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
BUSINESS AND CONSUMER AFFAIRS
SUBCOMMITTEE NO. 1

May 2, 1991 Hearing Room F
1:00 P.M. Tapes 15 - 16

MEMBERS PRESENT:Rep. Jerry Barnes, Chair
Rep. Lisa Naito
Rep. John Schoon
Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator
Annetta Mullins, Committee Assistant

MEASURES
CONSIDERED: HB 3025 PH
HB 2533 PH
HB 2534 PH

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during this session. Only text enclosed in quotation marks report a speaker's exact words.
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TAPE 15, SIDE A

004 CHAIR BARNES calls the meeting to order at 1:09 p.m. and opens the public hearing on HB
302 5.

HB 3025 - REQUIRES FOOD HANDLER PERMIT FOR RESTAURANT EMPLOYEES WHO PARTICIPATE IN PREPARATION, COOKING, SERVING OR SELLING OF FOOD.
Witnesses:Rep. John Schoon
Ted Osher, Dallas
Art Keil, Health Division
Hal Nauman, Health Division
Joe Fowler, Oregon Coalition of Local Health Officials and the Conference of Local
Environmental Health Supervisors
Mike McCallum, Oregon Restaurant Asociation
Lucy MacDonald, Chemeketa Community College

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT A).

009 REP. SCHOON introduces Ted Osher, a constituent.

009 REP. SCHOON: Mr. Osher brings us another issue for discussion which deals with food in restaurants and people who handle that food. Sanitation is an area of growing concern and is one of the areas where we have been relatively safe because of good sanitation and good habits in the past which we are neglecting now because things have gone well. It is a subject that is of vital concern to all of us.

035 TED OSHER, Dallas, submits a prepared statement, bulletin from United States Department of Agriculture (USDA), "Handling Delicatessen Meats," Food Service Manual from the Lane County Environmental Health Services and "Food Sanitation Rules, 1987, Chapter 333" from the Oregon Health Division (EXHIBIT B).
We are looking at certification of anyone who handles food in a public restaurant. We have been lucky because there is no one in any health department that can guarantee we won't have a large Hepatitis A epidemic tomorrow. There are many other types of illnesses. There are other diseases that are bacterial caused. Most of them don't bother us unless there has been sufficient time since the time of the introduction of the bacteria to the food product to allow the numbers of bacteria to multiply to a limit our bodies cannot tolerate.

We are talking about sanitation techniques: times, temperature control, cleanliness, to keep those numbers down. On the East Coast the USDA has reported that a large number of shell eggs are contaminated with salmonella, not only on the outside of the shell but also in the yoke. It is traveling west. The USDA no longer recommends eating raw eggs. Salmonella can be killed by cooking. If restaurants observe the practice of cooking to proper temperatures and time durations, they will eliminate 99 percent of the salmonella problem. Staph is also carried by humans.

This bill is about education of the food handlers. It is knowing what is right. We need a uniform method of educating the workers and of testing their knowledge. Some counties have mandatory certification programs. I have been watching and following Lane County's mandatory program. Their book is given out to the participants. It has a minimum amount of information they will be required to know. It talks about temperatures, washing their hands and certain cleanliness.

Included in the packet is the Oregon Health Division's Food Sanitation Rules. This should be

given to everyone who works in a restaurant regardless of their capacity. Part of this is an
enforcement problem. We can't really blame the Health Division or the Oregon Department of
Agriculture because of funding and lack of time. They can't see the violations that occur (when
they are not in the establishments).
>If you want another drink at a fast food place, you give them back your cup and they dip it
into the ice bucket.
>The only way to ensure good, positive sanitation is by a uniform system. Implementation may
have to be worked out. I know the Oregon Department of Agriculture and the Oregon Health
Division have different philosophies, different thoughts and possibly different regulations. I feel
they should work closer together and there should be a uniform program.
>Delicatessens which are governed by the Oregon Department of Agriculture are just as much
at fault for lack of sanitation.
>It is not just temperature and cleanliness. It is knowing what to do and what not to do. Unless
these people are trained and certified that they have that kind of knowledge, we are not doing the
job.

Issues discussed:
>There is no mandatory state program. State should oversee a program to make sure there are
minimums.
>Different counties have different requirements. USDA has video tape and supplemental book
which could serve as training. Lane County and Marion County have books. I feel Marion
County's book is a little overkill for the normal person who would be serving french fries
because it deals with things they are not concerned with such as the number of toilets required
for a restaurant, the type of fixtures, etc. Those are beyond their control.
>Program is for food handler and the worker. Eventually the supervisory and the manager of
the facility would have to have a different kind, a higher level of training program so they are
aware of what is going everywhere in their control and to be able to assure that people who work
for them are doing the right things.
>Counties are doing adequate job of inspections. The state would be a more uniform program.

