

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 LABOR

March 11, 1991Hearing Room D 8:30 a.m.Tapes 58 - 59

MEMBERS PRESENT:Rep. Gene Derfler, Chair Rep. Kevin Mannix, Vice-Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob Repine Rep. John Watt

STAFF PRESENT: Victoria Dozler, Committee Administrator Johanna Klarin, Committee Assistant

MEASURES CONSIDERED: HB 2599 - Public Hearing HB 2855 - Public Hearing and Work Session

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 58, SIDE A

003 CHAIR DERFLER: Calls the meeting to order at 8:30 A.M.

PUBLIC HEARING, HB 2599 (EXHIBITS A,B,C & D)

Witnesses:Larry Young, Workers Compensation Division Gary Steward, Department of Finance and Insurance Katherine Keene, SAIF David Thurber, Assistant Attorney General Greg Teeple, Oregon State Building and Construction Trades Council John Kirkpatrick, Painters District Council 55 Fred Van Natta, Oregon State Home Builders Association JoRae Perkins Ken Keudell, Construction Contractors Board

004 CHAIR DERFLER: Opens public hearing on HB 2599.

006 LARRY YOUNG, Deputy Administrator, Workers' Compensation Division: Testifies in response to the committee's inquiries of the Department during the public hearing on March 1, 1991 regarding House Bill 2599 (Exhibit A).

-A brief history and explanation on ORS 656.029.

-A brief history and explanation of the definition "independent contractor."

-Comment on the specific language as proposed in HB 2599 and other amendments proposed.

-Background information on the general contractor case referenced to by Mr. Van Natta on March 1, 1991.

044 REP. REPINE: Refers to Exhibit A, page 2, section 2. How would a primary contractor know?

YOUNG: He would contact first the Construction Contractors' Board to verify whether the subcontractor is exempt or non-exempt. The prime usually knows beforehand what kind of work is going to be performed.

063 CHAIR DERFLER: Is there any difference in the exempt or non-exempt status document?

YOUNG: The Construction Contractors Board should respond to that.

-Discusses a situation where a person who is registered as an independent contractor also works as an employee at the same time. When this person is an employee, he no longer meets the criteria of an independent contractor.

REP. REPINE: How does a prime contractor know whether an exempt person that he has contracted with has employees? How does the prime contractor know that relationship?

YOUNG: I believe the original intent of the bill is that the prime has some responsibility and is on top of what kind of work is going to be accomplished and what kind of people he is hiring.

REP. REPINE: One cannot know that the status of an individual has changed since they are not direct employees.

118 REP. MANNIX: The contractors and insurers both want predictability. We want to make sure that people are meeting their social obligations. In between there are operators who would like to get around the law.

-The carpet layers might be in a different situation needing special consideration.

-The hazy area is when circumstances change during the process. We are not addressing that.

-Can one obtain a determination whether a contractor is registered and is exempt or non-exempt?

150 GARY STEWARD, Department of Finance and Insurance: You can call the Construction Contractors' Board and get that determination. If the person is registered as a non-exempt they have certified to the board that they have workers' compensation insurance, that they are independent contractors and that they will work in that capacity. If a prime contractor contacts the Construction Contractors' Board and is informed that an individual is registered as non-exempt that prime has met the obligation of the statute and the responsibility falls on the subcontractor.

164 -Rep. Mannix and Mr. Steward discuss a situation where the subcontractor is on a six month project and three months later discontinues workers' compensation coverage. Does the prime contractor

have some obligation?

STEWARD: We have taken the position that the responsibility does not kick back to the prime contractor.

192 Rep. Mannix discusses a situation where an individual is found exempt and is a sole proprietor but later on hires some employees.

REP. MANNIX: If this is unknown to the prime contractor, what happens then?

STEWARD: Our position is that if the subcontractor is registered as exempt at the time the work under the contract commences, the prime is off the hook. We would treat the subcontractor as a non-complying employer if there is no coverage.

