the SB 596-A2 amendments.

CHRIS DAVIE, SAIF CORPORATION: Submits proposed amendment (EXHIBIT L). Would like to have employees who are involved in the adjustment of claims, investigation, or audit of employer premium reports included in the list of employees who are allowed to use their work address.

187 REP. MANNIX: Is there any provision in the law that allows an individual to go into DMV and request to have their address non-listed or their work address listed if they have been threatened?

DAVIE: My only knowledge of that is from testimony that was heard in a prior hearing on this bill. A person had testified that they had requested that. It was very difficult and complicated process.

222 REP. EDMUNSON: Does SAIf use DMV records to investigate claims for benefits?

DAVIE: Yes. We do.

238 REP. EDMUNSON: Why should the Department of Motor Vehicle disclose home addresses to any insurance company to assist the insurance company in investigating a citizen of Oregon?

DAVIE: It has been normal practice for insurance companies to obtain information from the Motor Vehicle Division to complete investigations for the purpose of determining legitimate benefits.

256 REP. TOM BRIAN: Is there a system now where you can request to have your record only given to certain individuals through the Department of Motor Vehicles?

CHAIMOV: No.

REP. BRIAN: That should be considered. The way we are going, this list is going to get longer every session.

281 REP. CLARK: Refers to the amendment suggested by District Attorney Dale Penn (EXHIBIT C). Feels this amendment takes a more comprehensive approach to the listing of address on DMV records.

304 REP. PARKS: Favors that approach. Does not feel it is possible.

332 REP. MARIE BELL: Feels the focus of the bill should be on dangerous clientele and nothing more.

360 REP. MANNIX: Would like to include as another exemption an employee of any entity, public or private where the employer certifies in writing that the job duties of the employee involve working with the public in circumstances where the employee may be in danger. Written testimony submitted on SB 596 (EXHIBIT M).

SB 596 - WORK SESSION

384 MOTION: REP. MANNIX moves to adopt the SB 596-A2 amendments (EXHIBIT A)

dated 6/6/91 to SB 596-A.

VOTE: Hearing no objection, the amendments are adopted.

MOTION: REP. MANNIX moves to amend the SB 596-A2 amendments by eliminating line 20 on page one.

VOTE: Hearing no objection, the amendment is adopted.

MOTION: REP. MANNIX moves to amend the SB 596-A2 amendments by changing line 24 on page one to read "who establishes" instead of "who has established". On page two, line one changing the wording to "uses" from "has used".

DISCUSSION TO THE MOTION:

410 REP. BRIAN: Does line 22, page one need that same adjustment on "previously established"?

REP. MANNIX: No. At the time the request has been made, the person had to have previously established an account.

SEELY: The Division would do it the same way, either way. Once an account is established, records can be obtained. Accounts can be established after this bill goes into effect.

MOTION: Friendly amendment to the motion. REP. MANNIX moves to amend the SB 596 -A3 amendments by changing page one, line 22 to read "who establishes" from " who has previously established", line 24 to read "who establishes" instead of "who has established" and changing page two, line one to read "who uses such account" instead of "who has used such account".

VOTE: Hearing no objection, the amendments are adopted.

TAPE 120, SIDE B

015 MOTION: REP. EDMUNSON moves to adopt the SB 596-A4 amendments (EXHIBIT E) dated 6/12/91 to SB 596-A.

DISCUSSION TO THE MOTION:

REP. MANNIX: Is there is any reason why the media should be given this exemption? They should be able to use an account.

REP. EDMUNSON: Feels that is unnecessary. In establishing an account there may be delay in obtaining information. Thinks if a bona fide member of the media appears at DMV, there should be no delay.

REP. BELL: Refers to the SB 596-A4 amendment (EXHIBITE), line four. Does not feel "connected with" is definitive. Feels the media could use the access to records for their own personal use.

