

HOUSE COMMITTEE ON COMMERCE SUBCOMMITTEE ON LABOR

May 3, 1993 Hearing Room D 8:30 a.m. Tapes 104 - 105

MEMBERS PRESENT: Rep. John Watt, Chair

Rep. Lee Beyer Rep. Michael Payne

Rep. Charles Starr

Rep. Bob Tiernan

STAFF PRESENT: Marilyn Johnston, Committee Administrator Kimberly Burt,
Committee Assistant

MEASURES CONSIDERED: HB 2351 HB 2414

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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. [--- Unable To Translate Graphic ---]

TAPE 104, SIDE A

CHAIR WATT: Calls the meeting to order. (9:35 a.m.)

PUBLIC HEARING ON HB 2414 Witnesses: Irv Fletcher, Oregon AFL-CIO Rep. Schoon, House District 34 Rep. Johnson, House District 51 Virlena Crosley, Assistant Administrator, Employment Division Donna Hunter, Tax Manager, Employment Division

004 IRV FLETCHER, OREGON AFL-CIO: Testifies in support of HB 2414 with the (-3) amendments.

036 REP. SCHOON, HOUSE DISTRICT 34: I would encourage you not to make this change unless you know who is being effected.

048 REP. JOHNSON, HOUSE DISTRICT 51: The fiscal impact statement doesn't indicate an increase in cost, (EXHIBIT A).

CHAIR WATT: The Employment Division needs to give us their intentions.

065 VIRLENA CROSLEY, ASSISTANT ADMINISTRATOR, EMPLOYMENT DIVISION: One thing we looked at was requirements under statute that BOLI has to use; the language "fully and promptly pay", could be defined by administrative rule.

_ We would look at some of the same things, not doing such an intensive search; we didn't mean to broaden this or include more employers.

CHAIR WATT: Is this to be able to work with the employer?

CROSLEY: To make it easier; the intention of deleting this is to put in an administrative rule, which is more flexible.

DONNA HUNTER, TAX MANAGER, EMPLOYMENT DIVISION: We are already working with the employers, but the information would need to be in administrative rule.

098 REP. BEYER: You would use all legal means to recover?

CROSLEY: Yes.

CHAIR WATT: What are your recovery methods?

HUNTER: We send assessment notices, then they have twenty days, then we send out billing statements; we try to use voluntary compliance.

_ We can file a warrant, garnish, seize real and personal property.

145 FLETCHER: Describes situation when the issue came to light.

HUNTER: The penalty and interest fund has been growing.

REP. JOHNSON: The Employment Division recovers 80% to 90% of the claims settled.

HUNTER: It is about 98%.

WORK SESSION ON HB 2414

180 MOTION: REP. BEYER MOVES THAT HB 2414, AS AMENDED, TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION

REP. BEYER: Indicates support for the measure.

205 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: PAYNE CARRIER: JOHNSON

PUBLIC HEARING ON HB 2351 Witnesses: Rep. Shiprack, House District 23 Rep. Mannix, House District 32 Mary Neidig, Workers' Compensation Board Lana Butterfield, SAFECO Insurance Company Janice Pilkenton, Attorney, SAFECO Insurance Company John Klur, Attorney Jerry Keene, Workers' Compensation Attorney Darrel Burt, Arctic Sheet Metal Mel Hoffman, Mel-Ken Motors, Inc. Chris Davie, SAIF Corporation RCA Moore, Oregon Workers' Compensation Attorneys Karl Frederick, Associated Oregon Industries

222 REP. SHIPRACK, HOUSE DISTRICT 23: Testifies in support of HB 2351.

_ I have had problems with constituents where I have felt that workers' compensation insurers were misusing the system.

_ This will direct that carriers have to be up front and honest with their appeals as well as the workers.

REP. MANNIX, HOUSE DISTRICT 32: Testifies in support of HB 2351.

_ Describes current law and reason for the measure; there are no sanctions for frivolous appeals in front of the Board, where 95% of the action is.

_ Lines two and three would change the term "frivolous" to "lacked

substantial basis in law or in fact"; describes reason for the change.

_ There is a filing fee for going before the Court of Appeals and the Supreme Court, but not for review or hearing at the Board.

470 CHAIR WATT: We are adding language that allows the referee and the Board to impose an appropriate sanction; are those sanctions in place now?

REP. MANNIX: Not for attorneys.

TAPE 105, SIDE A

REP. MANNIX: "Substantial basis in law" means there must be substance, not just theory.

095 REP. TIERNAN: If an officer determines it is frivolous, can the attorney appeal that?

REP. MANNIX: Yes.

_ Continues describing possible situations that the bill would prevent.

