

HOUSE COMMITTEE ON CIVIL LAW

January 28, 1999 Hearing Room 357

1:00 p.m. Tapes 13 - 14

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Max Williams, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2417

HB 2315

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 13, A		

HB 2417 Public Hearing

004	Chair Shetterly	Opens meeting at 1:07
010	Counsel Felton	HB 2417 bars recovery of non-economic damages in civil action for injury or death arising out of operation of motor vehicle if plaintiff was driving while under the influence of intoxicants or driving uninsured at time of accident.
017	Rep. Kevin Mannix	Representative for District 32. Testifies in support of HB 2417. Concept of this bill is focused on non-economic damages. Discusses the impact that uninsured drivers and those driving under the influence have on our society. California passed legislation, proposition 13, which resulted in a net premium reduction averaging 3%.
071	Rep. Uherbelau	Was there any discussion among the proponents of this bill about those that cannot afford to pay for insurance?
086	Mannix	We need a streamlind, basic insurance coverage. There are programs that ought to be enhanced in terms of access to transportation.
112	Rep. Witt	What do we hope to accomplish with this bill?
115	Mannix	Reduce the incidents of driving uninsured and driving while under the influence of intoxicants by making additional consequences. We are responding to the publicis demand to take affirmative action on these issues.
127	Rep. Witt	Do you have any evidence to support that by adopting this measure, we will reduce the incidents of driving uninsured?
126	Mannix	I do not have that evidence available. In California, insurance rates have gone down by 3% combined since they passed a proposition establishing this kind of law.
137	Rep. Witt	Is the 3% reduction in insurance rates in California directly attributable to the passage of that statute?
140	Mannix	More people getting insurance decreased the premiums for other insurers.
146	Rep. Witt	Are there more direct ways to deal with those that are driving uninsured than barring recovery of non-economic damages?
151	Mannix	Discusses ways the Motor Vehicle Division can educate the public about the obligation and the availability of insurance. Also, required insurance coverage needs to be trimmed down to make it more affordable.

163	Rep. Edwards	What is the penalty for both offenses of driving uninsured and driving under the influence of intoxicants?
170	Mannix	Drunk driving is a egregious conduct and is a misdemeanor with a fine and probation. Not carrying insurance is an infraction; a chronic problem that places a burden on society and limits the recovery for economic damages.
185	Rep. Edwards	How can these two acts be linked in this bill as one is more severe? What are the penalties for not being uninsured?
189	Counsel Felton	Driving uninsured is a Class B traffic infraction that is punishable by a \$300.00 fine. If uninsured drivers are involved in an accident they are subject to suspension of their driving privileges for one year. Driving under the influence of intoxicants is a Class A misdemeanor which is punishable by a prison term up to one year and a \$5,000.00 fine.
204	Mannix	States that the committee could always amend the bill to say that you get no recovery if you are driving under the influence. You are allowed economic damages if driving uninsured.
208	Rep. Uherbelau	This bill will not make people of limited means rush out and buy insurance. We need a bill that will encourage people to buy insurance.
233	Mannix	We are resistant to people who do not have the responsibility of not driving under the influence or driving uninsured who have gone to court and received non-economic damages. Those that do not have insurance are not always low-income people. This bill will have more of an impact on those with the means to obtain insurance.
274	Rep. Lowe	Would this bill limit the victim of non-economic recovery of a victim involved in an accident caused by someone under the influence or uninsured?
284	Mannix	That is correct.
286	Rep. Lowe	I a person who is under the influence pulls off the road and is rear-ended by someone else would this bill prohibit this person from recovering any non-economic damages?
301	Mannix	Discusses the implication of this scenario as implied by the bill.
347	Rep. Lowe	How does this bill affect a passenger?
357	Mannix	It would not.
360	Rep. Lowe	Would this bill have an effect on those drivers getting attorney representation?

