SENATE COMMITTEE ON LABOR

May 7, 1991 Hearing Room 50 06:00 p.m. Tapes 89- 92
MEMBERS PRESENT:SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,
VICE-CHAIR SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB SHOEMAKER STAFF PRESENT:ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE, COMMIIEE ASSISTANT MEASURES CONSIDERED: SB 1204 PH & WS SB 868 WS SB 826 WS SB 834 WS SB 792 WS

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 89, SIDE A

001 CHAIR KERANS calls the meeting to order at 6: 13 p.m. and opens the public hearing on SB 1204.

SB 1204 - REQUIRES CERTAIN EMPLOYERS TO SUBMIT REPORT TO EMPLOYMENT DIVISION WHEN PERSON IS HIRED, RETIRED OR RETURNS TO WORK - PUBLIC HEARING AND WORK SESSION

WITNESSES: Senator Mae Yih, Senate District 19 John Ellis, Assistant Administrator, Support Enforcement Division, Department of Justice Bill Cockrell, Assistant Manager for Recovery Services Section of the Adult and Family Services Division Karl Frederick, Associated Oregon Industries Marshall Coba, Oregon Parm Bureau Gene Potter, Assistant Director, Audit Division, Secretary of State's office Brenda Breames, Association for Children for Enforcement of Support, Inc. Theresa Ray, Clackamas County Coordinator, Association for Children for Enforcement of Support, Inc. Joe Gilliam, National Pederation of Independent Business Steve Tegger, Legislative Liaison, Employment Division: Senate Comm; - e on Labor Miy 7, 1991- Page 2

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

007 SENATOR MAE YIH submits and reads a prepared statement in support of SB 120 4 (EXHIBIT B). 073 CHAIR KERANS: Do you wish to discuss possible changes to the bill at this time or after hearing other witnesses? 077 SEN. YIH: I did discuss this with an AOI representative, and independent business representatives. They are concerned with the five-day requirement. In Washington, it is 35 days, but they are recommending five to 10 days. We could go with 10 days if that meets the employers' concern. Washington has provided a toll-free PAX number for employers to make the report because they feel the employers can also keep a record of it. I assume a toll-free FAX line would cost about the same as a toll-free telephone line and therefore we can add $25,000 to the fiscal impact. I have also discussed this bill with the Parm Bureau representative and they would like to add (d) to allow an exemption for seasonal agricultural workers. I support these changes. 099 CHAIR KERANS: We have received a letter from Pamela Mattson of the Employment Division (EXHIBIT C) which you an read and respond to later in the meeting. 102 JOHN ELLIS, Assistant Administrator, Support Enforcement Division, Department of Justice, submits and summarizes a prepared statement in support of SB 1204 (EXHIBIT D). 122BILL COCKRELL, Assistant Manager for Recoveq Services Section of the Adult and Family Services Division, submits and summarizes a prepared statement in support of SB 1204 (EXHIBIT E ). 138 SEN. BROCKMAN: What would be the revenue impact to employers by speeding up this process? 143 MR. COCKRELL: Based on what Senator Yih

has found out, and I have also talked to the State of Washington on their methods of employer reporting, they say it is very insignificant if they have a toll-free PAX or telephone number. 160 SENATOR KINTIGH: Could you explain why the inquiries are so far down the road? 168 MR. COCKRELL: If I were to go to the computer that takes me into the Employment Division data base, I might find out that somebody worked for you in the last quarter of 1990. There is no report that tells me that the person worked there in the first quarter of 1991. I have to make the assumption that either you haven't reported his first quarter earnings for 1991 or he doesn't work for you any more. We have the in-between period. 190 SEN. KINTIGH: Would the 30-day reporting get the job done? 191 MR. COCKRELL: It would be much better than the current requirement which is the 10th day of the second month following the quarter in which the money was earned. .. . . . These minutes contain materials which paraphrase and/or summarize statemeDts made during this session. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of die proceedinge, please refer to die tapes. . . . _ . Senate Commiltee on Labor May 7, 1991- Page 3

208 ANNETTE TALBOTT, Committee Counsel: When you prepared the fiscal impact, were you under the impression that half of the administrative costs would be picked up by the federal government? 212 COCKRELL: Yes. The expenditures from Adult and Family Services are federally matched 5050.

218 MS. TALBOTT: Then the AFS expenditure would be matched, but not the Employment Division expenditures.

220 MR. COCKRELL: That is correct. 223 SENATOR HILL: On the last page of Mr. Cockrell's testimony, he indicates that recovery to families and other states is $2.3 million. What does that mean?

230 MR. COCKRELL: Most of the recovery would go to families in Oregon. We have about 25 to 30 percent of families that live outside of Oregon which we would be mailing payments to. In addition, there are some custodial parents on welfare in other states.

235 SEN. HILL: But we don't mail the recovered money to the family that is on welfare?

MR. COCHRELL: If they are on welfare, you are right.

238 SEN. HILL: Would we be recovering money for some who are not on welfare?

239 MR. COCKRELL: In some cases that is true. If they had been on welfare before, there is a debt owed to the state and we apply that to the debt. We have a distribution system that says that after a welfare grant closes, any accrual after the grant closes gets the money first. Any left over would go to the state.

249 SEN. HILL: The idea is to contract with the Employment Division and fully reimburse their costs. 251MR. COCKRELL: That is correct. There are two programs and two federal match rates involved. To the extent that this helps reimburse welfare overpayments, that is matchable at roughly 50 percent. To the extent that it helps us collect child support, it is matchable at 66 percent. In any case, we would sign a contract with Employment Division and all of their costs would be met. AFS would be reimbursed at the appropriate federal match rate.

