

HOUSE COMMITTEE ON
LABOR

Hearing Room
Tapes - 25

MEMBERS PRESENT:

Rep. John Watt, Chair
Rep. Lee Beyer, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Mike Fahey
Rep. Lynn Lundquist
Rep. Lynn Snodgrass

MEMBER EXCUSED:

STAFF PRESENT:

Aaron Felton, Committee Counsel
Paula Gilmer Purcell, Committee Assistant

MEASURES HEARD: House Bill 2494, relating to Unemployment Compensation
Exclusions
House Bill 2322, relating to Disqualification from Unemployment Benefits

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,
please refer to the tapes.

TAPE , SIDE A

03 CHAIR WATT: Calls the meeting to order at 1:31 pm.

Opens Public Hearing on House Bill 2494

Witnesses: Rep. Liz VanLeeuwen
Donna Hunter, Oregon Department of Employment
Betsy Bailey, Associated Oregon Industries

10 AARON FELTON: Gives a brief summary of House Bill 2494.

20 REP. LIZ VANLEEUEWEN: Testifies in support of House Bill 2494. Discusses
language in the law that needs to be changed.

32 CHAIR WATT: Will you be drafting amendments to this bill?

33 REP. VANLEEUEWEN: I can.

37 CHAIR WATT: We need to address small companies. Is this directed toward agriculture?

43 REP. VANLEEUEWEN: Not specifically.

48 REP. FAHEY: What is substantial?

51 REP. VANLEEUEWEN: That would be decided under the corporation I think. It is extremely hard for any one that has paid to be able to collect it.

58 REP. BEYER: Is it your intent that this is only exempting those members that are corporate officers or directors?

61 REP. VANLEEUEWEN: Yes.

62 REP. BEYER: If you had a corporation that had five family members as officers and they employed other members of the family, would they not be exempt?

66 REP. VANLEEUEWEN: That would be my understanding.

67 REP. BEYER: You are only talking about actual officers or directors of the corporation then.

70 CHAIR WATT: Asks counsel to provide the committee a copy of ORS 657, as to how it relates to employment.

73 REP. BEYER: If the intent is just to exempt corporate officers, why not just say that?

79 REP. VANLEEUEWEN: The employment department would know better than I.

85 REP. BEYER: That language could cause a problem.

87 REP. FAHEY: What happens when there is a marital problem, and a party is no longer a part of the corporation?

91 VANLEEUEWEN: I can not answer that.

96 DONNA HUNTER, UNEMPLOYMENT INSURANCE TAX MANGER WITH THE DEPARTMENT OF EMPLOYMENT: Testifies and submits testimony [EXHIBIT A] on House Bill 2494. The department is neutral.

121 REP. BEYER: Would the amount of taxes be less?

124 HUNTER: An employer that pays less than 2 percent would be better off

132 REP. BEYER: What is the magnitude of dollars we are talking about?

133 HUNTER: Discusses costs in written testimony [EXHIBIT A].

140 REP. BEYER: Would that be per individual?

141 HUNTER: Yes, explains.

150 REP. BEYER: Does this have to be one way or the other? Could this be a provision where the corporation could elect to pay it or not?

152 HUNTER: Yes, that is what we have been working on, explains.

160 REP. BEYER: Could you address Rep. Van VanLeeuwen's comment that people would be paying a tax that they would not be able to collect.

163 HUNTER: A lot of times a corporation is between work, they might not meet our definition of unemployed. It is a case by case basis. Officers of a corporation have a harder time showing that they are available for work.

174 CHAIR WATT: Maybe the committee should consider giving people the option of paying the tax or not.

178 REP. SNODGRASS: Isn't that the amendment she was suggesting?

184 HUNTER: Suggests a change of language in that amendment.

191 REP. BROWN: Discusses the theory of a problem and the right way to fix it.

195 CHAIR WATT: Discusses the SMS, and how the language would effect this.

210 REP. BEYER: Did the department help Rep. VanLeeuwen?

211 HUNTER: This afternoon.

212 REP. BEYER: Could you work with her to prepare an amendment?

221 BETSY BAILEY, ASSOCIATED OREGON INDUSTRIES: Testifies in support of House Bill 2494.

Public Hearing on House Bill 2322

Witnesses: Rep. Kevin Mannix
Christine Chute, Oregon Department of Employment
Clark Campbell, Department of Human Resources
Irv Fletcher, AFL-CIO
Bob Shiprack, Oregon Building Trades

234 FELTON: Gives summary on House Bill 2322.

233 REP. KEVIN MANNIX: Testifies in support of House Bill 2322. Discusses Administrative Rules. Explains House Bill 2322. Discusses discharge and how that will effect unemployment benefits. Submits amendments [EXHIBIT B]

and discusses them.

