

HOUSE COMMITTEE ON COMMERCE

April 9, 1997 Hearing Room F

7:00 P.M. Tapes 14 - 17

MEMBERS PRESENT:

Rep. Eldon Johnson, Chair

Rep. Cynthia Wooten, Vice-Chair

Rep. Ron Adams

Rep. Roger Beyer

Rep. Richard Devlin

Rep. Jim Hill

Rep. Bob Montgomery

Rep. Jackie Taylor

Rep. Tom Whelan

MEMBER EXCUSED:

STAFF PRESENT:

Keith Putman, Administrator

Timaree Whitty, Administrative Support

MEASURE/ISSUES HEARD:

HB 3361 PUBLIC HEARING

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 |
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| TAPE 14, A | | |
| 004 | Chair Johnson | Opens meeting at 7:03 p.m. Opens public hearing on HB 3361. |
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| HB 3361 | | |
| PUBLIC | | |
| HEARING | | |
| 006 | Gary Conkling | Representative, Oregon Glass Association gives testimony in support of HB 3361 (EXHIBIT A). |
| 055 | Conkling | Continues with testimony. |
| 078 | Jim Kennedy | Attorney, Kennedy and Kennedy, LLP gives testimony in support of HB 3361(EXHIBIT A). Comments claim frequency is the largest determinant of insurance premiums. When deductibles are waived, policyholders are more likely to seek repairs, necessary or unnecessary, which leads to increased claims. |
| 136 | Dave Olsen | Owner, Olsen Auto Glass Company gives testimony in support of HB 3361 (EXHIBIT A). |
| 220 | Olsen | Continues with testimony. |
| 255 | Rep. Hill | Asks if the insurance company is only reimbursed twenty five percent of list price of the windshield. |
| 258 | Olsen | Responds some insurance companies have their own contract covering reimbursements; however, the comparable margin percentages between auto glass companies and insurance companies is small. |
| 270 | Rep. Hill | Asks what price the auto glass company is quoting the consumer. |
| 274 | Olsen | Responds the price quoted depends on the type of insurance the consumer holds. |
| 278 | Rep. Hill | Asks if the price discount varies by vehicle. |
| 280 | Olsen | Responds the price of the windshields vary between vehicles, but discounts are the same. |
| 282 | Rep. Hill | Asks if this discount remains the same. |
| 284 | Olsen | Responds affirmatively. |
| 286 | Rep. Hill | Asks if State Farm Insurance has the greatest discount and if so what is the opposite end. |
| 290 | Olsen | Responds the amount of payment received from insurance companies without contracts is determined through negotiations within a network representing these agencies. Comments it is a very competitive market. |
| 313 | Rep. Hill | Asks if they voluntarily enter into contract agreements with insurance companies, such as State Farm and Farmers. |
| 325 | Olsen | Responds affirmatively. |
| 336 | Rep. Hill | Asks if two separate people could be charged different rates for a windshield replacement in the same type of vehicle. |
| 338 | Olsen | Responds the cost is dependent on the insurance company's discount rate. |
| 348 | Myrv Chose | Owner, GlasPro gives testimony in support of HB 3361(EXHIBIT A). |