291     KARL FREDERICK, Associated Oregon Industr es: I have given you a copy of the Washington law (EXHIBIT F). We appreciate the intent of the measure and what Senator Yih is trying to do, but we must oppose SB 1204 in its present form. > Employers are less than enthusiastic about the paper work required by the bill on their part and the quantity of reports anticipated at the Employment Division. > Employment Division indicated there would be in excess of 1.4 million pieces of paper. >With respect to Washington's law, SB 1204 does not appear to be a mirror program. The Washington law only requires reporting by employers in certain standard industrial classifications. The Washington law is not as universal an application as SB 1204. It only applies to five SIC

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codes and has a much less restrictive reporting requirement and has a sunset of July 1, 1993 which leads me to believe the state is attempting a pilot program to test the law. > I would hope we would have a limited pilot program or in the alternative we could wait and see what happens in Washington.

370  SENATOR BROCKMAN: Do you see a fiscal impact on the employers? 375 MR. FREDERICK: Obviously there would be a fiscal impact on each employer. I don't have figures as to the cost.

399     MARSHALL COBA, Oregon Farm Bureau: I have come in to oppose SB 1204 or have it amended along the lines of the Washington program which does not include agricultural workers. After discussion with Sen. Yih, if we are able to reach an agreeable definition of a "seasonal agricultural worker," we could agree with the bill. 416 CHAIR KERANS: I believe we have a definition in statute that we could probably turn to.

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01      GENE POTTER, Assistant Director, Audit Dinsion, Secretary of State's office: We support the concept in order to increase the effectiveness of both the Adult and Family Services Division in carrying out the responsibilities relating to overpayments and payments to ineligible recipients of public assistance and to enable AFS and the Support Enforcement Division to be more effective in recovering unpaid child support payments. 029     In an effort to clarify what might result from a more expedited reporting, I can share part of the report we produced in March at the request of the Joint Legislative Audit Committee that we look at the effectiveness of the child support enforcement activities. He reviews the summary and portions of the report (EXHIBIT G). 096 SENATOR HILL: What has been the response to the audit? 096  MR. POTTER: The response on the part of both AFS and Child Support Enforcement has been very good. They see this as an opportunity. There would be some additional cost to recover and monitor. Two thirds of those costs would be borne by the federal government. We estimated the cost to recover the $5.5 million to be $300,000 per year. Only $100,000 of that would be General Pund. It should net to the General Fund nearly $1.3 million. 105   SEN. HILL: Are the recommendations being fully implemented? MR. POTTER: They are planning to implement these recommendations. The report was issued just last month. 109      SENATOR HILL: Have you gone before the W&M subcommittee on

Human Resources to talk about this in conjunction with the agency's budget? POTTER: Not yet. ~ -

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125 BRENDA BREAMES, Association for Children for Enforcement of Support, Inc., submits and summarizes a prepared statement in support of SB 1204 (EXHIBIT H).

164 THERESA RAY, Clackamas County Coordinator, Association for Children for Enforcement of Support, Inc. submits and summarizes a prepared statement in support of SB 1204 (EXHIBIT I) 200 JOE GILLIAM, National Federation of Independent Business: We would support this bill if we get it down to the criteria in the Washington model. NFIB in Washington has worked on this program for the last couple of years. The time frames work for employers and there is not a problem with the 30 days. Due to the nature of the small businesses, a lot of people send their payroll outside their business. They need that 30 day cycle in order to get things taken care of without being in violation and being assessed penalties. Sen. Yih's suggesting of FAXing is a good idea. We are concerned with the SIC codes. 232 SENATOR YIH: The Child Support Enforcement representative can respond to the letter from the Employment Division (EXHIBIT C).

239 MR. ELLIS: Sen. Yih asked me to respond specifically to paragraph 2 on page 2 of the letter. The Federal Government will reimburse the State of Oregon for any bona fide child support enforcement or ADC recovery program. 252 STEVE TEGGER, Legislative Liaison, Employment Dinsion: We should have been more specific with the statement. What was meant by that statement is that the limited use of administrative funds from the Federal Unemployment Tax Act could not be applied to this activity. It says "no new funds." We do have a benefit payment control unit whose function is to do cross match with our wage records to determine if somebody tried to claim benefits while they worked. We already get paid to do this activity. If we were to do this new process and not get any additional funds, we would redirect some of the activity in that benefit payment control to do this process. That means we would not do other kinds of investigations that we are currently doing with that money.

280 SENATOR HILL: I find a statement in the letter that it is estimated that there would be a savings to the Unemployment Trust Fund of $500,000 annually from earlier identification of recovery of benefit overpayments. Does that mean we are coming out $1 million ahead each biennium in the trust fund if we implement this program?

282 MR. TEGGER: That would be correct. To the extent we use this information to do our own earlier identification of UI overpayments, then that is a UI related activity and it would be permissible for us to use the federal funds that we now receive for benefit payment control toward that activity. We would not get new funds to do that.

314 CHAIR KERANS closes the public hearing and opens the work session on SB 120 4. 323CHAIR KERANS: As I understand it, there is no magic to the 350 hours of work and the $300 in gross earnings other than the fact they appear in the Washington statute. If we were to increase those, to give some comfort to the employers, to 500 hours and $600,

would you have any objection to that?

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There was no objection to the suggestion.

340 CHAIR KERANS: We have a definition of "agricultural worker." "Farm worker" is a narrower onewe will take the "seasonal farm worker" but for purposes of the bill, "agricultural worker" covers the folks who stand outside the UI law and is probably more appropriate to this.

355 SENATOR HILL: I don't think I would support that. If an agricultural worker is working 500 hours in a six month period, they are a long-term employee, not just a seasonal or temporary employee.
359 MS. TALBOTT: An alternative would be to use the definition of "seasonal farm worker. n That definition is in the statutes on seasonal farm worker housing. 382SEN. HILL: It doesn't put a time frame in the definition. It just says "temporary" labor for certain purposes including pre-commercial thinning, cultivation, harvesting..." If it is part-time, but not temporary, it wouldn't be included in the definition. If it were part-time temporary or full-time temporary, it would be included in the definition. The key word is "temporary."