037 REP. EDMUNSON: Would like to modify the amendment to remove the word "connected with". That would leave, "any person employed by or engaged in any medium of communication". This would be for professional communication purposes not for personal purposes.

REP. BAUM: We may want to consider in the language that the information is for the purposes of their employment.

049 MOTION: Friendly amendment to the motion. REP. MANNIX moves to change the wording on line four of the SB 596-A4 amendments (EXHIBIT E) by deleting "connected with" and adding, "any person acting on behalf of any medium of a communication".

REP. EDMUNSON: Do you think that is all consistent?

REP. MANNIX: It could include individuals that are not employees but their agents and makes it clear for business purposes.

VOTE: Hearing no objection, the amendments are adopted.

MOTION: REP. EDMUNSON moves to amend the SB 596-A2 amendments (EXHIBIT A) by deleting line three on page two and changing the wording on line five from "who" to "may" and after "requests" deleting the word "the" and inserting the word "specific license". On line six, deleting the word "shall" and inserting the word "by", deleting the word "complete" and inserting the word "completing".

DISCUSSION TO THE MOTION:

072 REP. EDMUNSON: The purpose of this amendment is to prohibit a major loophole in the law which would allow anyone, for any purpose, to say they wanted to do direct mail to all the license holders in the state of Oregon.

REP. BAUM: Is this going to cause any adverse fiscal impact to the DMV?

090 SEELY: Section four would be modified to apply to any person obtaining a record?

REP. EDMUNSON: Specific records. They would have to specify the license information they would want.

REP. MANNIX: That raises a new concept. We are now talking about exempting the entire list being provided for direct mail for advertising purposes. Opposes the amendment. 131 REP. BRIAN: Mr. Seely do you know what type of revenue the Department receives in the sales of direct mailing lists?

SEELY: It is about 60, 000 dollars a year.

REP. BRIAN: Would there be a reduction in revenue if direct mail advertising list requests were discontinued?

SEELY: The revenue generated from the direct mail advertising lists matches the Division's costs. Does not know if Rep. Edmunson's amendment would have the desired effect. Under section 3, subsection (e) they would still be able to get that type of list.

164 REP. EDMUNSON: Subsection (e) grandfathers in all of the junk mail distributors?

SEELY: Anyone who established an account could do that. They are exempt from the provisions of section four.

180 REP. BELL: Opposes the amendment. Feels it is going in a change of direction of policy.

VOTE: In a roll call vote, the motion fails with Representatives Baum, Edmunson and Clark voting AYE. Representatives Bell, Brian and Mannix voting NAY.

MOTION: REP. MANNIX moves to amend SB 596-A by adding a subsection (i) which states, "an employee of any entity, public or private, where the employer certifies in writing that the job duties of the employee involve working with members of the public in circumstances where the employee may be subjected to threats, harassment or other danger of personal harm".

214 REP. BAUM: Would that cover the County Juvenile Department employees and the counselors?

REP. CLARK: Could the amendment be limited to public entities?

REP. MANNIX: Feels private entities should be included. It addresses the reason for this exemption for all parties involved.

263 GERVAIC: Strongly opposes the amendment.

REP. CLARK: Is the phrase public figure defined in statute?

CHAIMOV: Does not know.

REP. EDMUNSON: It is defined in U.S. statute in New York Times vs

Sullivan.

278 REP. BELL: Has a hard time giving exceptions to public figures. It should apply to everyone.

REP. MANNIX: Withdraws the motion.

REP. BRIAN; What about the SB 596-A3 amendments (EXHIBIT B)?

REP. BAUM: The SB 596-A2 amendments (EXHIBIT A) covers everyone.

OGLESB Y: The amendments do not cover the county juvenile employees. Would like to have the amendment (EXHIBIT H) that was suggested, adopted.

304 MOTION: REP. CLARK moves to adopt the Marion County Juvenile Department amendment (EXHIBIT H) to SB 596-A adding subsection (i) which states, "Any employee of a County Juvenile Department whose duties include personal contact with clients of the department".

