

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 FAMILY JUSTICE

June 21, 1991Hearing Room 357 8:30 a.m.Tapes 148 - 151

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD:SB 593 - P.H. & W.S. SB 1219 - P.H. & W.S. SB 389 - P.H. SB 594 - P.H. SB 1174 - P.H. & W.S. SB 759 - P.H. & W.S. SB 1076 - P.H.

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TAPE 148, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 8:50.

SB 593 - PUBLIC HEARING Witnesses:Sen. Jane Cease Rep. Ron Cease

008 SEN. JANE CEASE: Reviews testimony submitted: hand engrossed SB 593, SB 593-2 amendments, and impact statement submitted by Children's Services Division (EXHIBIT A).

046 REP. RON CEASE: Testifies in support of SB 593 which he feels would encourage and aid adoptions.

053 SEN. CEASE: Heard of adoptions that could not take place because a family was worried that they might be subject to a major demand.

057 REP. SUNSERI: Sees the need for SB 593.

Is there a difference between "legal placement" and "placement" in the bill?

065 SEN. CEASE: We are trying to address the time prior to adoption when the child is legally placed in the home.

072 CHAIR CLARK: Temporarily closes public hearing on SB 593.

Opens public hearing on SB 1219.

SB 1219 -PUBLIC HEARING Witnesses:Rep. Walt Schroeder

077 REP. WALT SCHROEDER: Reviews provisions of SB 1219 which temporarily suspends renewal requirements for ocean troll salmon permits which is a limited entry fishery.

SB 1219 is endorsed by Coastal Caucus and Governor and other interested parties.

Presents proposed amendment SB 1219-A2 (EXHIBIT B) and asks favorable committee consideration.

115 CHAIR CLARK: Temporarily closes public hearing on SB 1219.

Opens public hearing on SB 389.

SB 389 -PUBLIC HEARING Witnesses:Sen. Dick Springer Debby Lee Carol Bonnono Brian DeLashmutt Debbie Wiley Nan Heim Dan Field Tony DeLorenzo, DMV

118 SEN. DICK SPRINGER: Testifies in support of SB 389 and reviews background and provisions of the bill.

We worked hard to reduce the fiscal impact of the bill to a minimum.

Encourages favorable committee action.

213 CHAIR CLARK: Is there a contrast between this bill and SB 759 ?

215 SEN. SPRINGER: Believes SB 759 would permit disclosure of information by emergency room personnel regarding an individual who departs from one of their health care facilities and appears to be intoxicated.

SB 759 is a good bill which I supported on the Senate floor. Do not feel it goes far enough, but is part of the same concern.

230 REP. MANNIX: Does not personally see a constitutional problem with SB 389.

How would you respond to the concern about the reporting issue and the capability of individuals to go in for emergency medical treatment and in effect being forced to present themselves to medical personnel because they have no alternative, and incriminate themselves through their need for medical treatment?

255 SEN. SPRINGER: We already do that for the felony offenses. Senses that a person requiring medical care for a life threatening would not think about blood being drawn and the information being disclosed to a law enforcement officer and feels that would not have an impact on their decision to seek medical care.

265 REP. BAUMAN: Why does the bill not make it mandatory for the health care provider to inform?

264 SEN. SPRINGER: That was a compromise reached with members of the health care professions who wanted discretionary language so that they would escape liability or sanctions if they failed, inadvertently, to make the disclosure.

271 REP. BAUMAN: A prosecutorial function is delegated to health care providers since it compels strong evidence where this an accident and a blood alcohol level over the maximum.

278 SEN. SPRINGER: Would have preferred the original language.

304 CHAIR CLARK: Temporarily closes the public hearing on SB 389.

Reopens public hearing on SB 593.

SB 593 - PUBLIC HEARING Witnesses: Gary Conklin, Holt International Children's Services Karen Pierson, C.S.D. John Powell, Blue Cross

322 GARY CONKLIN, HOLT INTERNATIONAL CHILDREN'S SERVICES: Summarizes written testimony in support of SB 593 (EXHIBIT D).

347 KAREN PIERSON, C.S.D.: Submits written testimony in support of SB 593 (EXHIBIT E).

364 JOHN POWELL, BLUE CROSS & BLUE SHIELD OF OREGON: Testifies in opposition to SB 593.

Federal law prohibits states from regulating private or self-funded programs. About half of the people in the state of Oregon are insured under those types of programs and would not be covered under a provision such as this.

379 REP. EDMUNSON: Does ERISA allow states to regulate insurance, expressly?

382 POWELL: Not insurance provided by self-funded programs through employers.

384 REP. EDMUNSON: Does ERISA only apply when it is an employment based benefit mandated by the state, and not to health plans which apply to all citizens equally?