390 SEN. YIH: The agricultural people went the "seasonal" part. Are "seasonal" and "temporary" the same?

393 SEN. HILL: I think 500 hours in a six month period pretty much covers it.

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017 CHAIR KERANS: I would like to take the "seasonal farm worker" definition in ORS 197.675 (1) with 500 hours and $600. Is there any definition to the toll-free FAX line? There were no objections to the suggestions. 022SEN. KINTIGH: "Seasonal agricultural workers" would not necessarily include those in the canneries. 027 CHAIR KERANS: That is correct. Most of those people will run up (the hours) pretty quickly because that is 48 hours straight. 032 MR. TEGGER: Is it your intent to write the FAX into the bill. I would not want for us to be tied because I would like for us to consider the possibility of a pilot project as voice response on the telephone. I have no objection to the way it is stated now, "copy of the W-2 form or by such other means as the division may establish by rule." We will pledge to use the best technology available to us. 051 SENATOR HILL: I don't know why we are going with the six-month period because they have to report quarterly anyway. The outside limit is three months. Asking the employer to project how many hours the person will work during six months is a little more hypothetical than asking them to project what hours they might work for the next three months. So why not make it 250 hours during the continuous three-month period?

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057 CHAIR KERANS: That would line it up with the quarterly report.

060 CHAIR KERANS: Let's make it 250 hours within three months.

There was no objection. 063 CHAIR KERANS: Another issue is the 10 days versus 35 days. Thirty-five days is what Washington does. I want to make it 10 days. 065 SEN. KINTIGH: I want 35 days. 073 SEN. YIH: Washington is considering five to 10 working days. SEN. HILL: I suggest 10 working days. I think Mr. Gilliam made a good point that a lot of small employers have accountants. I think the time should be enough that the small employer can deal with it in a reasonable fashion and comply with the law. 086 MOTION: CHAIR KERANS moves that 15 working days be included in the bill.

VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present.

088 SENATOR KINTIGH: We need a sunset clause. 091 CHAIR KERANS: How about December 31, 1995? It would start on January 1, 199 2. Then we can find out if it works. 101 SEN. HILL: It would make sense to end it on July 1 of some year.

102 CHAIR KERANS: June 30, 1995 would be better to coincide with the budget year. If we have this sunset on June 30, 1995, would the agency be able to report to the 199 5 session? 112 MR. ELLIS: I think we could do a good job of doing that. 116 MR. COCKRELL: We agree with that. 123 MOTION: CHAIR KERANS moves that a sunset date of June 30, 1995 be inserted in the bill. VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present. MOTION: CHAIR KERANS moves that 250 hours in three months be inserted in the bill. VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present.

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MOTION: SEN. KERANS moves that the definition of seasonal farm worker defined in ORS 197.675(1) be included in the bill. VOTE: CHAIR KERANS, declares the motion CARRIED. SEN. HILL objects. All members are present

141 SEN. YIH: Are you changing (c) on line 14, to "less than $600?"

142 CHAIR KERANS: It goes from $300 to $600. 153 MOTION: SENATOR SHOEMAKER moves that SB 1204, as amended, be sent to the Joint Committee on Ways and Means. 153VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present.

TAPE 89, SIDE B SB 826 - AUTHORIZES INSPECTION BY EMPLOYER INSURED WITH STATE ACCIDENT INSURANCE FUND CORPORATION OF EMPLOYER'S ACCOUNT RECORDS AND CLAIMANT FILES - PWLIC HEARING WITNESSES: Katherine Keene, SAIF Corp. Thomas Marmaro, Risk Management Services Co.

173 KATHERINE KEENE, SAIF Corporation: This issue was discussed by the Senate Interim Labor Committee. I will summarize the information we presented at that time; the information has not changed. > 0ur position

is that the bill is not necessary. We make adequate provisions for employers to receive all the information they need to have concerning their experience ratings and how it is affected by claims. We have a concern about what we think is intended by this bill. We have had our legal counsel in the Department of Justice review the statutes concerning claims records being privileged information and yet an employer having a right to know how their experience is determined. We have a well articulated set of guidelines developed for us by legal counsel.

At issue appears to be the desire by some people who represent individual employers to have relatively unfettered access to claims files. We presently make information available in personal reviews, we summarize information, we do not provide unfettered access to claims files because there is often medical information, for example, that is, in our attorney's view, privileged in that it doesn't necessarily relate to the individual employer or to any industrial accident or injury. We think that is the basis for the protection presently provided and the privacy that is afforded injured workers.

211 THOMAS MARMARO, Risk Management Services Co.: I encourage you to not only pass this bill, but I don't think it goes far enough. Two other issues should be included: access to the firm file that the employer is involved in and the claims legal file. Contrary to the testimony that you just heard, SAIF Corp. does not provide the necessary information to the employer. I represent Risk Management Senices which is an on-line risk management service to the employer with the expertise equal to SAIF Corp.'s knowledge of the system. We find most often that it



is a situation of 'Mr. employer, asked us any question and we will tell you.' The problem with that kind of perspective which has changed over the last two years is that the employer is left with 100,000 ideas in their head as to what to ask. I think the problem we have is that SAIF Corp. has developed an attitude over the last few years that was initiated by Brian Steffel of the Claims Unit and particularly after a series of events where employers had hired knowledgeable expertise in helping them understand why their claims costs were so high in several instances. At that time, Brian Stuffel was enacting a policy to use the language of ORS 656.702 to exclude the employer from records. If the committee were to go back and look at how that was developed, it was not the intent that the employer was supposed to be excluded, but the general public. What has happened is the employers are asked to pay the full bill, to suffer the consequences as the result of management of any particular claims issue that SAIF does without being held accountable and the employer is barred from having the expertise either in-house or hired to say 'let's look at the claim file specifically and review from the date the 801 was filed.' SAIF takes the policy position, 'we won't tell you.'

