

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

May 1, 1991Hearing Room D 8:30 a.m.Tapes 126 - 128

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

VISITING MEMBER:Rep. Bill Dwyer Rep. Tim Josi Rep. Gail Shibley

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

MEASURES CONSIDERED: HB 2726 - Public Hearing and Work Session HB 3569 - Public Hearing and Work Session HB 2487 - Public Hearing and Work Session HB 3138 - Public Hearing HB 3333 - Public Hearing

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TAPE 126, SIDE A

002 CHAIR DERFLER: Opens the hearing at 8:30 a.m.

PUBLIC HEARING, HB 2726 (Exhibits A & B)

Witnesses:Larry Young, Workers' Compensation Division Gary Stewart, Workers' Compensation Division

CHAIR DERFLER: Opens public hearing on HB 2726.

006 VICTORIA DOZLER: Describes the bill and the proposed -1 amendments, Exhibit A.

029 CHAIR DERFLER: Why does it takes somebody 60 days to decide whether the claim should be accepted or not?

REP. MANNIX: The law now allows 90 days. Often one needs to carry out an investigation and perhaps get a complex medical opinion.

-Chair Derfler and Rep. Mannix discuss the investigation time period.

077 REP. EDMUNSON: If SAIF accepted the claim and a noncomplying employer objected to the acceptance and it was later determined that the claim should not have been accepted by SAIF. As to the worker, what effect would that have on the payment of benefits?

REP. MANNIX: If there is a hearing held, the worker is going to have to receive notice of the hearing and have an opportunity to get representation.

REP. EDMUNSON: Would this create a loophole where a claim could be accepted by SAIF, and the worker thinks the claim has been accepted. The noncomplying employer comes forward after 60 days, after the acceptance has expired, not agreeing with the claim. This might amount to a backup denial.

REP. MANNIX: The claimant would have to have had notice. The employer would have to request a hearing which means the parties would all have to be notified. The claimant would have to be put on notice that the employer was objecting to the acceptance of the claim and that they were heading towards a hearing which means the claimant would be able to secure a counsel.

REP. EDMUNSON: Would the employer's non-acceptance of the claim be a denial of the claim for purposes of securing the claimant's right to obtain a counsel?

REP. MANNIX: Yes. If the claimant has to secure a counsel to protect his right to benefits under the claim, he would have a right to legal representation and it would be paid by the objecting party.

115 LARRY YOUNG, Deputy Administrator, Workers Compensation Division: Basically the employer has that right. Hands out proposed amendments to HB 2726 by the Department of Insurance and Finance, Exhibit B.

-Rep. Edmunson and Mr. Young discuss this point further.

138 REP. EDMUNSON: Would you compare that to a situation where the employer has complied with the law and has the coverage? Would the complying employer have the same right of objection to the acceptance of the claim?

YOUNG: I don't believe they do have the same right.

151 GARY STEWART, Supervisor, Registration Unit, Workers' Compensation Division: Describes a court case saying that there was no limit for which an employer could contest the acceptance of the claim. If they are a complying employer, the insurance company is responsible for processing that claim, and such the employer does not have the right to contest the acceptance.

REP. EDMUNSON: Are you aware of any rational basis for that distinction?

STEWART: If there is a rational basis for it, it is that the insurance company is the party that is responsible for paying the benefits.

161 REP. MANNIX: The problem here is that SAIF is not the agent of the noncomplying employer, so whatever action they take cannot be binding on the noncomplying employer.

178 CHAIR DERFLER: What would happen if the claim was accepted by the Department and went to SAIF and after a period of time it was decided that it was a denied claim. Who would then pay the payments that had been made for the injured worker?

YOUNG: We reimburse SAIF for their cost from the noncomplying employers' reserve fund.

CHAIR DERFLER: Would you then have recourse through the noncomplying employer when the claim was not accepted?

195 STEWART: We have taken the position that we have a right to collect those funds from that employer as though the claim was found to be noncompensable.

CHAIR DERFLER: Even though it was an accepted claim?

STEWART: Yes.

194 REP. DOMINY: What happens if we don't have a sixty-day rule?

YOUNG: You would have to put in the statute to say that there is no right for the noncomplying employer to question the acceptance by SAIF corporation of the claim. The case law would hold and they would have an indefinite period time to contest.

219 REP. MANNIX: Wouldn't that lead to a lawsuit of lack of due process?

234 REP. EDMUNSON: Refers to lines 5, 6 and 7 on the bill. That really is not true because to the extent an employer has complied the worker is entitled to rely upon the acceptance of the claim by the insurer. In a noncomplying employer sense the state assigns SAIF as the insurer, and the subject worker does not have the right to rely upon that acceptance. Their right to receive compensation is dramatically different based upon the complying status of their employer. Shouldn't we confront that policy issue before we address this, unless we were to amend the bill to provide that as to the worker the benefits are established by acceptance of the claim? Any adjustments, any disputes as to whether the acceptance was valid, is between the state, SAIF and the employer. The worker is not really a party to it.