375	Mannix	I have never seen attorneys not take those cases because they will take a fee out of the economic damages or they could negotiate a specific fee for the representation.
Tape 14, A		
002	Trisha Connors	Representative, National Association of Independent Insurers. Testifies in support of HB 2417 (Exhibit B). Discusses the intent and effect the bill has as it relates to discrimination against those who cannot afford insurance.
029	Rep. Edwards	What is the bare minimum cost of coverage to operate a vehicle in this state legally and what is the average premium?
030	Connors	The legislature in Oregon decided that the bare minimum coverage should be \$25,000/\$50,000. The average premium is \$323.00 annually.
034	Rep. Uherbelau	If this bill passes the insurers will benefit in two ways: They will have increased benefits and increased premium paid to them and they will have to pay out less under the coverage they have. Does this have any influence on where you are on this bill?
041	Connors	This bill does keep the claim costs down by not allowing the uninsured to claim non-economic damages that results in lower premiums. Discusses the unfairness of uninsured drivers driving and the effect it has on premiums.
054	Rep. Witt	When a bill in California was passed similar to this bill, were rates reduced by 3%?
058	Jim Jenks	Representative, USAA. Discusses Proposition 213 in California and the factors involved which caused insurance rates to go down.
088	Rep. Wells	Why does it matter to the insurance industry whether the rates are high or low?
094	Jenks	For a mutual company does everything they can to keep the rates low.
105	Rep. Witt	If you have a plaintiff who is uninsured and a defendant who is intoxicated, does this measure bar recovery of non-economic damages for the plaintiff?
116	Jenks	Yes, that is correct.
120	Rep. Witt	Discusses the lack of justice this bill has on the average premium rate of insurance for 18-25 year old unmarried males in the state of Oregon.

138	Brian Boe	Representative, Independent Insurers. Testifies in support of HB 2417. States the fairness of this bill and how it deals with those that do follow the law and carry the proper insurance. Talks about the data base that keeps track of people that obtain new insurance or that cancel their insurance.
182	Chair Shetterly	Asks whether this bill is fair for those that don't have insurance because of reasons other than purposely not obtaining the insurance?
194	Connors	Oregon has a statute that requires two sets of notices before cancellation of insurance. Insurance companies have a grace period before cancellation for those that are late in receiving notice of cancellation.
214	Rep. Wells	Is it fair if an uninsured driver is involved in an accident where he is not at fault and yet he doesn't get compensated for non-economic damages?
226	Boe	States that the person who gets into the car knowing he doesn't have insurance is driving illegally, even before the accident.
243	Rep. Uherbelau	How would this bill influence people to get insurance and wouldn't the value of non-economic damages be necessary and punitive?
269	Boe	Educating of the public of the importance of laws governing insurance will always be a key component. Discusses the compensation of an accident if you are not insured and how that relates to punitive damages.
290	Theresa Bedoy	Government Relations Manager of Allstate Insurance. Testifies in support of HB 2417. Discusses the Personal Responsibility Act and the responsibility the insured driver contributes to the cost of an accident and the fairness of HB 2417.
311	Rep. Witt	Are uninsured motorists paying twice for the damages?
313	Bedoy	Yes.
314	Chair Shetterly	Is HB 2417 the same as California's Proposition 213?
319	Connors	Discusses the differences in HB 2417 and California's proposition 213.
327	Mick Alexander	Chairperson of Oregon Trial lawyers Association Testifies against HB 2417 (Exhibit D). Discusses the unfairness to the uninsured person involved in an accident. This bill limits the powers of the courts to decide issues of who is at fault in the accident and the insured person who is at fault in not fulfilling his responsibilities.

449	Rep. Witt	Isn't there some justification to the argument that the uninsured is violating the law and transferring costs of insurance to those that obey the law?
468	Alexander	States that if the purpose of this bill is to encourage people to drive with insurance, then depriving non-economic damages to those that don't drive with insurance, will not serve that purpose.
485	Rep. Witt	The California measure did lower premium rates, so shouldn't we look at this bill to do the same?
Tape 13, Side B		
037	Alexander	States that if this bill did lower premium rates, the bill is still unfair for the rights of the uninsured.
054	Rep. Witt	Is this a statutory right of the uninsured?
057	Alexander	I am talking about a person's constitutional right for a remedy for pain and suffering that is guaranteed by our constitution.
063	Rep. Witt	On constitutional grounds?
064	Alexander	On personal and constitutional grounds.
065	Rep. Lowe	Would an intoxicated person, riding on a bicycle and causing an accident, be covered by this bill?
077	Alexander	No, I do not believe so.
080	Chair Shetterly	On page 1 line 6 of the bill, it indicates the operation of a motor vehicle.
083	Rep. Lowe	How would it affect litigation if the defendant established, by preponderance, that the plaintiff was under the influence of intoxicants?
092	Alexander	If the District Attorney chooses not to prosecute, the defendant in the civil case can still raise the issue and prove it by preponderance. If the District Attorney prosecutes and loses, the defendant could still raise it because there is still a lower standard of proof.
106	Rep. Backlund	Discusses two significant issues of the bill: How important is the principle of following the law and should we allow non-economic damages to those that have not followed the law?