207 REP. MANNIX: Discusses this issue as it relates to the carpet layers' situation.

STEWARD: One of the main issues in the carpet layer situation is the right to direct and control.

REP. MANNIX: What is your reaction to the single bullet reaction to that problem?

STEWARD: I would support it personally.

220 CHAIR DERFLER: What about when a person works as an employee and an independent contractor at the same time?

YOUNG: That can occur. The exempt status is there. The hearings referee would apply the test whether the individual was working as an employee or an independent contractor at the time.

CHAIR DERFLER: Could the independent contractors agree that they would not make a claim on an insurer if they were injured?

240 YOUNG: That is what this testimony is about. Will a piece of paper govern? Would one have to get a certification of an independent contractor before anyone would hire him?

CHAIR DERFLER: Would they be willing to sign off their rights and not expect coverage from workers compensation?

YOUNG: That is what the proposed language would do.

253 REP. EDMUNSON: But they really can't do that because the workers compensation law clearly states that the worker cannot waive his rights under the chapter.

263 REP. DOMINY: What would be the situation with roofers in a situation similar to that of the carpet layers?

YOUNG: The roofer would supply the materials also.

REP. DOMINY: Is there any other profession you could think of that is in a similar situation as the carpet layers?

YOUNG: It comes down to the definition. Provides an example of electricians.

REP. DOMINY: Who would be responsible if there was a flaw? Would it be the same as with the carpet layers?

YOUNG: Under the circumstances where they are not supplying the equipment or responsible for the outcome, it would be that way.

311 REP. MANNIX: It appears to me the carpet layers' situation is somewhat unique. We license our electricians but not carpet installers.

STEWARD: It is somewhat unique.

341 REP. REPINE: Discusses this situation as it relates to the roofing industry. The situation is no way different.

371 YOUNG: If the lumber company actually did the contract to install the roofing, we would have the same situation as with the carpet people, in that sense you are right.

388 CHAIR DERFLER: If you own an installation company and you install carpeting for several different companies, you would consider yourself as an independent contractor?

YOUNG: As an individual I would.

CHAIR DERFLER: We are trying to figure out a way that the law would allow those people to be independent contractors.

400 YOUNG: We would suggest that an alternative would probably handle that situation real well.

408 KATHERINE KEENE, SAIF: Introduces David Thurber, Assistant Attorney General.

-The previous testimony contains some inaccurate information about the independent contractor law and about SAIF corporation's audit practices.

TAPE 59, SIDE A

005 KEENE: Provides a condensed summary of the history of this issue.

-The law did not provide the kind of certainty that the people in the construction industry are looking for.

012 -Discusses how SAIF corporation has handled this issue. Discusses direction and control test (Exhibit B).

-Discusses Exhibit C--What contractors need to know about workers' compensation requirements for subcontractors.

-Our concern remains that when we are liable to pay claims, we do expect to collect a premium.

039 REP. MANNIX: SAIF's position is that you have to pay premium on the risk.

KEENE: That is correct.

-Continues her presentation. She discusses the check list to determine whether or not direction and control exist (Exhibit D).

-The broad policy question is do we want broad coverage or narrow coverage?

061 REP. MANNIX: Everybody wants to be an independent contractor when it comes to paying premiums, but wants to be a subject worker in case of an injury.

KEENE: We see that phenomenon.

-She discusses Saif corporation's premium audit hearing process and the statistics involved.

085 REP. DERFLER: Would you give a break down of the accounts that are settled before going into a hearing.

KEENE: We go into a fact finding situation.

092 DAVID THURBER, Assistant Attorney General: Discusses the discovery process to determine whether a case needs to go into a hearing. We exchange evidence and documents and often end up with evidence that was not available for us at the original time of the audit.

113 KEENE: Summarizes the statistical data--98.7% of SAIF's audits are resolved outside the Department of Insurance and Finance hearing process, 2.2% are decided inside the hearings process.