VOTE: Hearing no objection, the amendment is adopted.

MOTION: REP. EDMUNSON moves to amend SB 596-A by adding to the exempt groups, a judge of the Supreme Court, Court of Appeals, Oregon Tax Court, Circuit Court, District Court, Municipal Court or Justice Court.

VOTE: Hearing no objection, the amendment is adopted.

MOTION: REP. MANNIX moves SB 596-A to the full committee with a "do pass" recommendation and a side request to the Department of Motor Vehicles to restudy the proposed amendments suggested by District Attorney Dale Penn (EXHIBIT C) for next session.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

SB 147 - PUBLIC HEARING

375 CHAIMOV: Summarizes SB 147 (EXHIBIT N).

400 RUTH VANDEVER, BOARD OF PHARMACY: Submits and reads written testimony (EXHIBIT O). Believes most states have or are either in the process of getting authority to regulate out of state pharmacies. The issue is whether you give the Board in each state authority to do it by rule or statute or whether you adopt the California plan (EXHIBIT P)? Feels this plan does not give the Board any authority to require that out of state pharmacies meet the requirements in Oregon.

TAPE 121, SIDE B

024 REP. BAUM: Are you suggesting an amendment to the bill?

VANDEVER: No.

WARREN ROBINSON, BOARD OF PHARMACY: Testifies in support of SB 147.

049 CHUCK GRESS, OREGON STATE PHARMACIES ASSOCIATION: Testifies in support of SB 147.

065 THOMAS STANTON, AMERICAN MANAGED CARE PHARMACY ASSOCIATION: Submits

and summarizes written testimony in opposition to SB 147 (EXHIBIT Q). Cannot comply with all the state laws in out of state pharmacy services.

106 REP. CLARK: Understands there are a number of other states who have gone to this multi-state registration. Has this system been challenged constitutionally elsewhere and what has the outcome been?

STANTON: The outcome in some states has been that the Attorney General has actually said is it improper to impose licensure requirements where a less restrictive alternative is available, such as California's.

REP. CLARK: Could you give me some citations either now or after the hearing?

113 STANTON: Would be delighted to. The Attorney General's of Ohio and Nebraska have issued such opinions. Would respectfully suggest before this committee puts its good name on a piece of legislation that is subject to that kind of constitutional scrutiny to consider obtaining an opinion from the Oregon Attorney General on this point.

124 REP. EDMUNSON: Was there a court challenge in Arkansas on a similar statute and what was the outcome in that?

STANTON: The outcome was a settlement.

NICHOLAS WILLARD, AARP PHARMACY SERVICE: The Arkansas statute would have required a non-resident pharmacy to comply, in all aspects, with Arkansas' Generic Substitution Law. Arkansas, unlike Oregon, has a set formula that is independently based. The Arkansas Board of Pharmacy conceded that where conflicts would exist, an exemption would be made so that the law would not require an out of state pharmacy to violate the laws of its own state. Submits Attorney General opinions from Ohio and Nebraska (EXHIBIT R).

145 REP. EDMUNSON: On the Commerce Clause question, is the Arkansas statute still on the books?

STANTON: There was a settlement in litigation over that question. The law remains the law of Arkansas unless challenged by other companies. The problem is pharmacies can be in a tremendous bind between the requirements in their home state and those in other states which could add tremendously to their costs.

164 REP. BAUM: Do you have any court opinions on this that would address this issue either before state or federal court?

WILLARD: It has not been litigated fully before a court.

STANTON: We are not saying we have the best possible quality. Statements from Legislators in Maine and Michigan who have undertaken investigations have concluded that mail service pharmacies can, in fact, be a very high quality. We want to do our job efficiently and make sure the primary responsibility for licensure and policing licensing requirements rests with the Board of Pharmacy in the state where the pharmacy is located.