130	Rep. Williams	Do you think the law should treat the person that is chronically uninsured any different?
139	Alexander	The focus should be on how this accident was caused and there should be no distinction between the uninsured and the insured.
154	Rep. Williams	To have the privilege to drive, you have to follow the law. Is there a balance between those that are chronically uninsured and those that just forgot to pay their premium?
186	Alexander	Discusses other circumstances that could affect a persons right to drive.
199	Rep. Uherbelau	Which person has the greatest fault, the one who forgot to pay their premium or the one that deliberately does not get insurance? Neither one should be allowed to drive, it is still against the law. Discusses how the California proposition balances fault-finding.
233	Alexander	Discusses the punishment to the uninsured even if they did not cause the accident.
261	Rep. Williams	States that the language of the bill still needs to be discussed.
272	Rep. Witt	Public policy is to lower the rates of insurance for those that are following the law and are getting insurance.
299	Alexander	People who violate the law should not recover any damages, but there needs to be a relation between the punishment and the violation.
319	Rep. Lowe	How big of a windfall would be paid out in pain and suffering where there is an uninsured person involved in the accident?.
330	Alexander	I donit have any statistics. There are many scenarios involving the uninsured and legislation will only mostly affect just a few injured people.
348	Rep. Lowe	How much money are we talking about and how often do these cases come up where there is a plaintiff that has been under the influence or uninsured?
359	Rep. Witt	California proposition 213 contributes the successes of 3% premium savings to the measure.
369	Joe Gilliam	National Federation of Business Testifies in support of HB 2417. Discusses the rights of those who comply with the law and their affect on the National Federation of Business.

460	Rep. Uherbelau	How does the premiums on his business insurance have anything to do with his personal premiums?
471	Gilliam	We are concerned with company vehicles that are involved in accidents and the vulnerability of suits against the company.
492	Rep. Edwards	When relating to the bill, are intoxicants meant to be alcohol?
496	Chair Shetterly	It would mean alcohol or any controlled substance.
<u>HB 2315 Public Hearing</u>		
TAPE 14, B		
041	Counsel Felton	HB 2315 was brought back before committee for continuing the public hearing. HB 2315 modifies prohibition against forced sale of homestead to recover debt less than \$3,000. Allows creditor to recover on execution sale for debt less than \$3,000 after sale by debtor or when residence is no longer the homestead of the debtor or his family.
049	Rep. Wells	Why was this bill held over?
051	Chair Shetterly	There had been a last minute signal from the Debtors Creditors Section of the Oregon State Bar.
055	Rep. Edwards	Since there is no one hear to testify, can we assume that everything was resolved?
057	Counsel Felton	There was an individual from the Debtors Creditors Section that wished to testify, but he is not here today.
063	Carl Myers	Oregon State Bar There was in indication from the Debtors Creditors Section that there may be a problem with the bill. Both Mr. Marquee and I have attempted to contact that person and I did not receive a reply. We assume that their concerns have been resolved.
<u>HB 2315 Work Session</u>		
075	Rep. Williams	MOTION: Moves HB 2315 to the floor with a DO PASS recommendation. Vote: 8-1 Excused: Rep. Walker Carrier: Lowe

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Chair Shetterly

Adjourns meeting at 2:30.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2417, Written testimony, Trisha Connors, p. 6

B - HB 2417, Summary data, Trisha Connors, p. 1

C - HB 2417, Statistics, Trisha Connors, p. 17

D - HB 2417, Written testimony, Mick Alexander, p. 2