255 YOUNG: That is a major policy question and was part of our initial testimony.

-We are not opposed to that language because the courts have already said that. The policy question is, if you do that, who is going to be paying for that?

275 REP. MANNIX: The claimant can sue the employer and the employer has none of the common law defenses. We are not going to touch that part of the law.

282 YOUNG: Discusses the proposed amendments (Exhibit A).

WORK SESSION, HB 2726

CHAIR DERFLER: Opens work session on HB 2726.

YOUNG: Refers to subsection 4 (b) in the proposed amendments. Add

"negligently" in front of the word "paid".

353 CHAIR DERFLER: What does that do to the bill?

YOUNG: There are a lot of conditions where you don't have the information before you to find out that this is not a condition you should be paying for. That is a valid concern.

-Chair Derfler and Mr. Young discuss this point further.

392 MOTION: REP. MANNIX: Moves that the committee adopt the -1 amendments to HB 2726.

396 REP. EDMUNSON: Objects to the approach that has been taken in these amendments. I vote against the bill unless we can amend the bill to provide the coverage of compensation payable to a worker when a claim is accepted by SAIF on behalf of a noncomplying employer is treated the same as acceptance in complying cases.

VOTE: The motion carries 4-2.

AYE: Representatives Mannix, Repine, Watt and Derfler.

NAY: Representatives Dominy and Edmunson.

EXCUSED: Rep. Johnson.

417 MOTION: REP. EDMUNSON: Moves to insert in section 1 that the objection by a noncomplying employer to acceptance in any subsequent order arising from that objection does not affect the claim payment and benefits to the worker.

TAPE 127, SIDE A

-Rep. Edmunson explains his position further.

031 REP. MANNIX: Strongly objects to the amendment.

-We already have civil penalties for noncomplying employers. There should be some fairness in this system. We should give at least 60 days.

056 REP. DOMINY: Supports the amendment. The workers in this state have the right to the same type of benefits and privileges no matter where they work in the state when it comes to workers' compensation. It should not make any difference if you are working someone who is breaking the law or someone who is not breaking the law.

VOTE: The motion fails 4-2.

NAY: Representatives Mannix, Repine, Watt and Derfler.

AYE: Representatives Dominy and Edmunson.

EXCUSED: Rep. Johnson.

072 MOTION: REP. MANNIX: Moves to add the word "negligently" in front of the word "paid" on line 23 of the -1 amendments which were adopted.

VOTE: The motion carries 4-2.

AYE: Representatives Mannix, Repine, Watt, Derfler.

NAY: Representatives Dominy and Edmunson.

EXCUSED: Rep. Johnson

092 MOTION: REP. MANNIX: Moves HB 2726, as amended, to the House floor with a "do pass" recommendation.

VOTE: The motion carries 4-2.

AYE: Representatives Mannix, Repine, Watt and Derfler.

NAY: Representatives Dominy and Edmunson.

EXCUSED: Rep. Johnson.

CARRIER: Rep. Mannix.

100 REP. DOMINY: Serves notice of a possible minority report. Rep. Edmunson concurs.

PUBLIC HEARING, HB 3569 (Exhibits C & D)

Witnesses: Kurt Rossman, Court of Appeals Walter Edmonds, Court of Appeals Scott Carter, Legislative Asst., Sen. Bunn

CHAIR DERFLER: Opens public hearing on HB 3569.

106 DOZLER: Describes the bill.

126 KURT ROSSMAN, Judge, Court of Appeals: Testifies in support of HB 3569 (Exhibit C).

-We need to treat judges in this particular area the same we treat other public employees.

-Demands are greater than they used to be and the case loads are more complex.

-Refers to Exhibit B listing the judges who took the bench at the age 37 or younger.

-Discusses the stresses involved in the work.

240 DOZLER: This language is broad enough to imply that it is 27 years of any service. The actuary is actually valuing the amount of the employer's contribution for time served as a judge only.

254 REP. EDMUNSON: Refers to page 2, subsection 7. Wouldn't that imply that each of the years the member must have been a judge member. If he/she was not a judge member during each of those years, the contributions would not fall within this category.

ROSSMAN: That was our intention.

-This bill points itself to a specific inequity compared to the other bill you have been working with.

284 WALT EDMONDS, Judge, Court of Appeals: Describes his own personal history.

-This bill helps to remedy some inequities involved.

334 SCOTT CARTER, Legislative Assistant, Rep. Stan Bunn: Testifies in support to HB 3569 (Exhibit D).

WORK SESSION, HB 3569

CHAIR DERFLER: Opens work session on HB 3569.