I would like to refute the information that there is information in the claims investigation files. To develop that would be privileged information. That has been another farce that the attorney general's offfice has also backed SAIF on for some very negative reasons. That is, the employer is responsible. If information happens to be developed through the investigation that has nothing to do with the claims

investigation then, (a) as a former claims investigator, my question is why would SAIF document an unrelated relationship in the investigation if it didn't have something to do with the overall aspect of the claim, i.e. the character of a witness, the character of the claimant, or something related to the work place. I remember testimony that was given to most of the same people that are here today. SAIF's position was 'what if, in the course of the investigation, we find out that the injured worker trusts us and tells us that the employer has a terrible unsafe work place. The reason we don't want to let the employer know that is because of negative repercussion against the employee to the point of losing their job.' If that were true, SAIF Corp. would have the obligation to discretely set down with the employer and to decide whether or not the employer was acting in an unsafe manner or exposing employees to an unsafe working condition simply because if there should be an accident at a subsequent date, SAIF Corp. would have to buy the claim.

289 If you allow SAIF Corp. to garbage SB 826, then you have basically given them authority to have no accountability for performance. 294 CHAIR KERANS: Even if we don't expand it to go into their legal investigative files and branch out in other things, would the bill be worthwhile as it is printed and be of value to employers?

298 MR. MARMARO: It would be three-quarters more valuable than what SAIF is using as a policy to bar the employer now. I am saying be more specific because every and all of the investigative, employer claim file, the employer firm file, are critical to the accountability of management of the cost for the employer working with workers comp.

A letter from Kelly E. Ford, Attorney at Law, in support of SB 826 is hereby made a part of these minutes (EXHIBIT J). . . These minutes contain materials which paraphrase and/or summarize sP ements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceediogs, please refer to the tapea. 

340 MS. KEENE: I think it is appropriate to note that there doesn't seem to be a great ground swell on the part of the employment community suggesting that they don't get appropriate information from SAIF Corp. We have an individual here who makes his living representing his expertise to employers who would like to come shopping through our files. There are lots of policy reasons why we don't believe that is appropriate because he represents other customers insured with other insurers and there is some proprietary information that becomes available. I think we have a situation where we have an individual who doesn't believe that he personally gets good service from SAIF Corp. That is probably the case in that we have to make special accommodations when he seeks access to our information because of a rather negative reputation he has with some our women adjustors who don't like to meet with him privately. 365 CHAIR KERANS: If an employer came in and asked to see their account records under the amended ORS 656.702 during normal business hours, would you have a problem with that?

370 MS. KEENE: We believe that employers can look at their account files presently, information about their own loss experience. We sit down with them when they seek information about a claim and review the materials with them. We already do that. 377 CHAIR KERANS: For the record, under ORS 659.410, Discrimination against workers applying for workers compensation benefits prohibited, the worker who had applied for benefits would be protected from retaliation if such retaliation

occurred as a result of somebody finding something out in the file. 388 SEN. KERANS: We have written testimony from the Office of the Ombudsman for Small Business, Department of Insurance and Finance, in support of the bill saying it would be exceptionally helpful in their work with small business employers they deal with and gives some examples of problems they have been able to cure which would be easier to do if they were able to act under these provisions on behalf of the employers. 402 SENATOR HILL: The ombudsman relates that his office has had problems getting information from SAIF and the bill would help address that problem. But I don't think the bill permits the ombudsman (access to the files) unless we define the ombudsman as an agent of the employer. We may want to add "the workers' compensation ombudsman in performance of his or her duties." CHAIR KERANS: We will take that under advisement. 414 SENATOR HILL: I have a letter asking that we make clear that this legislation would not give employers access to other employers' claims files, only their own. 418 CHAIR KERANS: I think that is understood. 438 MS. TALBOTT: The current statute which was passed in the Special Session provides that the ombudsman "shall provide information and assistance to small businesses with regards to workers' compensation insurance claims and processing matters." 456 MOTION: SEN. HILL moves that the bill be clarified to make it clear that the ombudsman is an agent of the employer. - These minutes contain rnaterialr which paraphrase and/or summarlze daternerar mate tuna" thir session. Only text enclosed in quotation marks report a speaker's exact worse. For complete contenb of the proceedinga, please refer to the taper. - Senate Committee on Labor May 7, 1991- Page 11

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031 SENATOR SHOEMAKER: I think we need to investigate whether that is going to compromise an employer's file. 039 MS. TALBOTT: I think the only time the ombudsman goes into the file is at the employer's request. It can be clarified. 038VOTE: CHAIR KERANS, hearing one objection, declares the motion CARRIED. SEN. SHOEMAKER objects. All members are present. 044 MOTION: SENATOR HILL moves that SB 826, as amended, be sent to the Floor with a DO PASS recommendation. VOTE: CHAIR KERANS, hearing three objections, declares the motion FAILED. All members are present. 060 CHAIR KERANS opens the work session on SB 868.

TAPE 90, SIDE B SB 868 - MODIFIES PROVISIONS REGARDING DUTIES AND POWERS OF STATE ACCIDENT INSURANCE FUND CORPORATION - WORK SESSION

WITNESSES: Joe Gilliam, NFIB Michael Lamb, Department of Insurance and Finance Katherine Keene, SAIF Jim Hanna, SAIF Terry Meagher, Department of Insurance and Finance

052 MS. TALBOTT: The members have hand-engrossed SB 868 (EXEIIBIT K) (including the SB 868-1 amendments (EXHIBIT L).

062 CHAIR KERANS: The requestor of the bill has seen the amendments and has acquiescence in them.

066 MS. TALBOTT: The members also have letters from the Director of the Department of Insurance and Finance (EXHIBIT M), Mr. Lamb (copy not available) and Mr. McGavock (EXHIBIT N) in response to requested information by the committee. Mr. Lamb and Mr. Marr are here as a resource at my request.

073 MS. TALBOTT reviews amendments in the hand-engrossed bill (EXHIBIT K). 088CHAIR KERANS: Lines 10 - 12 on page 2 of the

hand-engrossed bill has been written to say that it does not require SAIF to be the insurer of last resort of any circumstance. 090 SEN. SHOEMAKER: What is meant by "by providing a sure workers' compensation insurance market?"

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091 CHAIR KERANS: It is intended to mean that we have a variety of insurers available to employers including SAIP and if they meet the test of a worthy insurer they will be offered a policy without regard to the fact they may be a smaller business, not of particular interest to the corporation in the past. It is saying we want to provide a broader market. 108 SENATOR HILL: It is to make clear that SAIP cannot discriminate against businesses solely by their size.