389 POWELL: The exemption to the ERISA law applies to employer based health plans, so this law would not apply to those types of plans.

394 REP. EDMUNSON: This law, if it applies equally to all citizens of the state of Oregon, regardless of employment status, would not be preempted by the Employment Retirement Income Security Act of 1974.

398 POWELL: The bill regulates health insurance policies, not citizens.

460 CHAIR CLARK: Closes public hearing on SB 593.

Opens work session on SB 593.

SB 593 - WORK SESSION

463 MOTION: REP. EDMUNSON: Moves SB 593 to the full Judiciary Committee with a do pass recommendation.

470 REP. EDMUNSON: Is interested in this issue and concerned by the position taken by Blue Cross, which he considers to be nothing short of obstructionism, that this bill is preempted by ERISA. In my view, it is not, because it applies to existing coverage, does not mandate any coverage, but simply defines under state law who are the children of a person who has a benefit extended to them.

Is confident there is no preemption problem and SB 593 is an excellent bill and an important public policy.

490 CHAIR CLARK: Would you consider a friendly amendment to include the SB 593-2 amendment?

491 REP. EDMUNSON: Yes.

493 CHAIR CLARK: Without objection, the motion is amended to include the 593-2 amendments which are technical in nature.

TAPE 149, SIDE A

038 REP. MANNIX: Understands sensitivity to insurance mandates, but there is a difference between mandating coverages and defining who is covered. We are trying to move forward with a progressive social policy which is to make sure that adoptive children are treated as children for all purposes. Does not believe insurance policies excludes birth marks as pre-existing conditions excluded from coverage.

055 VOTE: On a roll call vote, motion passes. Reps. Mason and Parks are excused.

065 CHAIR CLARK: Rep. Edmunson will carry the bill.

Closes work session on SB 593.

Opens work session on SB 1219.

SB 1219 -WORK SESSION

061 MOTION: REP. SUNSERI: Moves adoption of SB 1219-2 amendments.

070 VOTE: Without objection, Chair Clark declares the amendment adopted.

073 MOTION: REP. SUNSERI: Moves SB 1219 as amended to the full Judiciary Committee with a do pass recommendation.

VOTE: On a roll call vote, motion passes unanimously. Reps. Mannix, Mason, and Parks are excused.

079 CHAIR CLARK: Rep. Schroeder will carry the bill.

Closes work session on SB 1219.

Takes brief recess.

Opens public hearing on SB 549.

SB 549 -PUBLIC HEARING Witnesses:Bernie Thurber, United Services Meredith Cote, Ombudsman Hal Ritz, Independent Adult Care Providers Assn.

095 HOLLY ROBINSON: Summarizes provisions of SB 549 introduced at the request of United Seniors and Oregon Citizens Coalition for Better Nursing Home Care, which attempts to establish new requirements for the regulation of adult foster care.

102 BERNIE THURBER, UNITED SERVICES: Testifies in favor of SB 549 .

133 REP. MANNIX: Encourages committee members to listen to Ms. Patterson's testimony as he leaves for a meeting.

139 JOY PATTERSON: States her personal interest in SB 549.

165 REP. BELL: Does SB 549 address all individuals providing care or only the residence owner or operator?

170 THURBER: The bill would require all people to be trained.

174 REP. EDMUNSON: Are people currently required to be trained adequately trained?

180 THURBER: Eighteen hours of training for providers and resident managers currently required by administrative rule is not 100% complied with.

189 REP. EDMUNSON: What is the consequence of a provider or resident manager engaging in foster care without compliance with the rule?

192 MEREDITH COTE, LONG TERM CARE OMBUDSMAN: The current requirement exceeds the capacity of the Senior and Disabled Services Department to deliver before many providers are licensed, so the requirement is not enforced.

200 REP. EDMUNSON: Are care providers required to notify their clients if they have complied with training requirements?

205 COTE: No.

207 REP. EDMUNSON: Does this bill require them to divulge that information?

208 COTE: No.

210 REP. EDMUNSON: Would you oppose an amendment that would require notification by a care giver to the client?

214 THURBER: The bill requires the providers to maintain records of the completion of training requirement on site.

Your proposed amendment would be considered a friendly amendment, but concerned about any amendment at this late date in the session and its effect on the bill.

226 REP. EDMUNSON: If SB 549 passes, would the Division have the authority to promulgate a rule requiring notice?

227 THURBER: Believes so.

229 REP. EDMUNSON: Does the Division plan to, or would be willing to promulgate such a rule?

230 THURBER: The Division is required by this bill to promulgate rules surrounding both the content and the practice of how this training will work for providers, substitute caregivers, and resident managers.