258 The administrative rules are currently under litigation.

284 There should always be an employees assistance program available.

322 Employee assistance programs should always be made affordable.

339 REP. BEYER: Your intent is that if somebody violates the law, the is terminated because they show positive on a drug test and the employer has made available a drug rehabilitation program, they are fired. If they are fired and enter one of these programs then they are eligible?

348 REP. MANNIX: The amendments I propose eliminate testing from the bill.

374 REP. BEYER: The issue is protection for the worker. He then cites an example.

378 REP. MANNIX: That would be an issue of fact for the unemployment compensation hearing. Was it a matter of opinion or was it not?

393 REP. BEYER: Would you expect that the employment department to adopt administrative rules to deal with this?

395 REP. MANNIX: This would set a statutory program the would not need much in the way of rules. This bill, as amended, would have rules in it that apply.

408 REP. BEYER: Your intent would be, that if someone is discharged for perceptions of drug or alcohol use on the job, if they enrolled themselves in a treatment they would be eligible for unemployment?

417 REP. MANNIX: The original bill yes, the amendments no.

421 REP. BEYER: So, you are taking that piece out of the bill.

422 REP. MANNIX: The amended version takes that away, the first time around there can be sanctions. Cites examples that would not apply. This would also apply if you were dealing.

451 REP. BROWN: Do you consider drug and alcohol addiction an illness?

453 REP. MANNIX: No, there are predisposed dispositions.

472 REP. BROWN: If I had evidence and I don't would you change your view on how you would approach the problem.

476 REP. MANNIX: No, explains position. Discusses drug and alcohol in job environment

TAPE 25, SIDE A

48 REP. BROWN: You use the example of a illness that somebody else would

catch, what about something like schizophrenia, would you use the same theory?

50 REP. MANNIX: No because schizophrenia is not contagious. They are not taking a substance that enhance their illness. If there is a program to help you, and you do not take advantage of it, you then violate those rules.

62 REP. BROWN: Would you agree that part of the problem with drugs and alcohol is the denial aspect of it?

64 REP. MANNIX: Very much so.

65 REP. BROWN: Do you know if Commissioner Roberts will be testifying?

69 REP. FAHEY: Would this supersede a labor contract?

70 REP. MANNIX: This would set a statutory minimum. I would say it would not supersede a labor contract.

73 REP. FAHEY: There would be no testing at all to verify the findings?

78 REP. MANNIX: The amended version of this bill does not contain any discussion of testing.

81 REP. FAHEY: Is that because there is a cost related to testing?

81 REP. MANNIX: Testing is such a volatile issue, explains. Discusses random and possible causes from testing.

98 REP. FAHEY: Without testing, they could be on cocaine and you could not tell as long as they were acting normal.

101 REP. MANNIX: I would leave it up to agreements between employer and employees.

104 REP. FAHEY: I am more willing to do mandatory drug testing.

107 REP. FAHEY: If it is not an illness, why does the state mandate health care providers to provide a certain level of care for substance abuse?

109 REP. MANNIX: We could get into a philosophical issue as to whether it is a illness or not.

142 REP. FAHEY: There is no progressive discipline in this situation.

147 REP. MANNIX: It applies to anyone who is an employee.

168 REP. FAHEY: This would be a no cost to the employers.

173 REP. MANNIX: There is a cost to the employer. Discusses. The cost is that they have to allow for a safe harbor.

188 REP. FAHEY: The misconduct for the employer, this is providing an insurance policy for them.

197 REP. MANNIX: Yes, you can have it both ways.

204 REP. BEYER: Your intent is to discourage people from drinking on the
job and to encourage them to seek treatment before it becomes a problem?

207 REP. MANNIX: Exactly.

214 CHRISTINE CHUTE, POLICY ADMINISTRATOR OF EMPLOYMENT DEPARTMENT:
Testifies and submits written testimony [EXHIBIT C] on House Bill 2322.