TAPE 15, A

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| 003 | Rep. Wooten | Asks if the price differential for windshields put into identical automobiles is because one comes from a company targeted for customized cars. |
| 004 | Chose | Responds no. Comments that windshields made for foreign cars must come from after market sources. |
| 010 | Rep. Wooten | Asks for a description on the difference in quality. |
| 012 | Chose | Responds they all must meet federal standards and there is no difference in quality. |
| 015 | Chose | Continues with testimony. |
| 036 | Rep. Hill | Asks for clarification on billing practices of couponers. |
| 045 | Chose | Responds price is based on insurance companies normal contract terms. Companies that waive deductibles must find other ways to make a profit, such as padding the insurance bill or cutting corners on the replacement job. Often the insurance company may be billed for an entirely different windshield than the consumer has received. |
| 066 | Rep. Hill | Asks if we should assume all companies that do not offer coupons are honest and all couponers are dishonest. |
| 079 | Conkling | Responds this is a highly competitive market which controls pricing. Companies that charge deductibles receive a reasonable profit Companies that waive deductibles have a higher incentive to use padding to make their profit. |
| 090 | Rep. Whelan | Asks if the billing price only includes the windshield, sealer and molding. |
| 093 | Chose | Responds there are copies of invoices and two letters addressing overcharges under tab six of Exhibit A. |
| 109 | Conkling | Comments on letter from Ross Hess under tab eight of Exhibit A, which describes negligent business practices of a couponer. |
| 131 | Rep. Taylor | Asks if the marketplace takes care of negligent couponers. |
| 136 | Olsen | Responds many of these discount companies do go out of business, but similar new companies seem to take their place. |
| 150 | Rep. Devlin | Asks if he didn't have a contract with State Farm and instead was a couponer, would he bill State Farm for a higher price and would they accept it. |
| 157 | Olsen | Responds he doesn't know if State Farm would accept a higher billing price, but that price is usually set for each insurance company. |
| 165 | Rep. Devlin | Asks if insurance companies usually deny inflated billing attempts. |
| 172 | Olsen | Responds most insurance companies would not pay a higher price. The price would most likely be run through a networking system |

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| | | and be negotiated, or a check would be submitted for a lesser amount based on their set pricing. |
| 178 | Rep. Devlin | Asks why there are price lists so far away from what is actually being charged and then discounted. Asks why these companies don't use a real and reasonable price list. |
| 180 | Olsen | Responds he would also like to know the answers to these questions. |
| 182 | Conkling | Responds although the discount is the same, the actual price of the windshield can differ. Insurance companies can be billed for a different windshield than was actually installed. |
| 191 | Rep. Devlin | Asks if an insurance company can be billed for a different windshield than was actually installed. |
| 192 | Conkling | Responds affirmatively. |
| 200 | Rep. Whelan | Asks what keeps insurance companies from refusing to do business with these companies. |
| 206 | Kennedy | Responds there is a basic tension between the desires of consumers to have their automobiles repaired where they want and cost containment measures by insurers, and this tension manifests itself in many ways. Insurers are reluctant to dictate where the consumers can get their windshields replaced. It is also a question of resources in this area in terms of trying to contain costs. |
| 220 | Rep. Whelan | Asks isn't the net result the same. |
| 227 | Kennedy | Responds the deductible is an important part of the insurance contract and policyholders are agreeing to stipulated terms under this contract. Waiving the deductible changes the equation significantly in terms of what the overall costs are from the insurer's perspective causing them to reevaluate and increase their premiums which affects all consumers. |
| 237 | Rep. Whelan | Comments as a consumer he feels he could understand an insurance company decision to deny business with couponers due to fraudulent risks which in turn affect premiums rates. |
| 244 | Conkling | Responds we are not trying to determine what types of insurance policies are written. They are suggesting that an auto glass shop cannot intrude on a contractual relationship that already exists between a policyholder and an insurer. When the deductible is waived, a material term of the contract is broken. This bill is trying to prohibit this trade practice which interferes with an existing contract. |
| 261 | Rep. Whelan | Asks if the insurance company could assert their own rights under the contract. |
| 267 | Conkling | Responds insurers react differently to these circumstances, but the most expedient thing to do is increase premium rates to cover their costs of doing business. |
| 269 | Rep. Hill | |