233 REP. EDMUNSON: That would be a significant factor in my decision on how to vote on this bill.

241 REP. BELL: What happened to the individual who put Ms. Patterson's mother in the tub?

243 PATTERSON: He was charged with negligent homicide but was given a diversion so charges will be dropped in February, 1993.

246 REP. BELL: What happened to the resident manager?

248 PATTERSON: She voluntarily gave up her license.

250 REP. BELL: Could the manager be held harmless if an employee did something grossly negligent?

252 PATTERSON: Would depend on the facts of the case.

276 THURBER: Current rules require 18 hours of training. The bill simply sets a standard toward which the training will be designed.

288 REP. BELL: Unless resident managers are made liable unless they train personnel beyond the 18 hours, is not sure that 18 hours training is sufficient.

302 THURBER: Bill originally required much more training. In order to maintain no fiscal impact, negotiations among interested parties were necessary. Hopes rules that describe the training program will not describe a one-time training that will be good for all time, but a course of study that care givers will be expected to engage in throughout their involvement with the industry.

316 COTE: The long term ombudsman's office has purview over the 2,800 adult foster care homes in Oregon. We work with families and residents to resolve their complaints and concerns with regard to their foster care.

We support the bill and good adult foster care and aware of the delicate balance required between too much and not enough regulation.

The office of the Long Term Care Ombudsman is concerned if we do not address some of these issues quickly, the good care provided by the majority of foster care homes will be eclipsed by the magnitude and frequency of the quality of care problems.

Because there has been so much evidence that shows how detrimental physical and chemical restraints are to residents, nursing homes must show they have tried other alternatives and restraints are the alternative of last resort. There is currently no such obligation.

Feels fine increases are not significant when compared to other states.

TAPE 148, SIDE B

012 REP. BELL: Have you explored cooperating with private groups who

would advocate in areas and visit homes on a regular basis?

018 COTE: Our office trains volunteers to go into homes on a routine basis and work with the residents.

025 HAL RITZ, INDEPENDENT ADULT CARE PROVIDERS ASSN.: Speaks in opposition to SB 549. Presents and paraphrases written testimony (EXHIBIT F).

060 CHAIR CLARK: Is there an adult abuse reporting requirement?

067 RITZ: Yes.

069 REP. BELL: Do you believe that 18 hours training for your workers is an over-kill mode?

071 RITZ: No. The 18 hours is already in place. We recommend additional annual training.

080 REP. BELL: Institutional residents are the most vulnerable citizens.

095 RITZ: Do not object to rules and want to make sure they are implemented.

097 CHAIR CLARK: Temporarily closes public hearing on SB 549.

Reopens public hearing on SB 389.

SB 389 - PUBLIC HEARING

098 CAROL L. BONNONO, R.N., MULTNOMAH COUNTY DUII ADVISORY BOARD: Testifies in favor of SB 389, summarizing written testimony and presenting exhibits (EXHIBIT G).

153 REP. BELL: How do you feel about SB 759?

155 BONNONO: Thinks it is a wonderful needed legislation.

165 REP. SUNSERI: How did you conclude that there is a cost of \$250 million per year to taxpayers?

168 BONNONO: Used Oregon Traffic Safety Commission data.

190 TOM COONEY, ATTORNEY, OREGON MEDICAL ASSOCIATION: The Association supports SB 759, but opposes SB 389.

States concerns about legal exposure this bill puts the physician in trying to do the good work of getting the drunk off the road.

217 CHAIR CLARK: Asks Mr. Cooney to compare SB 759 and SB 389.

220 COONEY: SB 759 is a bill designed to protect the patient and others from harming themselves and others by leaving an emergency room in an intoxicated condition.

SB 389 requires the physician to do harm to the patient who is his fiduciary.

284 REP. BELL: If law enforcement required you to do that, would your

opposition be eliminated?

290 COONEY: Might be able to work out something so that the physician is not put in an exposed position.

297 CHAIR CLARK: Recesses at 10:10 a.m. Will reconvene following the 1:00 p.m. meeting of the full Judiciary Committee.

Reconvenes Subcommittee on Family Justice at 2:05 p.m. Opens public hearing on SB 1174.

SB 1174 - PUBLIC HEARING Witnesses: Calvin Henry Mike Clark Eunice Goetz Willie Richardson

325 ROBINSON: Gives overview of SB 1174 which would establish a zero tolerance policy for racial discrimination in state work places and academic institutions.

319 CALVIN HENRY, PRESIDENT, OREGON ASSEMBLY FOR BLACK AFFAIRS: Presents and summarizes written testimony (EXHIBIT H).

Responds to committee members' concerns.