>Whether bill would apply to delicatessen. Would need to amend the bill to apply to grocery
stores, or delicatessen.
>Length of course to train employees.
>Location of testing facilities.
>Whether roadside food sales should be included.

347 ART KEIL, Health Division, introduces Hal Nauman, submits and paraphrases a prepared
statement outlining concerns with HB 3025 (EXHIBIT C).
>Seven counties have food training programs for all employees. Between five and 10 percent

of the sanitarian's time when inspecting restaurants is devoted to training of employees and/or
managers.
>The guideline for training by January next year is unrealistic and suggest it be by July next
year.
>Need clarification on reciprocity between counties.
>Would consider counties doing training through their Health Departments and question whether
they would set their own fee and who pays the fee.

TAPE 16, SIDE A

024 Issues discussed:
>Effectiveness of current county programs.

036 HAL NAUMAN, Health Division: Multnomah, Marion and Lane counties are three counties
which have programs.

038 MR. KEIL: We will provide information on which counties have certification programs.

Issues discussed:
>Inspectors' role in training employees.
>Possibility of requiring food handlers in delicatessens and grocery stores obtaining permit from
Health Division and Department of Agriculture being responsibility for seeing the employees have
the permits.
>Instead of having bureaucracy, require the owner or manager to certify to the inspector that
employees have received certification.

179 JOE FOWLER, Oregon Coalition of Local Health Officials and the Conference of Local
Environmental Health Supervisors, submits a prepared statement and minutes of a conference
task force on certification of food handlers. He reads the prepared statement in support of HB
302 5 (EXHIBIT D).

250 MIKE McCALLUM, Oregon Restaurant Association: We oppose HB 3025:
>The concept of food handler training is not opposed by the industry. We think the system that
exists for the food service inspection programs is simply incapable of providing any backup for
a program such as described in HB 3025.
>Industry has programs developed by National Restaurant Association aimed at managers; not
food handlers.
>Employee turnover is intrinsic to any kind of training.
>In 1985, the restaurant industry promoted a bill centered around alcohol server training. The
cost for that training averages around $40 per student. The permit is required before a person
can go to work in an establishment. This bill would encompass those people and just about
everybody we employ.
>Setting up training system to train 90,000 people is no small fete.
>Most local programs consist of reading material, entering answers and paying a fee.

>If we had a uniform statewide consistent policy for inspecting restaurants, we would support food manager-food handler training of some kind because then we would have reasonable assurance that all restaurants would be operating the same. >Even with a standard state curriculum, programs would be implemented differently in every county.

TAPE 15, SIDE B

012 CHAIR BARNES: What are your thoughts on my suggestion that we have the employer-manager certify that employees have been trained when inspector comes around.

021 MR. McCALLUM: I think training is good. The most effective and efficient way of training may be through the managers. We think that is the way it happens now. We would hope that whoever is monitoring that manager to see that he is monitoring the food handlers is a consistent monitor before we start holding the middle manager accountable.

041 LUCY MacDONALD, Chemeketa Community College, submits a prepared statement and brochure on Chemeketa's food service instructional program. She paraphrases her prepared statement (EXHIBIT E).

The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT F).

103 CHAIR BARNES closes the public hearing on HB 3025 and opens the public hearing on HB 253 3.

(Tape 15, Side B)
HB 2533 - ALLOWS PERSON INJURED IN VEHICLE ACCIDENT TO RETAIN PERSONAL INJURY PROTECTION BENEFITS TO EXTENT THAT AMOUNT OF ACTUAL DAMAGES EXCEEDS AMOUNT COLLECTED FROM AT-FAULT PARTY.
Witnesses:Jeff Foote, Oregon Trial Lawyers Association
James Callahan, Attorney
Sharon Testani, Portland
John Powell, State Farm Insurance Companies and North pacific Insurance Company
Tom Bessonette, Oregon Mutual Insurance Company

The Preliminary Staff Measure Summary (EXHIBIT G) and Legislative Fiscal Analysis (EXHIBIT H) are hereby made a part of these minutes.

106 JEFF FOOTE, President, Oregon Trial Lawyers Association: The purpose of the legislation is stated in Mr. Williams testimony (EXHIBIT I). The bill is to clarify an inconsistency in existing law dealing with reimbursement of automobile liability carriers who pay personal injury protection benefits. Personal injury protection is a no-fault concept. If a person is injured they

immediately receive medical benefits and wage loss benefits through their own carrier. When the other driver is at fault and there is a recovery from that driver, the question is whether the personal injury protection provider gets reimbursed by the at-fault driver. In most situations they do and they should. The reason for that is you want to avoid double recovery.