388 MOTION: REP. EDMUNSON: Moves to insert HB 2643-1 amendments into HB 3569.

393 DOZLER: Describes the HB 2643 -1 amendments.

-The committee has no objections to the above motion.

MOTION: REP. EDMUNSON: Moves to insert "as a judge" on page 2, line 8, after the word "years."

-The committee has no objections to the above motion.

444 MOTION: REP. EDMUNSON: Moves that the committee refer HB 3569 to the Committee on Ways and Means with a "do pass" recommendation.

VOTE: The motion carries 6-0.

EXCUSED: Rep. Johnson.

TAPE 126, SIDE B

PUBLIC HEARING, HB 2487 (Exhibits E.G.H.I)

Witnesses: Bill Dwyer, State Representative, District 42 Tim Josi, State Representative, District 3 Patrick Gallagher, SAIF Kris Juul, Management-Labor Advisory Committee

018 CHAIR DERFLER: Opens public hearing on HB 2487.

020 DOZLER: Describes the bill and the proposed amendments (Exhibits E,G,H and I).

041 BILL DWYER, State Representative, District 42: I am happy with the amendments proposed by the Labor-Management Advisory Committee and SAIF. I am not sure what the amendments by Rep. Mannix would do.

-I want the concept to be as narrow as possible.

066 TIM JOSI, State Representative, District 3: Discusses the proposed agricultural amendment (Exhibit E). The minors working for their parents are already covered under their parents' health plan. In that regard they have a double coverage.

094 CHAIR DERFLER: What about if the parents do not have a medical coverage?

REP. JOSI: You are correct. We make that assumption. Maybe we want to put that in there.

121 REP. DOMINY: I have a problem with excluding those children from the workers' compensation law who work for the harvest.

REP. JOSI: We are talking only about the children of the people who own the farm.

REP. DOMINY: If we just put in the amendment agriculture along with timber and construction, would that satisfy your concerns?

REP. JOSI: Paragraph B deals only with corporate officers and directors and these younger children are not corporate officers or directors. It is not an appropriate place.

142 REP. MANNIX: If we are going to have an another kind of specific exemption, I want to have a hearing on this and hear from all sides.

158 REP. WATT: Has this been a problem--children suing their parents for workers' compensation purposes?

REP. JOSI: The problems have been with auditing processes.

CHAIR DERFLER: We would not like to include your amendment in this particular bill, but we have another bill that we could put it into to accommodate this problem.

180 REP. JOSI: Discusses HB 3138 with regard to partnership and offers his support. Asks for clarification as to paragraph B; does that define the term partner in paragraph A, or are we simply talking about all partners regardless of the occupation which they are operating?

190 REP. REPINE: This does not limit the scope to agriculture, it would be open to anybody. Is that your intention?

REP. JOSI: This would make sense in any occupation where children are working for their parents.

WORK SESSION, HB 2487

CHAIR DERFLER: Opens work session on HB 2487.

229 MOTION: REP. MANNIX: Moves to adopt the Labor-Management Advisory Committee proposed amendments (Exhibit I).

-The committee has no objection to the above motion.

REP. MANNIX: Discusses the language change in section 9 proposed by SAIF. The bill itself already has it in there. Clarifies that his earlier motion was not intended to change the language of the bill on page 2, line 2.

242 PATRICK GALLAGHER, SAIF: Addresses the Labor-Management Advisory Committee amendments and the SAIF proposed amendments. We have no preference. Our problem is primarily one of administration. We would prefer to go with Rep. Mannix's approach for a flat percentage as far as corporations are concerned.

REP. REPINE: Has the Labor-Management Committee reviewed the other amendments?

270 KRIS JUUL, Administrator, Management-Labor Advisory Committee: The committee has not seen the actual wording of the proposed amendments regarding a percentage of ownership for corporations. They talked about this concept but no action was taken. I don't believe the committee has taken a look at the SAIF amendments either.

292 REP. MANNIX: At some point we need to rework this whole statute to clean up all of these exceptions.

302 MOTION: REP. MANNIX: Moves HB 2487, as amended, to the House floor with a "do pass" recommendation.

VOTE: The motion carries 6-0.

EXCUSED: Rep. Johnson.

CARRIER: Rep. Bill Dwyer.

PUBLIC HEARING, HB 3333 (Exhibits J and K)

Witnesses:Laurie Wimmer, Oregon Commission for Women Kate Brown, Women's Rights Cialition Gail Shibley, State Representative, District 12. John Danielson, Oregon Education Association Karen Hafner, Oregon School Boards Association John Benninghoff, Confederation of Oregon School Administrators Joe Gilliam, National Federation of Independent Business

CHAIR DERFLER: Opens public hearing on HB 3333.

DOZLER: Describes the bill and the proposed amendments.