-A narrow exemption will solve one of the immediate problems before you, but it does not resolve the entire problem. For example, timber haulers will get caught up in this dispute.

137 CHAIR DERFLER: Your suggested language would give away the rights of that employee to accept or be able to collect workers' compensation.

THURBER: It is a matter of law. If I am signed up with the Construction Contractors' Board, I have a conclusive presumption that I am an independent contractor.

152 REP. MANNIX: I assume you are also trying to balance the concern we have about undue influence of employers over their employees. Refers to "any person registered, or any partner of any partnership, or any officer, director or stockholder." So a worker who didn't fit the above categories could not be registered and forced out of the system.

THURBER: I think he/she could be.

REP. MANNIX: Yes if he registers himself, but I meant a person who works for someone else.

168 KEENE: Our proposal didn't get into the public policy question of where one wants coverage. The other end of the spectrum is to mandate a universal coverage.

180 REP. EDMUNSON: The solution would be universal access coverage. If these amendments were adopted, then all the worker groups we have discussed before could not file workers' compensation claims. They could not bring a lawsuit against the contractor for negligence.

194 THURBER: You have a point. This is one of the social issues one has to wrestle with. When you carve out exceptions, you are getting away

from the public policy issue to protect the injured worker.

-The other social policy concern is where would they go for their benefits?

210 REP. MANNIX: Have you explored the idea of having universal coverage for those who register with the employers with the Construction Contractors Board?

KEENE: That is a variation of the suggestion I made requiring everyone having workers' compensation coverage.

230 REP. EDMUNSON: I wonder if the suggestion that they are exempt, if they have health insurance, would not be preempted by the federal ERISA Act.

235 THURBER: It is a probability that ERISA would cover claims processing.

REP. EDMUNSON: We would be preempted from accepting for workers' compensation what is covered under health insurance.

THURBER: I don't have any disagreement with that.

243 REP. MANNIX: I am wondering how revolutionary we can be this session.

253 GREG TEEPLE, Oregon State Building and Construction Trades Council: Introduces John Kirkpatrick, Business Representative from the District Council of Painters. Testifies in opposition of HB 2599.

-Discusses the competitive side of the issue.

-Reads Mr. Larry Gilbertson's letter, [QUOTE] As a representative of mason and tile contractors, we are concerned about the sentence on page 3, subsection 18; a person registered under ORS 701.035 with the Construction Contractors Board. If this means that mason and tile contractors can contract for work without carrying the proper workers' compensation that our licensed contractors have to carry then we oppose this action. It would put them in advantage for bidding for work or bidding at a lower rate. We feel strongly that all contractors should be licensed and carry the same workers compensation as our contractors. [QUOTE] Larry Gilbertson, Executive Director, Mason and Tile Contractors Association.

-Conveys the same concerns by Mr. John Molis, Business Representative for the Brick Layers and Allied Craftsmen' Union.

-Small employers would suffer competitively when competing with those who are just labor brokers.

305 JOHN KIRKPATRICK, Business Representative, Painters District Council 55: Testifies in opposition of HB 2599.

-This bill is a threat to our conscientious, honest employers.

-This is an attempt to improve the competitive advantage of unscrupulous, fly-by-night contractors.

-It encourages the abuse of the workers' compensation system.

-Discusses the issue of labor brokerage.

-Anyone who is working shouldn't be exempted from the workers' compensation system.

-Refers to an article in the Oregonian of a case of an insured worker in Salem.

-HB 2599 aggravates the problem of premiums going up.

-The universal coverage is the probably the best answer we have.

413 REP. REPINE: Refers to the example given by Mr. Kirkpatrick. If the person was working as an independent contractor wouldn't he have to have a 24-hour insurance coverage?

KIRKPATRICK: I don't have that information.