111 MS. TALBOTT explains the amendment in lines 21 - 27 on page 2, lines 29 - 36 on page 3, and the addition of Section 8 on page 4. 163 CHAIR KERANS: As I read Section 8, lines 33 and 34, it is every workers' compensation insurer, including SAIP, and it would take away future discount of medical. We would then have discounts on the lifetime pension benefits for survivors and permanent total cases. 171 MS. TALBOTT: Currently, workers' compensation carriers, other than SAIF, discount permanent total disabilities (PID) and fatale at five percent. SAIF currently discounts PTDs and fatale at seven percent. In addition, they discount medical at three and one-half and temporary total and permanent partial (disability) at seven percent. It would put SAIP and other carriers on a level playing field. The bill should probably say that Section 8 applies to all carriers as of a certain date. The committee may choose what date they want. The idea was that premiums would be set based on the idea that they couldn't discount reserves and there would be a better sense of the working dollars. Perhaps the best date would be January 1, 1992. 190 CHAIR KERANS: Does January 1, 1992 as an effective date for discounting rules pose any significant problems? 194 MICHAEL LAMB, Department of Insurance and Finance, did not object to the January 1, 1992 date. 196 MS. TALBOTT: Section 9, page 5, addresses the issue of tiering. It adds to the existing statute that deals with premium audit programs and examination of all workers' compensations insurers that have two or more schedules of premium rates and a gross premium level of more than $20 million. It says that those tiering practices would be subject to examination every two years. The assumption in that is there would be a clear oversight of whether or not the tiering is being implemented and applied as the filing has said it would be. In addition, Section 11 provides that any workers' compensation carrier who wishes to have tiered rates would have to file with the department a decision rule for determining when an employer or insured goes into a specific tier. This is existing administrative rule. There would be a clear understanding by both the carrier and the Department of Insurance and Pinance how the carrier makes the decision on which tier to put the insured in. 226The reason the $28 million annual premium level was suggested is there are a lot of carriers that actually have plans filed with the department, but just don't write the business for one reason or another. The department is concerned that they get some position authority to address this issue. . . . These minutes contain materials which paraphrase and/or summarize sts ementa made during this session. Only text enclosed in quotation marks report a speaker'a exact wordr. For complete contentll of the proceoding, plear,e

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236 CHAIR KERANS: What are the statutes (being repleaded), ORS 656.502, .504, .505 and .508?

243 MS. TALBOTT: These are sections that generally were from a throwback when SAIF was a state agency and are seemingly unnecessary. In addition, since we have made them comply with other sections of the Insurance Code, those sections would be picked up and would make these sections not specific to SAIF Corp.

266 JOE GILLIAM, National Federation of Independent Business outlines his support of, and objections to, certain of the amendments.

412 MOTION: CHAIR BERANS moves that the SB 868-1 amendments (EXHIBIT L) as shown in the hand-engrossed bill (EXHIBIT K) BE ADOPIED.
416 VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present 417 MOTION: CHAIR KERANS moves that SB 868 be further amended on page 4, line 34, after "corporation" insert a beginning date of after January 1, 1992. 427 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion CARRIED. All members are present. 429SEN. KINTIGH: The allegation was made that the bill would undermine work place safety by removing the threat of the assigned risk pool to employers with poor safety practices. Is that not the case? 438 MR. GILLAM: That was the new emerging language in Section 2(1) and the first half of paragraph (d) on page 2. We have taken that out to dispel the rumors we are trying to load SAIF up with every bad risk that comes down the street. We are going to rely upon (c). We have addressed the issue of size in the first section and that is why we have taken the language out. It was not out intent in the first place.

TAPE 91, SIDE A

026 KATHERINE KEENE, SAIF Corp., introduces Arden Olson, Attorney in Charge, Department of Justice, and Jim Hanna, Vice President and Chief Corporate Officer.

MS. KEENE: We have many concerns with the amendments that were presented tonight. What does being "a sure market" mean? We don't know. In insurance circles it generally means you are expected to be the insurer of last resort and you have an affirmative obligation to take all comers. We are very concerned about that language. If the language is construed, legally, to give us an affirmative requirement to insure all comers, we don't know what kind of standards exist that give us the opportunity to non-renew, terminate, and not offer insurance in the first place. If we are required to be the insurer of last resort, despite the existence of the assigned risk plan, the point made about the bill earlier including the impact this would have on our willingness to work with independent agents, the desirability of our having group programs, the effect on safety of us having to take all comers, are all legitimate concerns with the bill.

These minutes contun materials which paraphrase and/or summarize datotuents made during this se~sion. Only text enclosed in quotation marks report a speaker's exact words. For complete content. of the proceedingr, plcase refer to the tapes. Senate Committee on Labor May 7, 1991- Page 14

We are not certain what the amendments relative to discounting authority

do. We think there is a legitimate public policy question here about us being different than private insurers. Statutes make it clear that we are treated differently and we have an obligation to make sure that we have reserves sufffficient to cover all of our liabilities. The method is also speciSed in statute. We are directed to discount. The bottom line is our reserves are adequate today. We have several different consulting actuaries who will tell you that. This bill is intended to cause us to increase those reserves for competitive reasons, we believe. It will cause the cost of workers' compensation insurance to go up. This bill would not create a level playing field because there are other areas of the law that treat us differently for very legitimate public policy purposes.

We don't know how we would make a distinction between our existing financial reserves and future reserves after date certain. We think the proponents may be confusing case reserves on individual claims, which the private insurers generally add up and then add some sort of factor to in order to come up with their financial statement reserves. The approach we take, which is entirely different and something we can do because of our longer history, can be explained in greater detail by Mr. Hanna. With respect to the requirements for documenting how we would used tiered rating, our concern has not changed regardless of the amendment. That is, we don't know what a decision rule is, but if it would require us to disclose what we believe to be proprietary information to our competitors about how we apply different rate tiers, then we remain damaged in our view.