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| | | Asks if under Oregon law consumers can choose where to get their vehicle repaired. |
| 274 | Kennedy | Responds there are stipulations stated in the chapters on insurance codes. |
| 293 | Chair Johnson | Asks if a network operator requires an inspection before authorizing repairs. |
| 295 | Olsen | Responds that some do. |
| 298 | Chair Johnson | Asks if it is considered common practice. |
| 299 | Olsen | Responds affirmatively. |
| 303 | Chair Johnson | Asks if the auto glass company generally knows what they will be paid before installing a windshield. |
| 304 | Olsen | Responds yes. |
| 306 | Chair Johnson | Asks what is the percentage of windshield reinstallments made because of problems incurred. |
| 308 | Olsen | Responds it is quite small, somewhere in the three to five percent range. |
| 314 | Chair Johnson | Asks if carriers are able to control the price they pay for repairs or are there any legal prohibitions keeping from this. |
| 317 | Kennedy | Responds the primary legal prohibition is what is provided under the policy. Insurers within the policy provisions can resist being charged an unreasonable price. |
| 323 | Chair Johnson | Asks if an insurer can put a cap on the amount paid out for repairs which the policyholder must accept. |
| 327 | Kennedy | Responds if it is reasonable; however, the policyholder has other avenues of complaint to challenge the insurance company's decision. |
| 331 | Chair Johnson | Asks if the OEM window could be made by the same manufacturer as the replacement glass. |
| 333 | Olsen | Responds it could be, but it probably isn't. |
| 337 | Rep. Beyer | Asks for clarification on average billing and if insurance companies pay only their list price. |
| 364 | Chose | Responds the insurance company pays what they call competitive pricing. |
| 366 | Conkling | Comments there are different windshields at different price points that can go into the same car. Although the discount remains the same the price could be different. |
| TAPE 14, B | | |
| 000 | Rep. Devlin | Asks how prevalent the practice of enticing a customer with a coupon, getting the reimbursement from the insurance company which is insufficient to pay the original bill, and then billing back the customer for the difference is. |
| 005 | Conkling | |

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| | | Responds there is evidence that this occurs, but he does not have statistics to show how often. |
| 010 | Rep. Devlin | In reference to the example invoice P-1, asks if there is any chance the consumer would pay anything close to that price for a windshield. |
| 020 | Chose | Responds no. |
| 023 | Rep. Whelan | Asks if insurance companies have the option to ask for an itemized billing list of repairs. |
| 030 | Conkling | Responds there are examples in the handout (EXHIBIT A) that show bills with falsified itemization. |
| 041 | Chair Johnson | Asks if this would be considered fraud. |
| 042 | Kennedy | Responds affirmatively. |
| 044 | Rep. Hill | Comments this is already a crime in violation of Oregon statute. |
| 050 | Conkling | Comments HB 3361 is directed at the interference of a contract, as well as unlawful trade practices. |
| 061 | Chose | Comments often the insurer does not sign the actual invoice, but rather the work order. They don't know the pricing or ever even see it. |
| 068 | John Brennehan | Representative, Independent Auto Glass Association of Oregon gives testimony in opposition of HB 3361 (EXHIBIT B). |
| 105 | David Denney | President, Denney Enterprises, Inc. DBA Elite Auto Glass gives testimony in opposition of HB 3361 (EXHIBIT C). |
| 170 | Denney | Continues with testimony. |
| 237 | Brad Nelson | Partner, Cascade Auto Glass, Inc. gives testimony in opposition of HB 3361 (EXHIBIT D). |
| 328 | Nelson | Continues with testimony. |
| TAPE 15, B | | |
| 000 | Nelson | Continues with testimony. |
| 038 | Troy Klein | Representative, Rapid Auto Glass gives testimony in opposition of HB 3361 (EXHIBIT E). |
| 090 | Klein | Continues with testimony. |
| 140 | Rep. Beyer | Asks about contradiction in his written testimony in regards to pricing and billing practices. |
| 152 | Klein | Responds insurance companies have different amounts they are willing to pay. |
| 169 | Rep. Beyer | Asks if insurance companies pay different prices. |
| 171 | Klein | Responds affirmatively. |
| 173 | Rep. Taylor | Asks for comments regarding the practice of cutting out an old windshield, pumping a bead of urethane over the old remaining urethane, setting the windshield, taping the molding down, and then telling the customer to remove the tape in twenty four hours. Asks if this is an unusual practice. |