REP. REPINE: If he works in the form of being licensed and bonded, in the state of Oregon you must have workers' compensation or 24-hour health coverage. Isn't that correct?

432 REP. MANNIX: No, not yet. We are requiring coverage in 1993. Right now it is a voluntary program.

TAPE 58, SIDE B

001 REP. MANNIX: Discusses motor helmet usage in this context. Would you support a system where everyone pays for their own coverage?

011 KIRKPATRICK: There are enforcement costs built into that.

015 TEEPLE: We still have doubts with that concept. The amendments go a short way toward addressing the problems that the bill creates.

-We still need to address the question of competitiveness.

027 JORAE PERKINS: Her husband and is a self-employed carpet installer who is registered with the CCB.

-Describes their experience with SAIF audits.

055 REP. MANNIX: With regard to the premium audits, SAIF will allow you to work out a payment plan.

-Is not a fine you have to pay. It is an insurance assessment based on the payroll.

PERKINS: Yes based on the payroll of non-subject employees.

-Discusses the SAIF checklist "Your workers: Employees or Independent Contractors?"

-Individual people are not given the opportunity to pass the test.

-Refers to Mr. Kirkpatrick's testimony with regard to fly-by-night contractors. We find these people in every industry.

105 REP. MANNIX: The installation price is usually packaged into the

carpet price. Is that correct?

PERKINS: Yes.

REP. MANNIX: Doesn't that suggest that the installation contract is packaged in the price?

PERKINS: The consumer does not have to pay for the installation cost.

123 CHAIR DERFLER: Does your huSB and install the carpet by himself?

PERKINS: Yes, the majority of the work.

CHAIR DERFLER: Doesn't this give your huSB and a competitive edge because he doesn't have to pay workers' compensation?

PERKINS: No it doesn't. Explains the costs involved in being an independent contractor. Our income increased only because of the tax advantages.

-My huSB and cannot get insured through SAIF because he doesn't carry employees.

CHAIR DERFLER: Why not?

PERKINS: Because he is an individual person.

CHAIR DERFLER: Isn't he a company?

PERKINS: Yes, but he is an individual, a proprietor. We are not incorporated.

-An independent contractor should be exempt. If they hire people then they are not exempt.

-If an independent contractor chooses to work with another independent contractor, he should not be considered an employee.

187 CHAIR DERFLER: Asks Mr. Van Natta whether the provision in the bill that an employee can sue a contractor is going to cause a problem?

194 FRED VAN NATTA, Oregon State Home Builders Association: That exists today and this legislation would not change that in any respect.

-Our problems apply mainly to the carpet industry.

-Home builders cannot provide full-time or even half-time employment for all the specialties needed to construct a house.

-We also need to deal with the invalid registration question.

260 CHAIR DERFLER: We all agree we tried to correct that last time. We didn't realize the extra exposure there might be for the contractor.

VAN NATTA: I think the contractors recognize that potential, and I don't think this changes the nature of that exposure.

267 REP. EDMUNSON: I couldn't disagree with you more.

VAN NATTA: I am not sure that we are apart.

301 Rep. Edmunson and Mr. Van Natta discuss the issue of exemptions, especially in the residential construction industry.

315 REP. DOMINY: Do we really know at this point who is going to qualify and who is not? Why are we hurrying to resolve this part of an inequity? There are other inequity issues that we are not hurrying to resolve.

VAN NATTA: You may have confused me with someone else. This my first testimony with regard to workers' compensation.

340 REP. DOMINY: Have you consulted the Labor-Management Advisory Committee concerning this issue?

VAN NATTA: No I have not. I have indicated my willingness to do so.

-I believe this issue does not arise out of the May 7th special session and is not part of that package at all.

376 REP. DOMINY: I disagree. We redefined who had to pay workers' compensation.

382 CHAIR DERFLER: I believe that a carpet layer should have the right to choose to have or not have workers' compensation if he is the owner of the company. I thought we accomplished that last time, I guess we did not.