069 The bottom line is we don't believe the amendments accomplish what either the committee or the proponents suggest you are trying to accomplish. 074 CHAIR KERANS: On page 2, line 13, if we delete "sure" would that take away your objection as to insurer of last resort? 078 MS. KEENE: Why we would require the language at all given our statutory mission to make insurance as much available as is consistent, is a mystery to us. 090 CHAIR KERANS: I am offering to take out "sure" as an amendment if that would satisfy you. You could then put your finger on other words which might lead you to believe that you would be required to be insurer of last resort. Would you have objection if we were to delete "sure?"

091 MS. KEENE: No, Mr. Chairman, I wouldn't. 091 CHAIR KERANS: Would it be helpful to you and the corporation for us to one last time pound into the legislative record that you are not now, not intended to be, nor will you ever be required by this committee in this bill or this Legislature to be the insurer of last resort until we explicitly say so? 096 MS. KEENE: That would be marvelous. That is a guarantee you don't usually find in this process. 098 CHAIR KERANS: You have it and I think you can stand on it.



099 SENATOR HILL: I think by inference that means that SAIF is to provide a less than sure or other than sure workers' compensation market. I am not sure why we have a SAIF Corp. unless it is to assure a workers' compensation market.

MS. KEENE: Given that we hardly discriminate against businesses on the

basis of size, we have over 25,000 accounts that pay us less than $20,000 a year in annual premium. We don't see that the language with the amendment suggested by the Chair would change our mission.

123 MOTION: CHAIR KERANS moves to further amend SB 868 by deleting "sure" in line 13 of page 2 of the hand-engrossed bill (EXHIBIT K).
125 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion CARRIED. All members are present. 138MS. TALBOTT: On page 3, line 36, DI F pointed out that it might be clearer to say, "for claims for occupational injury or illnesses filed prior to" instead of "except as provided in Section 8 of this 1991 Act." It would say this provision applies for claims for injury or illnesses that occurred prior to January 1, 1992, as opposed to Section 8. We need to make it clear that it says "claims for occupational injuries or illnesses on or after January 1, 199 2. I am not sure which would be the better term, "filed" or "occurring." 151 JIM MANNA, Vice President, SAIF Corp.: Having just received the new amendments, we are somewhat confused by the intent of the language. Our initial interpretation would be that we could continue to use the old discount method on old claims and on any new claims reported after January 1, 1992 we would use the new discount rate. CHAIR KERANS: That is the intent. 170 MS. TALBOTT: Would you assist the committee in determining whether you say "filed" or "occurring?" 177MR. MANNA: The problem is that we don't look at individual claim files and add up the sum of the reserves. We look at loss development on all cases over a period of time. Our actuaries develop losses over a period of time, regardless of when they are filed. 185 CHAIR KERANS: And you would continue to do that for all of those claims prior to that date, but would begin treating new claims under the new conditions called for in the statute. 190 MR. MANNA: This would require a totally different approach to our financial statement and loss reserve development. It would create an administrative nightmare to do that. 201 CHAIR KERANS: This would require that you treat your reserves the way every other carrier does. Is that correct? 206 MR. MANNA: We do not know how other insurance companies determine their loss reserves as reported on their financial statements. 213 SENATOR SHOEMAKER: Is there any change between Sections 4 and 8, those things for



which reserves will continue to be permitted?

217 MS. TALBOTT: Yes, because SAIF currently discounts for permanent totals and fatale at seven percent. The department is allowing other private workers' compensation carriers to discount at three and one-half percent.

272 CHAIR KERANS: Is SAIF's process superior, the same, equal to or better and how much rocket science is involved in dealing with future claims on a new basis?

278 MICHAEL LAMB, Casualty Actuary, Insurance Division, Department of Insurance and Finance, introduces Mr. Terry Meagher, Chief Examiner responsible for domestic insurance companies. We have discussed with state management and their consulting actuary how they go about doing their reserving. I don't know that it is superior, but I think it is

good quality. We are convinced that it is a reasonable estimate. We concur with their consulting actuary that prior to the discounting that they do, they have made some very conservative assumptions about projecting the numbers and amounts of serious injuries that would cause their reserves prior to discounting to be somewhat redundant.

297 CHAIR KERANS: You are aware of the amendments to the bill. If the bill became law, what sort of an administrative nightmare would it be for SAIF to continue to treat their existing claims and reserves as they do now, and not apply the discount factor to claims that come in after the effective date?

330 MR. LAMB: At the present time, the total amount of discounting is over $600 million. Not all of that would go away under this bill. The $600 million would gradually reduce to a smaller amount.

356 SEN. KERANS: Is the process for determining the reserves a process that can be transported to SAIF and which they can master between now and next year?

372 MR. LAMB: I don't think they would have any difficulty understanding it.

381 I would encourage you to use the word "occurring" because if you say "injuries reported" or "filed" SAIF would not be able to discount it.

395 CHAIR KERANS: Then we should use the word "occurred."

398 SEN. KERANS: What is a decision rule?

400 MS. TALBOTT: It is similar to what is in the administrative rules currently.

402 MR. LAMB: I think our existing administrative rules say you must file a clear rule for deciding which tier you are going to use. That is good enough language for administrative rule. For statute, we think "decision rule" meaning a rule on how you decide, is appropriate.

414 SENATOR SHOEMAKER: Did I hear you say SAIF's present reserve practices are sound? 416 MR. LAMB: I believe that the reserves they maintain prior to the discount are definitely



adequate. 421 SENATOR SHOEMAKER: What about the discount?

422 MR. LAMB: The discount is recognizing the lost income opportunity.

426 SENATOR SHOEMAKER: Is there anything that SAIF is doing now which should alarm us? My question is whether what they are doing now is something we ought to change. Until I am persuaded it is, I am not going to vote to change it.

440 MR. LAMB: If you are confident that SAIF will always remain in business and be a going entity, there is no reason to be concerned about

this kind of losses. If you have any reason to fear that you some day may have to reinsure SAIF's losses or transfer them to some other insurers, then the question of discounting becomes a more serious issue.