TAPE 149, SIDE B

003 REP. EDMUNSON: Wants to leave the option for the worker to go through their own chain of command before they file a complaint.

008 HENRY: That option is in Section 1 of the bill.

012 REP. EDMUNSON: Appreciates the intent, but that is not what the bill says.

Is the complaint in Section 2 a different complaint?

021 HENRY: Yes. Rereads Section 2.

031 REP. BAUMAN: Why were other forms of discrimination left out of the engrossed version of the bill?

065 HENRY: Feels that racism is the greatest problem facing us today. If we can deal with that problem it will probably make it easier to solve other problems.

075 REP. BAUMAN: Lines 13 through 16 of the original bill included other forms of discrimination.

Why were the other categories taken out?

082 HENRY: The Senate Committee felt it advisable.

100 CHAIR CLARK: Does not understand "zero tolerance".

105 HENRY: Speaks of incident he witnessed.

SB 1174 says that aggrieved people have a right to point out a continuing problem and hold the administrator accountable. If the problem continues to exist, the administrator should be fired on the spot.

113 CHAIR CLARK: Does the problem you are talking about constitute discrimination?

114 HENRY: Yes.

115 CHAIR CLARK: Then existing anti-discrimination statutes are sufficient to cover it.

116 HENRY: They are not sufficient to cover the accountability issue.

125 REP. MASON: Does the bill define race or racial group?

127 HENRY: No. Racial discrimination is defined.

140 REP. MASON: Asks for example of someone who would not belong to a racial group.

142 HENRY: Can not give example of a person who does not belong to a racial group.

157 REP. MASON: Asks for example of an official administrative act that is unintended and fair on its face that seems to discriminate.

165 HENRY: If you were to say that you were going to hire the best qualified individual, and you never hired a person of color, when people came forth.

175 REP. BELL: Are we talking about numbers or simply qualifications on employment opportunities?

185 HENRY: The bill is getting at the fact of the person who is aggrieved by some act occurring in the work place complaining to the executive officer, and the executive officer doing nothing about the complaint or allowing it to continue to exist.

200 REP. BELL: If a community has no minority applicants would they be violating a zero tolerance policy?

201 HENRY: No.

202 REP. BELL: Concerned about change in higher education and the production of teachers when teacher programs are removed from metropolitan areas where minorities live in higher numbers.

215 WILLIE RICHARDSON: Testifies in support of SB 1174.

250 REP. BAUMAN: Do you think you have been discriminated against on the basis of sex?

265 RICHARDSON: Yes, but the discrimination is doubled because I am a black woman.

Is more a supporter that there should be no discrimination.

290 CHAIR CLARK: Closes public hearing on SB 1174.

Opens work session on SB 1174.

SB 1174 - WORK SESSION

292 REP. EDMUNSON: Asks to move conceptual amendment to Sec. 3 (3) to state that reporting requirements include community colleges if that is not in current statute.

294 CHAIR CLARK: Recesses Subcommittee for call of the House at 2:23 p.m.

301 MOTION: REP. CLARK: Moves conceptual amendment to include community colleges in Sec. 3 (3) to make it clear that community colleges are covered within the purview of the bill.

308 VOTE: Without objection, Chair declares conceptual amendment adopted.

309 REP. MANNIX: Concerned whether reporting requirements will cause a fiscal impact.

320 HENRY: Legislative Fiscal office indicated there will be minimal fiscal impact.

335 REP. EDMUNSON: Proposes new language for line 21.

348 CHAIR CLARK: The executive official needs to have some knowledge that the event has occurred so that he has the ability to act.

358 REP. EDMUNSON: Thinks that is implicit in the bill, but wants to make it absolutely clear that an official can not feign ignorance to avoid the application.

359 REP. MANNIX: Proposes conceptual amendment.

375 CHAIR CLARK: Proponents of the bill want the executive official put on the line for his own employment.

381 MOTION: REP. EDMUNSON: Moves inclusion in Sec. 3 (3), line 21 of "if the executive official fails to act after the official knows or should have known of racial discrimination, it shall be cause for appropriate discipline."

394 VOTE: Without objection, amendment is adopted.

398 MOTION: CHAIR CLARK: Moves insertion of words "public" before "elementary", "community", and "institutions" on page 2, lines 1 and 2.

TAPE 150, SIDE A

002 REP. BAUMAN: Do you mean "public" or "public institutions that receive public funds"?

004 CHAIR CLARK: Public.

005 REP. BAUMAN: So a private institution that receives public scholarship funds would be allowed something greater than a zero tolerance in their racial discrimination?