392 REP. EDMUNSON: Addresses Mr. Keudell and refers to Mr. Kirkpatrick's testimony. I am disturbed by this testimony that contractors could become labor brokers. Who are the people who register with you?

410 KEN KEUDELL, Administrator, Construction Contractors Board: The current number of registrations is approximately 23,500. About two thirds are registered as exempt. The vast majority of them are sole proprietors.

TAPE 59, SIDE B

004 -He describes all the different trades in home building industry that are affected by the statute. There are about 26 separate subcontractors on a typical home. All those could be independent contractors.

013 CHAIR DERFLER: It is not that easy for an employee to become registered. He describes a typical situation with regard to the issue labor brokerage.

KEUDELL: Explains the requirements to become registered. It is relatively easy to register as a sole proprietor, working alone with no employees.

-Chair Derfler and Mr. Keudell discuss the registration process further.

039 REP. DOMINY: How many people apply every year and how many are disqualified?

KEUDELL: We do not disqualify anybody because they do not meet the independent contractor qualification; this is a self-certification.

050 -Rep. Dominy and Mr. Keudell discuss the requirements involved in the registration process.

062 REP. DOMINY: How many licenses did you give out last year?

KEUDELL: From October 1989 we have gone from 16,000 to 23,500.

071 REP. WATT: Do you ever turn anybody down?

KEUDELL: Only if they did not meet the terms of registration.

078 CHAIR DERFLER: It sounds like anybody in this room could come in today, fill out the papers and start building houses tomorrow as an independent contractor.

KEUDELL: That is correct if they can get the bond and insurance.

085 REP. WATT: What are the finances relating to the insurance requirements?

KEUDELL: The liability insurance could run from \$300 to several thousand dollars depending on the type of work. In many cases it could be less than \$500. The bond could, in many cases, cost less than \$200. The registration fee is \$80 or \$100.

095 REP. EDMUNSON: With regard to the liability insurance, can one be covered under a group plan or does one need individual coverage?

KEUDELL: We don't have much group type of policies, but there is nothing in the law to prevent that.

105 CHAIR DERFLER: How do you verify that they have insurance?

KEUDELL: We do spot checks. We have a system similar to that of DMV.

-Discusses cases where the primary contractor doesn't have an insurance policy because they have no employees. Nobody is auditing that.

158 Chair Derfler and Mr. Keudell discuss how the proposed bill would affect the above situation.

160 KEUDELL: This bill would bring some fairness to the situation as far as the primary contractor having or not having workers' compensation coverage.

PUBLIC HEARING, HB 2855

171 CHAIR DERFLER: Opens public hearing on HB 2855.

173 REP. MANNIX: This bill is intended to put the definition of "independent contractor" into chapter 656. This is not a policy change, just a technical matter.

WORK SESSION, HB 2855

188 MOTION: REP. MANNIX: Moves HB 2855 to House floor with a "do pass" recommendation.

190 REP. EDMUNSON: Is it your intention that the definition of

"independent contractor" would include carpet installers and others who are similarly situated?

REP. MANNIX: It is my intent that the present state of the law be recodified in chapter 656. I am not making any changes in the law nor presenting an opinion of what the definition of an independent contractor means in any given situation. This bill is not intended to do anything along those lines.

211 VOTE: The motion carries 6-0.

EXCUSED: Rep. Johnson.

CARRIER: Rep. Mannix.

221 CHAIR DERFLER: Adjourns the meeting at 10:20 a.m.

Submitted by: Reviewed by:

Johanna Klarin Victoria Dozler Assistant Administrator

EXHIBIT LOG:

A	-	Testimony on HB 2599 - Larry Young - 9 pages
B	-	Testimony on HB 2599 - Katherine Keene - 2 pages
C	-	Testimony on HB 2599 - Katherine Keene - 20 pages
D	-	Testimony on HB 2599 - Katherine Keene - 3 pages