228 We have amended our rules since 1993.

235 The rules are currently in litigation.

256 REP. BEYER: Asks if there were no drug testing, what would an employer
have to do to demonstrate that they were firing a person for good cause?

264 CHUTE: Makes assumptions that would decide case.

271 REP. BEYER: A person is terminated, they have filed for unemployment,
the employer has contested it and appealed it for an administrative
hearing, correct?

275 CHUTE: A person is fired, discusses process and what would then
happen. At that point, the field officer would make notice to the
employer. There would be an investigation, and make a decision would be
made. Whoever wins or loses, they have the right to appeal. Discusses what
the employer would have to prove for letting people go.

364 REP. BEYER: The issue isn't so much an impairment where you have a
test. It is that there is a policy that says you should not be under the
influence and there is a test that shows you were.

372 CHUTE: To cut it more finely, the current rules recognize the
usefulness of drug testing.

400 REP. BEYER: Where does the burden of proof lie?

401 CHUTE: If you are fired, it lies on the employer.

407 REP. FAHEY: If a person has one beer they would not be impaired.

427 CHUTE: Without testing it is very hard to prove impairment.

432 REP. SNODGRASS: If the work policy says you are not to drink on the
job, does it matter the amount?

439 CHUTE: You need to be careful about the policy. Discusses example that
Fahey used.

458 REP. BEYER: An employer can establish work rules, and if an employee
has violated those rules, then they have the right to fire that person.

474 CHUTE: That is correct.

475 REP. BEYER: This law doesn't do anything beyond what it does today?

478 CHUTE: Our rules are under attack in the court. The bill with the
amendment doesn't do anything different.

37 REP. BEYER: That piece of the bill lightens up the rules you have in place.

42 CHUTE: It does happen.

50 REP. BEYER: It is still a violation of safety rules.

52 REP. FAHEY: The problem is the issue with night shift or swing shift. Cites examples.

110 CLARK CAMPBELL, DEPARTMENT OF HUMAN RESOURCES: Testifies and submits written testimony [EXHIBIT D] in support of House Bill 2322.

155 Many people do need some type of intervention.

171 REP. BROWN: Do you believe that there are sufficient treatment programs to satisfy the demand?

176 CAMPBELL: No I do not.

181 REP. BROWN: Then you are saying we do not have enough treatment programs.

182 CAMPBELL: Beginning April 1, when the Oregon Health Plan takes effect, we hope this will help the situation.

203 REP. BROWN: Discusses methods used to determine if people are impaired, couldn't we train employers to use those tests?

212 CAMPBELL: Technically, yes, but that is not the environment we want, explains. Discusses illness issue. If it is viewed as an illness, that heads you down one path.

236 REP. BROWN: If you are driving machinery, safety is a big issue.

239 CAMPBELL: If we assume that all supervisors are capable of receiving the training and applying it in a reasonable way, then sure.

246 REP. FAHEY: Do you have the numbers of people who voluntarily enter programs voluntary or forced to enter the programs?

250 CAMPBELL: There is no significant difference between the two.

265 IRV FLETCHER, AFL-CIO: Testifies and submits written testimony [EXHIBIT E] in support of House Bill 2322.

285 REP. BEYER: Is that supported by the AFL-CIO?

298 FLETCHER: Suggests language that might need to be looked at. Cites Christine Chute's testimony.

314 BOB SHIPWRACK, OREGON BUILDING TRADES: Testifies on House Bill 2322. Discusses federal rules. The rules in our contract are very good and I urge

you to look at them. They conform with federal and state requirements.

Closes Public Hearing on House Bill 2322

386 CHAIR WATT: Adjourns the hearing at 2:54 pm.

Submitted by, Reviewed by,

Paula Gilmer Purcell	Aaron Felton
Committee Assistant	Committee Counsel

EXHIBIT SUMMARY:

- A - Testimony on House Bill 2494, submitted by Donna Hunter
- B - Testimony on House Bill 2494, submitted by Representative Kevin Mannix
- C - Testimony on House Bill 2494, submitted by Christine Chute
- D - Testimony on House Bill 2494, submitted by Clark Campbell
- E - Testimony on House Bill 2322, submitted by Irv Fletcher