008 CHAIR CLARK: They are covered by all the federal anti-discrimination provisions because they receive federal funds.

Reason for amendment is that if we bring private schools into this,

then, for the first time, private colleges in Oregon will be brought under the jurisdiction of the Chancellor, and public elementary and secondary schools will be brought under the Superintendent of Public Instruction in a different way than they have been before.

015 REP. MANNIX: This bill was designed towards a zero tolerance policy in government. It was not meant to address places of public accommodation. Is comfortable to the reference to public.

020 VOTE: Without objection, amendment is adopted.

021 REP. MANNIX: When we talk about discrimination intended, or unintended, on page 2, lines 4 and 11 is concerned. Why do we need to say "intended or unintended" instead of just say "discrimination"?

030 CHAIR CLARK: Understood there is to be a motion to remove "intended or unintended".

032 MOTION: REP. MANNIX: Moves deletion of "intended or unintended" on page 2, lines 4 and 11.

036 REP. MANNIX: Taking out "intended or unintended" because feels that discrimination reflects a knowing act where you are aware of a given set of facts and take some kind of action. Does not want someone to say "It was reckless or negligent." Also does not want to say it was unintended because an innocent act which does not constitute discrimination is pulled in.

042 CHAIR CLARK: Suggests friendly amendment. Line 4 is existing law dealing with affirmative action.

046 REP. MANNIX: Modifies his motion to let line 4 stand as printed.

047 VOTE: Without objection, amended amendment is adopted.

049 REP. BAUMAN: Expresses her views on eliminating factors other than race.

073 CHAIR CLARK: Suggests Rep. Bauman spend time working with sponsors of the bill on an appropriate amendment before the bill is brought back before the committee on Monday.

078 REP. BAUMAN: May jeopardize the bill by delaying action until Monday.

Would have made motions to: > Delete "racial" from "discrimination" and expand definition of discrimination to include race, color, national origin, age, sex, religion, marital status, physical or mental disability. > Move the addition of sexual orientation to zero tolerance discrimination.

094 MOTION: REP. MASON: Moves to delete "or any act that is fair in form, but discriminatory in operation, either" on line 11.

120 REP. MASON: The idea that there can be an act that is fair in form but still subjected to an action for discrimination sounds noble, but in the real world thinks it opens us up to an extreme number of lawsuits and will not work.

127 CHAIR CLARK: Recesses Subcommittee for call of the House at 3:05

p.m.

128 CHAIR CLARK: Reconvenes Subcommittee.

146 MOTION, REP. MANNIX: Moves to remove the word "racial" on page 1, lines 10, 13, 17, 19, 21, 25, and on page 2, lines 7 and 10 and other places if necessary for consistency. Also, under the definition of "racial discrimination" to have it read on page 2 (e) "discrimination means any act that unreasonably differentiates treatment or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, national origin, age, sex, marital status, or physical or mental disabilities".

170 REP. MANNIX: This is intended to fulfill a large part of Rep. Bauman's concern. We should have zero tolerance for all these forms of discrimination. We already have a statute that defines affirmative action in terms of these kinds of discrimination. This would make a clear point that we do not tolerate any of these kinds of discrimination for which we already have an established policy of affirmative action.

181 VOTE: Without objection, amendment is adopted.

182 CHAIR CLARK: Restates Rep. Mason's earlier motion.

194 VOTE: Without objection, amendment is adopted.

195 MOTION: REP. MANNIX: Moves SB 1174 to the full Judiciary Committee with a do pass recommendation.

213 CHAIR CLARK: Does Mr. Henry have any sense for what your organization's recommendations will be to Sen. McCoy and other chief sponsors of the bill as to concurrence or non-concurrence?

215 HENRY: Will recommends no objection to the amendments.

223 VOTE: On a roll call vote, motion passes unanimously. Rep. Bauman is excused.

236 CHAIR CLARK: Rep. Bauman will be asked to carry the bill.

Closes work session on SB 1174.

Opens public hearing on SB 759.

SB 759 - PUBLIC HEARING Witnesses: Brian DeLashmutt Dr. Ann Brown Mike McCracken Don Field

238 HOLLY ROBINSON: Summarizes provisions of SB 759 which would allow a health care provider providing emergency care, if they have reason to believe that a person is under the influence of intoxicants and is about to drive, to notify the local law enforcement agency about the situation. It is not a duty to report bill, but an immunity bill that allows them to make that report.

250 BRIAN DeLASHMUTT: The Oregon Nurses Association supports SB 759 .

256 DR. ANN BROWN, OREGON MEDICAL ASSOCIATION AND OREGON CHAPTER OF AMERICAN COLLEGE OF EMERGENCY PHYSICIANS: We are sponsoring and supporting SB 759.