142 We have the problem when a person's damages exceed the available insurance. The question becomes does the personal injury protection carrier get reimbursed. Prior to 1985, the statutes were interpreted in a "policy limits" case, which means the value of the case because of the severity of the injuries exceeds the amount of liability insurance, the liability carrier would pay the injured the policy less what that injured person received in personal injury protection benefits. They would then reimburse the personal injury protection carrier.

158 In 1985 the Oregon Supreme Court decided a case called Kessler v. Weigant which changed the way the insurance industry did business and the liability carrier was required to pay not only the amount of the liability policy to the injured person, but to reimburse the personal injury protection carrier as well. We found ourselves in the situation where a carrier could have written insurance for $25,000 liability, they would have paid that back to the injured person and then they may have had to pay back PIP benefits on top of that. There are a few examples where those PIP benefits were up to $100,000.

The insurance industry came to the Legislature in 1987 and SB 699 was passed. That legislation amended what is now ORS 742.534. It makes it clear that the insurer who writes $25,000 worth of coverage will not have to pay more. It leaves an ambiguity as to whether or not in those situation the personal injury protection carrier gets reimbursed or whether the injured person keeps the full policy.

185 Carriers are interpreting the law differently. We hope that HB 2533 will clarify what the Legislature started to do in 1987. It will clarify that when you have a situation where an injured person's damages exceed the value of the liability policy and the value of the personal injury protection coverage, that they be entitled to retain the benefits.

107 During the same session the Legislature passed uninsured motorists coverage and said essentially that when you have a severe injury where damages exceed the amount of coverage, and it is a UM case, there would be no reduction for the PIP that is already paid. In some situations people are better off if there is no liability carrier and just proceed under their UM coverage.

Washington law is different. The principal behind their law is that the injured person be fully compensated and if the injured person is fully compensated and there is available liability insurance beyond that amount, then you do the reimbursement. That is essentially what we are attempting to do with this legislation.

234 JAMES F. CALLAHAN, attorney: I brought Ms. Testani to have her relate to you her experiences as a result of a vehicle accident.

228 SHARON TESTANI, Portland, submits and reads a prepared statement explaining her injuries and compensation (EXHIBIT J).

270 MR. CALLAHAN: The law provides three different ways Ms. Testani's company can recoup the PIP benefits they paid out. They are set out in the materials I have provided (EXHIBIT K). HB 2533 proposes to eliminate the reimbursement under ORS 742.536 and 742 .538 so that if the injured party's company cannot recoup their PIP payments from the other insurance company, the insurance company of the person at fault under 742.534 cannot come directly against Ms. Testani to take part of the settlement she received from the party at fault.

The modification made to ORS 742.542 was also passed in 1987 and the Legislature made it perfectly clear that if there is no insurance for the person at fault, the injured person has to go against her own policy's uninsured motorist provision. ORS 742.542 makes it perfectly clear that her own company cannot offset the uninsured motorists limits by what they pay out in PIP. She has the benefit of the uninsured motorist and PIP coverage.

The position the insurance companies are taking is that if the other person does have insurance, then they are allowed under the two sections HB 2533 addresses to recoup their PIP if the other person has insurance. If the other person doesn't have insurance, ORS 742 .542 makes it clear they would not be able to do that.

TAPE 16, SIDE B

049 REP. NAITO: Who decides what remedy the injured person should have?

MR. FOOTE: If it is a dispute with the wrong doer's insurance company, that is a matter for trial. In this case, Mr. Callahan and the carrier could have been arguing whether it is a $100,000 or $150,000 and it wouldn't have made any difference because there was only a $30,000 limit and they settled. If it can't be settled, it goes to trial. If there is a dispute between the injured person and their insurer, then I think that would be a matter for arbitration. That is the way I would interpret it.

072 The Chair asked how the insurance company goes about making claim against Mrs. Testani.
That is what this bill addresses. HB 2533 deletes the motor vehicle liability insurer from two
statutes and removes from the liability carrier the right to sue their own insured for
reimbursement. This still leaves the health insurer able to demand reimbursement, but removes
the right of the PIP carrier to do that and requires them to go against the other company or not
be reimbursed.

091 JOHN POWELL, State Farm Insurance Companies and North Pacific Insurance Company:
Our objection to the provisions of HB 2533 center on what it does to the traditional coverage of
personal injury protection and the policy direction it will take.

The PIP coverage in an auto insurance policy was designed to be a no-fault quick-pay system
while liability questions are being worked out. The design of the PIP coverage was not a
liability or an extension of liability. HB 2533 would make the PIP coverages excess liability
stacked on to the wrong-doers liability policy.