TAPE 92, SIDE A

019 SENATOR SHOEMAKER: Their reserves are supposed to be adequate to cover everything on their books if they stopped doing business tomorrow. Could they do that now? 022 MR. LAMB: They would still have their assets that are invested. If you were to appoint us or someone to run off that business, with the current assets it would probably be alright. If you were to try to sell those liabilities or reinsure them somewhere, then the discounting might not be appropriate. 034 CHAIR KERANS: Mr. Lamb, in your letter dated April 23 to Ms. Talbott, on page 2 you say there is currently a task force of actuaries working on guidelines of how discounting might be allowed.... (tape is inaudible). What does that paragraph tell us about the practice of discounting in relationship to the corporation? 048 MR. LAMB: It is my understanding from the survey that was made that there are several states that do allow some companies to discount reserves. That happens in a situation where the regulator is quite familiar with the financial situation of the company. Sometimes it is because there is a strain on the company's surplus by running a large volume of new business.

062 SENATOR SHOEMAKER: Is it possible that you could conclude that the discounting practices of SAIF are now appropriate? 068 MR. LAMB: I can't promise what the task force will do but I suppose that is possible. 068 MS. TALBOTT: Section 8 allows you to determine what the discount rate would be. So depending on what you determined as a result of that task force you would be able to use those results to set the rate. 072 SENATOR SHOEMAKER: We are limiting the discounting privilege to permanent total and fatal. We don't allow it for permanent partial or medical. 076 MS. TALBOTT: Has the task force looked at other types of reserves for PPD and medical and . These minutes contain roaterials which paraphrase and/or summarrze etatemeob made during this res ion Only text enclosed in quotation marks report a speaker's exact words Por co , lete coraent~ of the proceedi g8, please refer to the taper Senate Committee on Labor May 7,1991- Page 18

temporary total?

078 MR. LAMB: It is not that specific? 082 SENATOR KINTIGH: We have heard from SAIF that their reserving practices are sound, and we haven't received any indication that they are not sound. I am wondering why not let SAIF continue the way they are and let the others do what SAIF is doing. 092 MR. LAMB: The task force is considering the kinds of risk to be considered when permitting discounts, the kinds of considerations to be made on the cash flow risk, and how adequate the reserves are to begin with. We are fairly comfortable with SAIF but I am not sure we would be that comfortable if we had all the insurers doing this kind of discounting. 104CHAIR KERANS: Then you are not sure you can recommend going in the other direction. MR. LAMB: I don't think I can recommend that. 105 CHAIR KERANS: I have Mr. Weeks' letter dated May 3 (EXHIBIT M) regarding financial data reported by SAIF corporation. At an earlier hearing we asked for and the corporation was kind enough to submit reports. Mr. Weeks says the high loss ratios for recent years demonstrate a need for our regulatory vigilance and goes on to say there are aspects of SAIF's financial condition and reserving practices we believe mitigate the need for immediate action. But he demonstrates on an attached table the loss ratio rising from 96 percent to 146 percent

between 1981 and 1990. What does that mean? 129 MR. LAMB: You had written to our department and asked us to verify the data in the first three columns. It comes from Schedule P of the annual statement for 1990 provided by SAIF. He reviews page 2 of the report attached to Mr. Weeks letter. 143 CHAIR KERANS: As I read that, in 1990 the discount had a value of $87,499 to bring the loss ratio down as a calculation of net earned premiums to $146,000 as opposed to $194,000. 145 MR. LAMB: That is the discount SAIF applied at the end of 1990 for claims that will eventually arise from injuries occurring during 1990.
188 TALBOTT: What loss ratio would represent a healthy corporation?
190 MR. LAMB: That depends a lot on the carrier and their own financial situation. 218TERRY MEAGHER, Chief Examiner, Insurance Division, Department of Insurance and Finance: One of my jobs is to keep companies solvent and to try to make sure they have aufficient cash to pay claims 20 years down the road. > There is a set of Generally Accepted Accounting rules called GAAP that are promulgated by the public accounting profession. These are the guidelines we are held by in Oregon and others are passed by the Legislature and are referred to as Statutory Accounting Principles. By their very nature and to protect the public, they are conservative. What often happens with discounting concepts, in my opinion, is they are judgmental. As to the . . . . .


question of why not let everybody do it, in my opinion, would open a Pandora's box. It would be anybody's guess whether any company could pay their claims 10 or 20 years down the road. 248 SENATOR SHOEMAKER: Do you find that their reserves are adequate? MEAGHER:I can't give you a direct answer. I depend on the actuaries to tell me whether they are adequate. 270 SENATOR SHOEMAKER: Do you do this every year in your audits? MR. MEAGHER: Every three years, triennially. 274 SENATOR SHOEMAKER: Did they pass muster? 274 MR. MEAGHER: The examination report that was begun for the period three years ago has not been completed because of some actuarial problems in it. In the examination report issued prior to that using an outside consulting actuarial firm, SAIF did not pass muster. The last issued report for the period ending 12/31/1984 of SAIF showed that their reserves and surplus, based on an outside consulting actuary firm employed by the department, were not adequate. The examination report for 1987 has not been completed as of this time. 317 CHAIR KERANS: If I brought you a private carrier who couldn't do the discounting which SAIF does and their loss ratio was climbing from 132 to 194 , what would you say about them? 322 MR. MEAGHER: We would say they could potentially be hazardous to the insurance buying public and take some sort of appropriate monitoring action. 328 CHAIR KERANS: Why would that be? 329 MR. MEAGHER: Because for every dollar they are taking in they are paying out $1.94 in losses before their overhead and operating expenses are accounted for. 334 CHAIR KERANS: What is the standard for the private insurer, as a yard stick? 338 MR. MEAGHER: As a yard stick we would look to see whether all sources of income were at least equal to all sources of expenses. CHAIR KERANS: What would the loss ratio be? 345 MR. MEAGHER: The loss ratio on reserves and the loss adjustment expenses themselves may vary, but as a total combined expense ratio, including other underwriting expenses, it shouldn't exceed 100 or it is going to go in the hole and they would have to look for sources of income elsewhere. 352 CHAIR KERANS: In your experience, what has been the range in the loss ratio column in other carriers? 365 MEAGHER: In my experience it couldn't

exceed 110% - 115% because they don't make



investment income at rates greater than that.