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| 180 | Klein | Responds he is not an installer, but it does involve the use of manual tools. Comments that taping moldings down is common practice and basically done to keep the windshield straight. Moldings are strictly cosmetic and have nothing to do with the windshield staying in place or leaking. |
| 209 | Chair Johnson | Asks what percentage of the windshields you have repaired do you have to reinstall. |
| 212 | Klein | Responds probably less than two or three percent. |
| 215 | Chair Johnson | Asks about reinstallation involving leakage. |
| 217 | Klein | Responds their leak rate generally runs less than five percent. |
| 219 | Chair Johnson | Asks if he generally knows what he will be paid when installing a windshield. |
| 220 | Klein | Responds yes he knows what he will be paid from every insurance company. |
| 221 | Chair Johnson | Asks if there are different types of glass with different costs that can be installed for one particular automobile. |
| 222 | Klein | Responds in some cases there is. |
| 233 | Chair Johnson | Asks if his company belongs to any networks. |
| 237 | Klein | Responds they are members of a couple networks because sometimes dealing with certain insurance companies can be on the intense side. |
| 239 | Chair Johnson | Asks if insurance companies occasionally inspect the completed product you install. |
| 240 | Klein | Responds not to his knowledge. |
| 244 | Chair Johnson | Asks if it is true that the cost of adhesives is often more than what the carriers will pay you. |
| 245 | Klein | Responds yes in some cases. |
| 253 | Pete Shepherd | Attorney, Department of Justice gives testimony on HB 3361 and proposed amendments (EXHIBIT F). |
| 334 | Joel Ario | Company Regulation Manager, Insurance Division, Department of Consumer of Business Services gives testimony in support of HB 3361. Comments deductibles and discounts are both important parts of the marketplace. |
| 391 | Rep. Whelan | Asks if insurance companies could insist the consumer go only to a repair shop that does not waive the deductible. |
| 394 | Ario | Responds there is a law that prohibits insurance companies from directing business to a particular shop, so they would have to transact business with whatever shop the consumer chose. |
| TAPE 16, A | | |
| 006 | Rep. Whelan | Asks if it is true that insurance companies cannot designate a particular repair shop. |

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| 009 | Ario | Responds law allows the consumer to go wherever they choose. |
| 015 | Rep. Beyer | Asks for clarification on written testimony stating one pending case and verbal testimony referring to some pending cases. |
| 018 | Shepherd | Responds the Department of Justice has one active investigation involving one consumer's allegation, as well as additional unrelated complaints from consumers involving the same type of conduct. |
| 024 | Rep. Beyer | Asks if this one investigation involves the market of using the free windshield quote, which is the complaint and the nature of your current investigation. |
| 027 | Shepherd | Responds affirmatively. |
| 028 | Rep. Beyer | Asks if they have received any complaints from either types of glass shops as far as the quality of work that they perform. |
| 030 | Shepherd | Responds he isn't aware of any complaints regarding quality. |
| 038 | Rep. Beyer | Asks if this answer can be provided. |
| 040 | Shepherd | Responds he will attempt to get that information for the committee. |
| 042 | Chair Johnson | Asks if he knows of any person who would replace a window if it wasn't necessary. |
| 044 | Ario | Responds he doesn't believe anyone would replace a perfectly good windshield, but sometimes small damages pose a decision by the consumer whether to do nothing, have it repaired, or have it replaced. Windshield replacement is where the deductible factor is involved. |
| 054 | Mike Sherlock | Representative, Pacific Automotive Trades Association gives testimony in support of HB 3361. |
| 073 | Chair Johnson | Asks if he has any documentation to show that insurance rates are up as a result of this practice. |
| 075 | Sherlock | Responds he has no documentation, he believes there are some insurance people prepared to testify that will have that information. |
| 078 | Rep. Beyer | Asks if Pacific Automotive Trades Association is a regional organization of repair shops. |
| 080 | Sherlock | Responds yes; generally shops in Oregon that are independent repair facilities which may include glass repair shops, brake repair shops, Midas muffler shops, etc. They are basically independent shops that provide auto repairs to consumers. |
| 088 | Rep. Beyer | Asks if this bill really would not affect the majority of your members. |
| 090 | Sherlock | Responds affirmatively. |
| 097 | Roger Martin | Representative, Cascade Auto Glass gives testimony in opposition of HB 3361. Comments that any fraudulent act is illegal. If this is truly an issue of insurance fraud, the insurance industry would be well represented at this hearing. |
| 150 | Martin | Continues with testimony. |