It will cost the consumers a lot of money. State Farm would estimate that with their 20 percent
of the auto market, it would be between $4 million and $5 million annually. Another problem
is the cost will go up most for those people with minimum limits, young and high risk drivers.
A second problem and equally important problem with the bill is the administration of this type
of excess coverage. Who would determine the amount of damages that someone would be due
under the provisions of HB 2533. An example would be if a claimant claimed damages for pain
and suffering. In those cases only a jury can make a final determination. After looking at all
the coverages that might be available or if no insurance was available, excessively high claims
could be made from the fact that they would be depending on getting the limits of the other
person's policy and recovering from their own policy. Once that claim is made, how is it
determined short of litigation and the culmination of a lawsuit as to what those damages would
be. There would be those who would say they would be happy to negotiate it. That is probably
a lot of what is behind the bill.

We oppose the bill because it really takes PIP, first party coverages which are designed to be
quick and efficient, and turns them into a real dispute between the insurer and their insured.
When you add it to the liability of another policy of the wrong doer, you bring that element into
this coverage. If the Legislature wants to make more insurance available, you could look at
increasing the minimum limits of liability on policies. We don't recommend

that. If that is an
issue, that is how it should be addressed.

233 TOM BESSONETTE, Oregon Mutual Insurance Company: One, Oregon law is not "no
fault." It is first party benefits. It provides that we shall reimburse the carrier who had paid
those bills.

In the illustration prepared by staff we are talking about $10,000 payment; that should be $10,000
in medical payments and $1,250 per month of wage loss, for a total of $22,500 today.

The Oregon issue started in the late 1960's and early 1970's and continued on through the 70's
when no fault was an issue statewide and in the United States. The goals were 1) to reduce the
cost of auto insurance especially on the East Coast, 2) to provide certain early payment of wage
loss without consideration of who was at fault, and 3) to reduce court congestion. It did that by
establishing in the no-fault states a threshold that you could not sue unless your medical expenses
or some other criteria which the Legislature decided, had been exceeded.

In 1971 the Oregon Legislature, with plaintiff attorneys and the insurance industry, did not want
to short circuit the citizens' right to go into a court room by having a threshold on our bill. So
we did not establish a threshold. Instead we adopted a program that did hold the Oregon auto
insurance premium in a near level condition and provided for early certain payment for medical
expense up to the limits of the policy and wage loss, regardless of who was at fault so the
individual got their early bills paid. It did relieve the court docket system.

This bill does damage to goal 1, the reducing of the cost of auto insurance and also the court
docket. PIP law provides that by early payment you relieve tension and stress caused by the
wage loss and uncertainty of collection from the wrong doer. As the result, funds are advanced
and have been since 1971. Because of funds being advanced many people did not want to sue.
This bill is a step backward. We feel our first party benefit, PIP, bill has been working well in
the past and will continue to work well in the future.

297 Previous speakers were talking about the insured being fully reimbursed in Washington. That
is a court decision and applies to all subrogation, not just PIP.

324 CHAIR BARNES closes the public hearing on HB 2533 and opens the public hearing on HB
253 4 and closes the public hearing on HB 2534.

(Tape 16, Side B)
HB 2534 - PROVIDES THAT UNDERINSURANCE BENEFITS ARE EXCESS OVER AMOUNTS RECOVERED FROM OTHER MOTOR VEHICLE LIABILITY INSURANCE.

The Preliminary Staff Measure Summary (EXHIBIT L) and Legislative Fiscal Analysis are
hereby made a part of these minutes (EXHIBIT M).

328 CHAIR BARNES declares the meeting adjourned at 2:56 p.m.

Respectfully submitted,Reviewed by,

Annetta Mullins Terry Connolly
Assistant Administrator

EXHIBIT SUMMARY

A - HB 3025, Preliminary Staff Measure Summary, staff
B -HB 3025, prepared statement, USDA bulletin, Lane County Food Service Manual and Food
Sanitation Rules, Oregon Health Division
C -HB 3025, prepared statement, Art Keil
D -HB 3025, prepared statement, Joe Fowler
E -HB 3024, prepared statement and brochure, Lucy MacDonald
F -HB 3025, Legislative Fiscal Analysis, staff
G -HB 2533, Preliminary Staff Measure Summary, staff
H -HB 2533, Legislative Fiscal Analysis, staff
I -HB 2533, prepared statement, Jeff Foote for Charlie Williamson
J -HB 2533, prepared statement, Sharon Testani
K -HB 2533, comparative interpretations of statutes, statutes, minutes and demand letter, James
Callahan
L -HB 2534, Preliminary Staff Measure Summary, staff
M -HB 2534, Legislative Fiscal Analysis, staff