373 CHAIR KERANS: If they are at 194%, and you are looking for something at 110 to 115%, the question is what is the value of their other earnings that makes you think it is okay? Shouldn't we think the same here? 382 MR. MEAGHER: I would say so, yes. 383 CHAIR KERANS: That has been my position all along. I look at that and think it is unhealthy. 386 MR. MEAGHER: I would not disagree. 397 SENATOR SHOEMAKER: Some discount is appropriate. They show a reserve of $87.5 million on the $359 million base amount of total loss. Does that look like an unreasonable reserve? 417 MR. MEAGHER: It would seem so to me because it is approximately 25 percent of the total incurred losses. 428 SENATOR SHOEMAKER: Does that raise a red flag or does it look like it is probably prudent? 431MR. MEAGHER: It would raise a red flag from my perspective. They have allowed up to three and one-half percent on certain lines and not up to 25 even on those limited lines.

TAPE 91, SIDE B

012 SENATOR SHOEMAKER: With the discount, it brings it down to $146. How does that strike you?

014 MR. MEAGHER: That strikes me that they have to pick up revenue from other sources and the only other one I know of is investment income and I don't believe they are making 46 percent on their investment. 017 SENATOR SHOEMAKER: You are saying, in effect, even if we were to accept the discount as reasonable, it leaves us with a ratio that is not appropriate.

MR. MEAGHER: Yes, sir.

021 SEN. SHOEMAKER: Mr. Lamb, what are your observations regarding that?

024 MR. LAMB: Some portion of that $87 million would remain. Mr. Weeks said in his letter that we do believe that there is some redundancy in their discounting in the recent years. I think it needs to be watched over the next three years to see if it goes down as much as we expect it would. 033 SENATOR SHOEMAKER: You are essentially agreeing that the loss ratio is too high.



034 MR. LAMB: It is too high as published here, yes.

Discussion continues between committee members and Mr. Lamb and Mr. Meagher regarding discounting and reserving practices of SAIF and private workers' compensation insurance carriers.

115  CHAIR KERANS: The chair senses a lack of consensus on the bill at this point. We have an amended bill. I suggest those concerned with the bill make their wishes known to the members of the committee in order to clarify their thinking. We will carry the bill over to May 17.

CHAIR KERANS closes the work session on SB 868 and opens the work session on SB 834.

TAPE 91, SIDE B SB 834 - PROHIBITS USE OF HANDWRITING ANALYSIS FOR EMPLOYMENT SCREENING PURPOSES.

148     MS. TALBOTT: The SB 834-3 amendments (EXHIBIT O) delete the original bill and substitute a new bill which provides that an employer who uses handwriting analysis as an employment screening tool needs to ensure that they give notice to an individual that they intend to do that with the handwriting sample, that they not disclose the analysis to any third-party other than the personnel officer of the employer and they don't use the result of a handwriting analysis as the sole criteria in determining the employment decision, whether it be a hiring, transfer or promotion. 161       SEN. KINTIGH: What if a small company doesn't have anyone designated as "personnel officer?" Are we using the term in a generic way? 162CHAIR KERANS: Yes. It is meant to mean the person who does the screening, hiring and firing. It could be the boss.
171     MS. TALBOTT: Lines 15 through 17 requires that the results be released to the employee or perspective employee upon request. Lines 18 through 20 state this does not intend te prevent an employer from utilizing a handwriting analysis in a criminal or civil investigation. We understand from the analyst that they often do work in that regard.
210     LIZ WELT, handwriting analyst: Those people who initially had concerns, have accepted this and we are very pleased with it.
218     MOTION: CHAIR KERANS moves that the SB 834-3 amendments BE ADOPTED. 219    VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion CARRIED. All members are present. 222       MOTION: SENATOR KINTIGH moves that SB 834, as amended, be sent to the Floor with a DO PASS recommendation.



223  VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. All members are present.

227  CHAIR KERANS opens the work session on SB 792.

(Tape 91, Side B) SB 792 - SPECIFIES CERTAIN PRACTICES REGARDING USE OF PSYCHOLOGICAL TESTS FOR EMPLOYMENT SCREENING PURPOSES TO BE UNLAWFUL EMPLOYMENT PRACTICES - WORK SESSION

227     CHAIR KERANS: We have proposed amendments to SB 792 (EXHIBIT P).

237  MS. TALBOTT: There has been a proposal to address the certification language as proposed in the bill. The other question is whether or not the definition should include tests beyond integrity test and honest tests for personality characteristics. As the Chair mentioned, the Executive Department and Employment Division do not feel those are

necessary tests to be included in this bill.

263 CHAIR KERANS declares the meeting adjourned at 9: 16 p.m.

Transcribed and Reviewed by: submitted by: Annetta Mullins Annette Talbott Assistant Committee Counsel

EXHIBIT SUMMARY

A - SB 1204, Preliminary Staff Measure Summary, staff B - SB 1204, prepared statement, Senator Yih C - SB 1204, letter from Pam Mattson D - SB 1204, prepared statement, John Ellis E - SB 1204, prepared statement, Bill Cockrell F - SB 1204, Washington law on employer reporting, Karl Frederick G - SB 1204, summary of and report by the Secretary of State, Division of Audits, "Child Support Enforcement Accomplishments and Opportunities to Increase Collections," March 1991, Gene Potter H - SB 1204, prepared statement, Brenda Breames I - SB 1204, prepared statement, Theresa Ray J - SB 826, letter from Kelly E. Ford K - SB 868, hand-engrossed SB 868, staff L -SB 868, SB 868-1 amendments, staff M - SB 868, letter from Gary Weeks N - SB 868, letter from Dick McGavock O - SB 834, SB 834-3 amendments, Senator Kintigh P - SB 792, hand-engrossed SB 792, staff

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