190 WILLARD: Represents the Retired Person's Services which is the owner and operator of the pharmacy service which has been endorsed by the American Association of Retired Persons for national membership. Has a licensing agreement with AARP and by virtue of that agreement,

does business as the AARP Pharmacy Service.

REP. BRIAN: Is this a non-profit or profit making organization?

WILLARD: We are a non-profit organization. We are not tax-exempt. We pay all applicable federal, state and local income taxes where they are appropriate.

REP. BRIAN: What is your IRS classification?

203 WILLARD: We are a tax paying entity. Since 1985 we have worked with pharmacy groups and state Legislatures in more than thirty states in trying to reach a consensus on how to approach this issue equitably.

324 REP. MANNIX: What if we put a provision in the law that stated you did not have to directly meet all of the same standards but you did have to be licensed in the state and meeting standards substantially similar to the standards of the state of Oregon?

WILLARD: That language has been adopted in other states.

342 REP. MANNIX: You agree that if we did that, there would not be a Commerce Clause problem?

STANTON: At that point, given the basis in each state with very common licensure requirements, very common standards, and tremendous interchange among members of Boards of Pharmacy your benefits will not be very substantial compared to where we already are. Then it becomes a weighing test where you have attorneys looking at what is substantially equivalent. The objective of mail service pharmacy companies is to set a standard, any standard across the country.

380 REP. MANNIX: Could set up a mail pharmaceutical firm in a U.S. territory such as Guam or the Virgin Islands where they had lax standards. Registering the operation in Oregon does not do much good because standards are not being enforced, are they?

STANTON: Our members are in 14 states. There is no evidence that they have gone to the most lenient states. They are going to states to serve a national customer base.

410 REP. MANNIX: Let us say we are interested in making sure that whoever is dispensing pharmaceuticals to Oregon citizens, meet appropriate professional standards. Why not be able to look at, for example, California's statute and rules and determine whether or not they are substantially equivalent to ours? Could the Board of Pharmacy say yes or no to the rules of the state? That could be a one time decision.

423 STANTON: My suspension is you would have real Commerce Clause problems if the Oregon Board of Pharmacy were leaving it to itself to decide which other pharmacies it thought were appropriate for Oregon citizens. Does not believe any of our members are located in territories.

TAPE 122, SIDE A

014 REP. CLARK: What if you had a provision in SB 147 that stated If there is an absolute conflict in the provision between Oregon law and the provision of the home state law, you could get by with substantial

compliance? Does that help any?

STANTON: The problem is by deferring to the home state law you are almost conceding the relative unimportance of the domestic law?

025 REP. CLARK: Does not think so. Thinks it would make the statute constitutional.

WILLARD: One of the things that has been discussed with the Board is to make sure you know what in statute and what you want out of state pharmacies to comply with.

REP. BAUM: How are we burdening you?

WILLARD: Feels it is easier and more open in a legislative form than it is in an administrative hearing before a regulatory authority.

067 REP. MANNIX: Right now we have no oversight authority over out of state pharmacies under the current definition in the law. This is an effort to give us that authority. What if put in the bill "substantially equivalent" and require a report in two years to make sure no one is taking advantage of anyone?

STANTON: California addressed that issue by setting specific standards. Clear requirements lower the burden under the Commerce Clause.

089 REP. BAUM: You have to understand, at the same time, we have not had a problem yet. How many states have had registration laws like this and how long have they been in effect?

WILLARD: In the states that have been challenged, the only one is Arkansas.

REP. BAUM: How long had the laws been on the books?

WILLARD: They had been on the books since 1983. The action was brought in 1987 or early 1988. The interested parties came to a settlement agreement.

105 REP. BAUM: Likes to deal with issues that are of substance. Issues are being raised that an appellate court in this country has yet to rule upon. You cannot bring to me a case that states this type of conduct is clearly unconstitutional because we have not done anything yet to you.

STANTON: The registration statute would give Oregon the power of oversight to know who is shipping what into this state.

REP. BAUM: It gives no quality control.