160 REP. MANNIX: (In response to Rep. Tiernan) This doesn't just happen in workers' compensation, it also happens in civil cases and we should be cleaning up the process, building sanctions for attorneys. 180 REP. BEYER: If sanction is awarded against the attorney, is that passed on to the client?

REP. MANNIX: Not normally; attorneys can withdraw and this would encourage them to do that.

REP. BEYER: Do current procedures allow the pass on?

REP. MANNIX: No; the current law says "attorney" and I don't want to change that language.

278 MARY NEIDIG, WORKERS' COMPENSATION BOARD: This would affect the Board by leading to fewer requests for hearings at the Board level.

_ There are frivolous appeals in the system; ten to fifteen percent perhaps, it is hard to say.

357 REP. BEYER: Do you see a difference in "frivolous" and "lacked substantial basis in law or in fact"?

NEIDIG: The case history will determine those definitions; my sense is that the amendment is an attempt to further define what this bill was designed to deal with.

REP. MANNIX: This is going to require a case by case analysis; this is meant to be tougher than "frivolous".

405 REP. TIERNAN: Is it the intention of this bill that the attorney should pay for the assessment themselves and in no way pass it on to the client?

REP. MANNIX: As to workers, the answer is no.

REP. TIERNAN: It is your intent that the attorneys pay the sanctions, not pass them on to clients?

REP. MANNIX: Yes.

463 LANA BUTTERFIELD, SAFECO INSURANCE COMPANY: Introduces Janice Pilkenton.

JANICE PILKENTON, ATTORNEY, SAFECO INSURANCE COMPANY: Submits and summarizes written testimony in support of HB 2351; (EXHIBIT C).

TAPE 104, SIDE B

040 PILKENTON: Continues summarizing written testimony, see Exhibit C.

090 REP. BEYER: Do you feel that there is a need for the higher standard?

PILKENTON: I would be happy to see the bill pass; right now we have nothing.

105 JOHN KLUR, ATTORNEY: Testifies in support of HB 2351 with amendments.

_ The bill levels the playing field; most lawyers would go to the hearing and then ask to withdraw for reasons that can't be told because of attorney/client confidentiality.

178 KLUR: Disciplinary procedures at the Oregon State Bar are cumbersome and not an adequate deterrent.

REP. TIERNAN: Do you agree with the warning?

KLUR: As a practical matter we will be warning people; I would prefer to see the legislation go through as simple as possible.

247 KLUR: I think the time lines are better handled by the referees.

REP. BEYER: It seems the insurers are feeling like many workers' attorney's are requesting hearings to get a settlement.

275 JERRY KEENE, WORKERS' COMPENSATION ATTORNEY: Testifies in support of HB 2351.

_ There are a number of situations where requests for hearings are filed and work is done and then the request is withdrawn.

_ Gives statistics on requests for hearings with the Court of Appeals.

388 REP. TIERNAN: Who would be opposed to this?

KLUR: People who represent workers' who file frivolous requests.

405 REP. BEYER: Do you have any comment on the change of "frivolous" as opposed to "lacks substantial basis in law or in fact".

KLUR: I do think it is a good idea.

450 DARREL BURT, ARCTIC SHEET METAL: Testifies in support of HB 2351, submits and summarizes written testimony, (EXHIBIT D). TAPE 105, SIDE B

062 REP. TIERNAN: Has your company employed someone who had a claim brought through this process that you felt was frivolous?

BURT: Yes, more than one; describes situation.

106 MEL HOFFMAN, MEL-KEN MOTORS, INC.: Testifies in support of HB 2351; submits and summarizes written testimony, (EXHIBIT E).

155 CHRIS DAVIE, SAIF CORPORATION: Testifies in support of HB 2351 and the amendments.

165 RCA MOORE, OREGON WORKERS' COMPENSATION ATTORNEYS: Testifies in opposition to HB 2351.

_ I believe that if this is passed you will see an increase in defense filings.

272 KARL FREDERICK, ASSOCIATED OREGON INDUSTRIES: Testifies in support of HB 2351 with amendments.

CHAIR WATT: We are adjourned. (11:20 a.m.)

Submitted by, Reviewed by,

Kimberly Burt Marilyn Johnson Committee Assistant Committee Administrator

EXHIBIT SUMMARY:

A - HB 2414: Preliminary staff measure summary, (-3) amendments, hand engrossed version, fiscal and revenue impact statements submitted by staff, pp 16 B - HB 2351: Preliminary staff measure, (-1) amendments, hand engrossed version submitted by staff, pp 5 C - HB 2351: Written testimony and informative material submitted by Pilkenton, pp 5 D - HB 2351: Written testimony submitted by Burt, pp 1 E - HB 2351: Written testimony submitted by Hoffman, pp 3