Testifies in support of the bill.

304 MIKE McCRACKEN, OREGON MEDICAL ASSOCIATION: Indicates the Association's support for SB 759.

316 DEBBIE LEE: Mothers Against Drunk Driving supports SB 759 and urges a do pass.

Submits written testimony (EXHIBIT I).

320 REP. MASON: How does this bill relate to the other bill?

321 ROBINSON: The primary difference between the two bills is timing and no test results, but only observations.

340 REP. MASON: What was MADD's position on SB 389?

350 LEE: They strongly supported both bills.

352 BROWN: Our association supports SB 389. Would like an amendment for liability protection for not reporting.

358 McCRACKEN: The Oregon Medical Association opposes SB 389.

The target of SB 759 are those patients who could cause harm to themselves or others if they continue with their plans to drive a car. The purpose of SB 759 is to allow health care providers to encourage them, through even the threat of calling the police so that they do not endanger themselves or others.

386 DAN FIELD, OREGON ASSOCIATION OF HOSPITALS: The Association supports SB 759 and urges committee support for the bill.

The Association opposes SB 389.

395 CHAIR CLARK: Closes public hearing on SB 759.

Opens work session on SB 759.

SB 759 - WORK SESSION

399 ROBINSON: Joan Robinson, Legislative Counsel, recommends that the provisions of SB 759 be removed from the implied consent statutes of the Oregon Traffic Code.

Submits memo from Ms. Robinson (EXHIBIT J).

412 MOTION, REP. MANNIX: Moves SB 759-A7 (EXHIBIT K).

415 VOTE: Without objection, amendment is adopted.

TAPE 151, SIDE A

002 MOTION: REP. MASON: Conceptually moves SB 389 provisions not inconsistent into SB 759.

003 REP. MANNIX: Objects on the basis that violates the relating clause of SB 759.

004 CHAIR CLARK: Suggests that Rep. Mason hold off on making his

amendment until the committee takes testimony on SB 389.

015 REP. MANNIX: Withdraws his objection.

016 REP. BELL: Objects to the motion.

020 VOTE: On a roll call vote, motion fails. Rep. Mason votes Aye. Reps. Bell, Edmunson, Mannix, Parks, Clark vote No. Reps. Bauman and Sunseri are excused.

025 MOTION: REP. MANNIX: Moves SB 759 as amended to the full Judiciary Committee with a do pass recommendation.

031 VOTE: On a roll call vote, motion passes. Rep. Mason votes No. Reps. Bauman and Sunseri are excused.

032 CHAIR CLARK: Rep. Parks will carry the bill.

Closes work session on SB 759.

Opens public hearing on SB 549.

SB 549 - PUBLIC HEARING Witnesses: Colleen Smith Shelly Shirk Grover Simmons Mark Nelson

039 COLLEEN SMITH, GOVERNOR'S COMMISSION: Paraphrases written testimony in support of SB 549 (EXHIBIT L).

072 SHELLY SHIRK, OREGON ALZHEIMER'S PUBLIC POLICY COMMITTEE: Summarizes written testimony in support of SB 549 (EXHIBIT M).

103 GROVER SIMMONS, INDEPENDENT ADULT CARE PROVIDERS ASSOCIATION: Paraphrases written testimony in opposition to SB 549 urging the committee to reject passage of SB 549 and allow the Budget Note to Senior Services Division to operate as intended by the Ways and Means Committee (EXHIBIT N).

137 REP. EDMUNSON: Is SB 549 consistent with the budget note?

138 SIMMONS: Yes, with one exception. The exception is the penalties.

144 REP. EDMUNSON: Does the Division now have the authority to promulgate a rule which imposes a penalty?

146 SIMMONS: Yes.

174 MARK NELSON, OREGON REGISTERED CARE PROVIDERS ASSOCIATION: Presents written testimony detailing adult foster home rules (EXHIBIT O).

210 REP. EDMUNSON: Do these rules include training for substitute care givers?

214 NELSON: No.

225 CHAIR CLARK: Closes public hearing on SB 549.

Reopens public hearing on SB 389.

SB 389 - PUBLIC HEARING

243 BRIAN DeLASHMUTT: Presents written testimony of Susan King (EXHIBIT P).

We originally objected to the provision that the provider would be put in the position of attempting to make a determination as to who was the driver of the vehicle without adequate information. That piece of the bill has been solved on the Senate side and we are not strongly supportive of the bill.

Do not believe there is a problem with violating the confidential information between the nurse and the patient.

263 CHAIR CLARK: Believes there is a difference between reporting child abuse done to your patient and reporting suspected ingestion of alcohol the effect of which might cause a criminal charge to be brought against your patient.