127 REP. BRIAN: Would encourage if the SB 147 passes, to work closely with the Oregon Board of Pharmacy in developing the most reasonable rules.

149 WILLARD: We would like some guidance in knowing what do you do when there are conflicts?

REP. MANNIX: Is that not a business decision every business person has to make when they do business in more than one state?

STANTON: The Oregon citizens will be affected when the price of pharmacy benefits go up because of the costs of multiple requirements.

174 REP. BELL: Would hesitate asking Oregonians to back off on their standards to blend into a universal kind of model until they were ready to do that.

207 BRUCE BISHOP, KAISER PERMANENTE: Refers to page two, lines 24-28. Wonders if the clause, "with facilities located within or out of this state" modifies only mail order vendors or other drug outlets?

225 REP. BRIAN: Are you asking if you have one of your clinics in Vancouver, Washington and an Oregon resident goes there for services and is dispensed a drug?

BISHOP: Would like to know if that is considered sufficient dispensing to a resident of the state that would trigger the requirement to be licensed in another state?

REP. BRIAN: Reads line 28 to mean if it is distributed to an Oregon resident out of this state would think so.

234 BISHOP: What constitutes dispensing, delivery or distribution? If a Kaiser member who lives in Oregon picks up a prescription in Washington, is that a sufficient transaction that would require that pharmacy to be registered with the Oregon Board. The way the language is written, it is unclear as to what the scope of the language would be.

Tape 122, Side A

SB 147 - WORK SESSION:

252 REP. BRIAN: Mrs. Vandever, as a requester SB 147, would it be accurate to say that the Board of Pharmacy would not intend to trigger the registration in the case just discussed?

VANDEVER: That is correct. The critical factor is where the prescription is dispensed in reference to mailing drugs, not picking up drugs.

271 REP. MANNIX: What if we put in a limitation clause in an appropriate part of the statute which stated, "In regulating mail order vendors with facilities located only outside of this state, the Board shall adopt regulations which require professional standards which are substantially equivalent to those applied to other drug outlets within this state"?

VANDEVER: It would, in effect, define what type of rule-making authority we could have? Has no problem with that. Does not feel there is a problem there anyway.

REP. MANNIX: In terms of a Commerce Clause argument, if we have put into the legislation this kind of a statement and your rules follow that kind of a standard, thinks we would be in a good position.

297 REP. BAUM: Does not know if we want to lay the constitutional case law in statute which would state as long as you stay within the substantial equivalent, you are safe. We all know that.

REP. MANNIX: The alternative some day may be the Board being sued for

not requiring identical standards for out of state operators.

318 REP. CLARK: Supports the proposal made by Rep. Mannix proposal.

MOTION: REP. MANNIX moves to amend SB 147-A by adding a limitation clause stating, "In regulating mail order vendors with facilities located only outside of this state, the Board shall adopt regulations which require professional standards which are substantially equivalent to those applied to other drug outlets within this state".

DISCUSSION TO THE MOTION:

332 REP. MANNIX: On a case by case bases, the Board can determine what is substantially equivalent. Likes giving the Board a standard the statute.

VOTE: In a roll call vote, the motion fails with Representatives Clark, Edmunson and Mannix voting AYE. Representatives Baum, Bell and Brian voting NAY.

MOTION: REP. BRIAN moves SB 147-A to the full committee with a "do pass" recommendation.

DISCUSSION TO THE MOTION:

358 REP. MANNIX: Ms. Vandever, if SB 147 becomes law, are you going to require identical compliance to your intent or are you going to allow some middle ground for someone who has to follow a different procedure if they are substantially equivalent with your standards?

VANDEVER: Yes. We would not require the same standards.

VOTE: In a roll call vote, the motion carries with Rep. Clark voting NAY.