335 LAURIE WIMMER, Executive Director, Oregon Commission for Women: Testifies in support of HB 3333 (Exhibit J). Oregonian employees need to be protected from the minority of employers who are not willing to make accommodations for families.

-I am not in favor of deleting section 2. The bill, as written is appropriate for the problem.

TAPE 127, SIDE B

018 REP. WATT: How many single parent households are headed by males?

WIMMER: About 20,000.

022 KATE BROWN, Women's Rights Coalition: Supports the bill in its current form (Exhibit K).

040 GAIL SHIBLEY, State Representative, District 12: Testifies in support of HB 3333. This is an "every day reality bill." This bill addresses a very important and relevant issue in the lives of Oregonians.

-Mothers working outside the home are the fastest growing segment in our work force.

-Now employees are forced to lie which does not create a very healthy working environment.

132 REP. DOMINY: There are two issues 1) should one be allowed to take the time off without reprimand and 2) if the employee should be

compensated? It comes to a point that we have to a decision as to whether we take out a whole section or whether we take out the mandate, do you have a preference?

REP. SHIBLEY: I prefer to leave the bill as it is.

152 REP. WATT: We need to have a direct answer to that question; referring to Rep. Dominy's question.

REP. DOMINY: There is an amendment before us to delete section 2 entirely. The other possibility is leaving everyone with the opportunity to take this leave and just not mandate that the employer pays.

REP. SHIBLEY: Differs with Rep. Dominy's conclusion regarding line 7. I don't see a mandate there. The employer does not have to pay any more money out than that is already provided for by their paid sick leave policy.

REP. DOMINY: Discusses the banking association's position on this bill--if an employee uses all the sick days for caring sick children, what is the employee going to use when she/he get sick herself? That is the argument. Is it worth losing the whole bill?

REP. SHIBLEY: I believe that this kind of bill would not affect the banks at all because they are far ahead of where this is. I would like to keep the bill as whole as possible.

236 REP. REPINE: Suggests applying a ratio as to the usage of the sick leave to care for dependents.

REP. SHIBLEY: That idea is worthy of further consideration.

265 CHAIR DERFLER: Describes his experience as an employer.

309 BROWN: Discusses a study of small businesses nation-wide and in Oregon. Majority of the businesses did not find the parental leave difficult to administer.

-Even if there were some additional costs involved, we need to discuss where our priorities are.

321 JOHN DANIELSON, Oregon Education Association: We concur with sections one and two. We are most interested in the existing section 3 in the bill.

-Discusses the narrow definition of sick leave in the statute as it relates to teachers.

376 REP. MANNIX: I agree with you and I support what you want to do.

DANIELSON: Discusses how the value of sick leave is computed with regard to retirement benefits.

395 KAREN HAFNER, Oregon School Boards Association: We are not here to debate family leave. These type of benefits should be handled in a collective bargaining situation.

-We like to separate the issues of family leave and sick leave.

TAPE 128, SIDE A

016 JOHN BENNINGHOFF, Confederation of Oregon School Administrators:
Concurs with Ms. Hafner's testimony.

025 JOE GILLIAM, National Federation of Independent Business: Testifies
in opposition to HB 333 3.

-We care about workers and their dependents, but we need flexibility in
the market place to offer benefits.

045 REP. EDMUNSON: Do you oppose the amendment?

GILLIAM: We do not oppose the amendment and we have no position on
section 3.

PUBLIC HEARING, HB 3138

Witnesses:Rep. Rod Johnson

CHAIR DERFLER: Opens public hearing on HB 3138.

055 ROD JOHNSON, State Representative, District 45: Describes the bill.
We want to let family members be partners.

063 DOZLER: The definition of partnership was not very clear. Would
you clarify that?

REP. JOHNSON: This applies to general partnerships.

DOZLER: The issue is whether it is restricted to a certain job.

REP. JOHNSON: I will look into that.

073 CHAIR DERFLER: Adjourns the meeting at 10:45 a.m.

Submitted by: Reviewed by:

Johanna Klarin Victoria Dozler Assistant Administrator

EXHIBIT LOG:

A - Amendments to HB 2726 - Committee Staff - 2 pages.
B - Amendments to HB 2726 - Larry Young - 2 pages.
C - Testimony on HB 3569 - Kurt Rossman - 6 pages.
D - Testimony on HB 3569 - Scott Carter - 4 pages.
E - Amendments to HB 2487 - Rep. Josi - 1 page.
G - Amendments to HB 2487 - Rep. Mannix - 1 page.
H - Amendments to HB 2487 - Patric Gallagher - 1 page.
I - Amendments to HB 2487 - Kris Juul - 1 page.
J - Testimony on HB 3333 - Laurie Wimmer - 2 pages.
K - Testimony on HB 3333 - Kate Brown - 1 page.