273 DeLASHMUTT: Understands there are other circumstances, beyond child abuse, where criminal activity is involved and confidentiality is broken. Views this as an area of substantial public interest.

280 CHAIR CLARK: Are you saying that if there is a confidentiality problem, the Association takes the position that on balance it is outweighed by the need for public safety?

282 DeLASHMUTT: Yes.

285 REP. BELL: Can see that from an Association standpoint, but what about you as an individual?

288 DeLASHMUTT: Can not answer for individual nurses. Assumes they would have no problem.

289 LEE: MADD fully supports SB 389.

Distributes written testimony from Sen. Dick Springer (EXHIBIT Q).

315 DR. BROWN: Oregon Association of Emergency Physicians support SB 389.

Had amendments on the Senate side which have addressed our concerns.

Would like to add amendment to allow liability protection for not reporting.

334 CHAIR CLARK: Don't you think it unfair that statute could treat two people differently based solely on the ethical view of a particular physician?

345 BROWN: The only way we see to maintain our integrity with the patients is to go ahead with the unequal application of the law.

365 CHAIR CLARK: We have an obligation to do not only what is right, but to do what is constitutional.

366 BROWN: We understand there is unequal application of law, but feel that being responsible for getting patients into treatment for chronic substance abuse problems outweighs process concerns.

388 REP. PARKS: Will you be ordering chemical tests for the purpose of assisting police?

401 BROWN: No, we will be ordering medical blood alcohols we feel are necessary for the evaluation of the patient and their subsequent treatment. If, in the process of looking at the value, we realize that the test exceeds the statutory intoxication limit, we would have the option of reporting the information to the police.

TAPE 150, SIDE B

006 REP. PARKS: Can't think of any reason why you can't do this without this bill.

009 BROWN: Physician/patient confidentiality prevents us from doing that. SB 389 would allow that breach.

025 DEBBIE WILLEY, EMERGENCY NURSES ASSOCIATION: Testifies in support of SB 389.

The bill is not just a punitive bill, but an interventive bill.

038 REP. PARKS: Do not think you even needed the prior bill. Any citizen can report to the police any crime happening or about to happen.

The bill you are seeking is intrusive. Does not benefit law enforcement because you have to prove the body of the crime independent of the confession of the person.

Unless you had independent evidence that the person was driving a vehicle and was intoxicated, the fact that they said they were driving the vehicle would not get you to the jury.

If you had that independent evidence you do not need to violate what I think is a rather important privilege.

052 WILLEY: The difficulty is identification of the patient, especially in a large metropolitan area such as Portland.

Explains current provisions.

Continues her testimony.

103 NAN HEIM, OREGON AMBULANCE ASSOCIATION: Testifies in reluctant opposition to SB 389. Are sympathetic with the purposes of the bill.

117 RANDY GARNER, WOODBURN AMBULANCE: Paramedics are concerned about getting drunk drivers off the road but have questions about the confidentiality issues.

124 DAN FIELD, OREGON ASSOCIATION OF HOSPITALS: Testifies in opposition to SB 389.

Supported SB 759.

163 TONY DELORENZO, DMV: Testifies in support of SB 389 paraphrasing written testimony (EXHIBIT R).

170 REP. MANNIX: Encourages supporters of SB 389 to pass on their words of support to people in the House hierarchy.

182 CHAIR CLARK: Closes public hearing on SB 389.

Opens public hearing on SB 1076.

SB 1076 - PUBLIC HEARING Witnesses: Sen. Kitzhaber Kevin Earles Amy Klare
- A.F.L.-C.I.O

183 SEN. KITZHABER: Reviews provisions of SB 1076.

330 REP. EDMUNSON: If a carrier sets an unrealistic rate, does the Director have the authority to disallow it?

335 SEN. KITZHABER: No, but if they set a rate that is too high, they will not get the business.

345 CHAIR CLARK: When does the six month waiting period begin?

350 SEN. KITZHABER: Under this legislation there would be a six month waiting period for a pre-existing condition.

Continues review of SB 1076.

TAPE 151, SIDE B

004 SEN. KITZHABER: Speaks to SB 1076-A32 amendments.

091 CHAIR CLARK: Asks for explanation of the reinsurance pool, the assessments, different options, and availabilities.

094 KITZHABER: The purpose of the reform is to try to spread risk and force people to manage the services the providers are offering to control costs.

There is a reinsurance pool under the bill to try to provide relief for insurers who have a high risk individual in their group. Participation in the pool under the current bill is voluntary. Explains operation of the pool.

130 REP. PARKS: Do you then, at the end of a year, send out a four percent assessment to every small business that has been paying premiums?