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| 178 | Paul Cosgrove | Representative, Nationwide Insurance gives testimony in support of HB 3361. |
| 200 | Craig Crandall | Claims Division Manager, Western Direct Operation, Nationwide Insurance gives testimony in support of HB 3361 (EXHIBIT G). |
| 250 | Crandall | Continues with testimony. |
| 323 | Rep. Taylor | Asks how it is different for an insurance company to waive the deductible rather than the auto glass company. |
| 325 | Crandall | Responds the differential is in regards to the insurance contract, which is an agreement between the insurer and the policyholder. Either party has the right to waive certain stipulations within the contract for whatever reason, and if beneficial to both parties it is usually permitted. |
| 341 | Cosgrove | Comments it is encouraged to repair rather than replace when appropriate; therefore, the waiver applies. |
| 345 | Rep. Taylor | Asks for further explanation of insurance company practice of waiving deductibles, but deterring third party waivers. |
| 348 | Crandall | Responds a third party has no contractual right in the two-party contract between the insurer and policyholder. |
| TAPE 17, A | | |
| 000 | Rep. Beyer | Asks for background on the state of Arizona's allowance of couponing. |
| 006 | Crandall | Responds Arizona is the state where this type of business practice gained much of its momentum. A major vendor in this field conducts incentive business practices in Oregon. This company drew policyholders into collection activity, which isn't good for the marketplace. |
| 045 | Rep. Beyer | Asks why Arizona didn't pass legislation on this. |
| 047 | Cosgrove | Responds too much litigation was involved. |
| 049 | Rep. Devlin | Asks if Nationwide Insurance is similar to State Farm in the sense you would provide discounts to vendors for services. |
| 051 | Crandall | Responds currently they are not providing a discount for services. |
| 053 | Rep. Devlin | Asks if they would apply an actual cash value standard to claims submitted by various vendors. |
| 056 | Crandall | Responds they are not being billed on this basis. Comments customers are being led into these situations prior to contacting their insurance companies. |
| 073 | Rep. Devlin | Asks if they have the capability to show comparisons in billing practices between the coupon companies and noncoupon companies. |
| 078 | Crandall | Responds yes they can provide this information. |
| 086 | Gale Francis | Owner, National Glass Company submits written testimony in support of HB 3361(EXHIBIT H). |
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| | Ryan Bledsoe | Independent business owner gives testimony in support of HB 3361. |
| 107 | Chair Johnson | Adjourns meeting at 9:38 p.m. |

Submitted By, Reviewed By,

Timaree Whitty, Keith Putman,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 3361, written testimony, Oregon Glass Association Panel, 66 pp.

B - HB 3361, written materials, John Brenneman, 3 pp.

C - HB 3361, written testimony, David Denney, 6 pp.

D - HB 3361, written testimony, Brad Nelson, 16 pp.

E - HB 3361, written testimony, Troy Klein, 2 pp.

F - HB 3361, written testimony, Pete Shepherd, 6 pp.

G - HB 3361, written testimony, Craig Crandall, 26 pp.

H - HB 3361, written testimony, Gale Francis, 2 pp.