TAPE 123, SIDE A

SB 1199 - PUBLIC HEARING:

054 GARY CONKLING, SAFECO PROPERTIES: Submits and summarizes reads written testimony (EXHIBIT S).

SB 1199 - WORK SESSION

MOTION: REP. EDMUNSON moves SB 119-A to the full committee with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

Tape 123, Side A

SB 427 - WORK SESSION

MOTION: REP. EDMUNSON moves to amend SB 427-A by deleting section nine on page three.

VOTE: Hearing no objection, the amendment is adopted.

129 REP. CLARK: What was the amendment there was no objection to?

CHAIMOV: Section nine of SB 427-A, in connection with section ten, effectively prohibit attorneys from incorporating under the Oregon Business Corporation Act.

138 BOB OLSON, OREGON STATE BAR: Has agreed to delay consideration of that provision of the bill, will address after other Profession Corporation Act issues have been resolved this session.

REP. MANNIX: Justice Carson are you comfortable with the proposed amendment (EXHIBIT T) about the duties of attorneys and modifying that language?

MOTION: REP. BELL moves to amend SB 427-A by deleting line 23 in section 10.

VOTE: Hearing no objection, the amendment is adopted.

157 JUSTICE CARSON, OREGON STATE BAR: Has no objection to the amendment (EXHIBIT T).

MOTION: REP. MANNIX moves his amendment numbered 9.460 to SB 427-A.

DISCUSSION TO THE MOTION:

REP. BRIAN: Thought section five was the troublesome section?

181 REP. MANNIX: There was concern among many people that we were taking out of the statute a requirement that the attorney maintain client confidentiality. At the same time, there was a desire that we tie in with the rules of the Professional Responsibility Code. The compromise is to recognize the concept of the statute but will make it clear that this is consistent with the rules of professional conduct, established under the statutory authority.

VOTE: Hearing no objection, the amendment is adopted.

198 CHAIMOV: In the absence of the full committee Chair, he asked me to suggest a few ideas for the committee's consideration: >In sections three and four deleting the language "and fit to practice law". Without a definition of "fit to practice law" it probably should not be in the statute. >Also suggested taking out subsection three of section five. It would create a pro-bono requirement. >In section six, raise the 25 dollar cap on money that could be assessed for the Client Security Fund instead of having the bar decide what its members have to contribute.

MOTION: REP. BAUM moves SB 427-A to the full committee with a "do pass" recommendation.

VOTE: In roll call vote, the motion carries with all members present voting AYE.

244 CHAIR BAUM closes work session and adjourns the meeting at 4:15 p.m.

Submitted by: Reviewed by:

Karen EdwardsPat Zwick AssistantOffice Manager

EXHIBIT LOG: A - Amendments to SB 586-A - Staff - 5 pages
B - Amendments to SB 596-A - Staff - 1 page C - Amendments
to SB 596-A - Staff - 1 page D - Amendments to SB 596-A - Staff -
3 pages E - Amendments to SB 596-A - John Gervaic - 1 page
F - Testimony on SB 596-A - Judson Randall - 1 page
G - Testimony on SB 596-A - William Seely - 2 pages
H - Testimony on SB 596-A - Larry OgleSB y - 2 pages
I - Amendments to SB 596-A - Mary Loveland - 2 pages
J - Testimony on SB 596-A - Donna Kelly - 4 pages
K - Testimony on SB 596-A - Ken Otto - 1 page L - Amendments
to SB 569-A - Chris Davie - 1 page M - Testimony on SB 596-A -
Staff - 3 pages N - Staff Measure Summary/other information on SB
147-A - Staff - 13 pages O - Testimony on SB 147-A - Ruth Vandever
- 3 pages P - Testimony on SB 147-A - Ruth Vandever - 1 page
Q - Testimony on SB 147-A - Thomas Stanton - 16 pages R -
Attorney General Opinions on SB 147-A - Nicholas Willard -16 pages
S - Testimony on SB 1199-A - Gary Conkling - 3 pages
T - Amendment to SB 427-A - Rep. Mannix -1 page