135 KITZHABER: Other witnesses can better explain the technical details.

138 REP. BELL: Is it true that for every large entity that is allowed to voluntarily opt out, the premiums will go up for everyone else?

140 KITZHABER: The risk that is assumed by the people who opt out is taken out of the mix. The remaining risk is the risk that is to be assumed by the people who remain in the pool. This is an employer's bill, not an insurance company bill, and is designed to force significant reform in the insurance market.

149 CHAIR CLARK: If you made the reinsurance pool mandatory, why would anyone choose to assume the risk?

152 REP. EDMUNSON: This plan shakes the pillars of the insurance industry in this country.

How has SB 1076 been crafted to avoid the preemption question so that we are not juxtaposing ourselves with the federal courts?

165 KITZHABER: Understands that we run into the issue of ERISA when we mandate a product on the industry.

Does not understand that small group insurance reform per se puts you afoul of ERISA.

Even if there is an ERISA challenge that would provide us with the same forum we have gotten with trying to get the Medicaid waiver.

184 CHAIR CLARK: Where are we with the Medicaid waiver?

185 KITZHABER: We will seek administrative and Congressional waivers. The administrative waiver is written and waiting for a final appropriation in order to plug in the benefit package. That will proceed over the next six months. Sen. Packwood and Rep. Wyden are also putting in a statutory waiver which will probably be debated in the reconciliation act this Fall.

The package that we have funded meets or exceeds most existing federal Medicaid mandates.

Feels that adding age as one of the criteria by which you can fluctuate the rate bands is contrary to where we are trying to get on this.

SB 1076-A32 amendments have the support of Associated Oregon Industries, National Federation of Independent Businesses, A.F.L.-C.I.O, Blue Cross, Kaiser, Oregon Medical Association, and the Oregon Association of Hospitals.

The Oregon Health Action Council is actively opposing the bill.

250 KEVIN EARLES, ASSOCIATED OREGON INDUSTRIES: Speaks in support of SB 1076. Feels the bill is a very substantial step forward in the partnership between the public and private sector to provide health care coverage to state residents.

Strongly support the voluntary reinsurance mechanism.

281 REP. BELL: Is it really voluntary, or just voluntary for the big guys?

284 EARLES: Thinks it is strictly voluntary. The distinction is that we want to encourage all carriers within their fiscal capacity to accept as much risk as they can. SB 1076 does that and also provides a safety valve mechanism for carriers who find themselves facing risk that is exceeding their financial capacity to bear to stay in the market place but seed those risks.

309 AMY KLARE, AFL-CIO: We support the consensus amendments.

Points out that we do not view this bill as comprehensive insurance reform. Feel that it is a first step forward and gives the insurance the opportunity to demonstrate that they can be part of the solution by providing affordable health care plans and limiting their skimming abilities and putting some rate bands down.

Would liked to have seen tighter rate bands and limits on deductibles and co-payments.

Asks committee support for SB 1076.

Submits written testimony (EXHIBIT S).

323 REP. EDMUNSON: How does this affect the Taft-Hartley Trust?

325 KLARE: Does not know.

328 REP. EDMUNSON: Is your organization concerned about this bill diminishing the ability of the Taft-Hartley Trust to protect individuals who are covered under those Trust plans?

348 KLARE: Not at this time.

352 CHAIR CLARK: Adjourns meeting at 5:30 p.m.

Transcribed by,

Pat Zwick

EXHIBIT LOG: A-SB 593 Exhibit - Sen. Cease - 7 pages B-SB 1219-A2 Amendment - Rep. Schroeder - 1 page C-SB 389 Exhibit - Sen. Springer - 1 page D-SB 593 Testimony - Gary Conkling - 2 pages E-SB 593 Testimony - Karen Pierson - 2 pages F-SB 549 Testimony - Hal Ritz - 1 page G-SB 389 Testimony - Carol Bonnono - 29 pages H-SB 1174 Testimony - Calvin Henry - 4 pages I-SB 759 Testimony - Susan Owen - 2 pages J-SB 759 Exhibit - Joan Robinson - 1 page K-SB 759-A7 Amendment - Staff - 1 page L-SB 549 Testimony - Colleen Smith - 1 page M-SB 549 Testimony - Shelly Shirk - 2 pages N-SB 549 Testimony - Grover Simmons - 2 pages O-SB 548 Exhibit - Mark Nelson - 42 pages P-SB 389 Testimony - Brian DeLashmutt - 2 pages Q-SB 389 Testimony - Sen. Springer - 1 page R-SB 389 Testimony - Tony DeLorenzo - 1 page S-SB 1076 Testimony - Amy Klare - 1 page