

HOUSE COMMITTEE ON CIVIL LAW

January 25, 1999 Hearing Room 357

1:00 p.m. Tapes 9 & 10

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Max Williams

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2314

HB 2316

SB 28

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 9, Side A		

003	Chair Shetterly	Calls meeting to order at 1:07.
<u>HB 2314 Public Meeting</u>		
004	Chair Shetterly	Opens public meeting on HB 2314.
007	Counsel Felton	Repeals provisions limiting buyer and borrower liability on deficiency after default in retail installment contract, charge agreement or unpaid loan. Under current law, if a debt has been secured by collateral, and a repossession occurs and the collateral must be sold, after the sale if there is still a deficiency of \$1,250.00 or less, the creditor cannot continue collection action against the debtor.
018	Jim Markee	Oregon Collectors Association Testifies in favor of HB 2314 (Exhibit A). This law, as it is on the books, encourages lawsuits. No other state has this statute.
088	Rep. Uherbelau	Have you had any discussions with people from the Debtors Creditors Section of the bar about this change?
091	Markee	I have not sent copies of this bill to the Debtors Creditors Section of the Bar , the Consumerís Section of the Bar, or to the Lobbyists for the Oregon State Bar. I did check with Legal Aid and they do have some copies and they will have some testimony today
116	Rep. Wells	There are two issues here: (1) The time line issue, (2) The elimination of the \$1,250.00 collection from debtor. Is it true then that you are more interested in the time line then the dollar amount?
126	Markee	Yes, the statute of limitation is the greater problem of the two.
129	Rep. Witt	Discusses what happens when the balance owed on a contract is less than \$1,250.00 and greater than \$1,300.00.
138	Markee	That is correct. The statute states that the amount owed is less than \$1,250.00, there is no right of a creditor to go after a deficiency balance after of the sale.
146	Rep. Witt	Then the creditor would have an incentive to keep the total amount owing above \$1,250.00 at the time of repossession?
152	Markee	That is true. The creditor has an incentive to seek other remedies other than repossession. Before repossession the present law encourages lawsuits by creditors so they can seek other remedies.

157	Chair Shetterly	It seems to me that this bill does discourage repossession.
162	Markee	That is correct.
164	Rep. Uherbelau	Why was the time line was put in the bill in the first place?
174	Markee	I did not receive that information, but will supply that to the committee.
184	Sylvia Caley	Oregon Law Center Testifies and submits written testimony in opposition to HB 2314 (Exhibit B). Repeal of this deficiency judgement protection will hurt low-income Oregonians.
227	Rep. Uherbelau	Do you represent the consumers in these kind of cases?
232	Caley	The Oregon Law Center has been receiving a lot of referrals and these are cases that our Farm Worker program represent. We refer a lot of cases to Lewis & Clark Legal Clinic and to Consumer Lawyers in private practice that we know will do certain kinds of consumer cases.
241	Rep. Uherbelau	My concern is that these consumers may have a defense that the sale wasn't a commercially reasonable sale, but if they cannot afford an attorney, they would not be able to bring forth that defense.
245	Caley	It is very difficult for low income people to seek representation in consumer related matters.
251	Rep. Wells	Gives example—If I buy a car and put a down payment of less than \$1,250.00 and the motor falls out, whose responsibility is it? The dealer can repossess an automobile that has a value less than \$1,250.00 , sell it for less because they can go back to the buyer and get the rest of it.
281	Caley	You raise a good point about the sale of items sold at an auction. The kinds of cars that our clients would buy would not bring a good price at an auction and the car ends up back on the lot and sold again.
294	Rep. Witt	Don't these statutes shift costs from people who are not meeting their obligations under a contract onto those that do have a contract? Doesn't this effect the cost of financing?
303	Caley	I suppose it is possible. It is a forward and positive thing to do for low income people in this state and that is our main concern.
309	Rep. Witt	This law applies to all Oregonians doesn't it?

311	Caley	I think it is the low income Oregonians who are negatively affected by a deficiency judgment.
322	Rep. Witt	If financing becomes more expensive because certain percentage of legitimate debts are not being paid because of the statutory loophole, do you think it is good public policy to raise the cost of financing across the board to cover that cost?
330	Caley	We do not have an action plan of shifting costs and creating bad public policy. We don't know whether the point you are raising is causing the cost of financing to go up.
350	Rep. Uherbelau	These retail installment contracts carry very high interest rates and your payment is first to interest and then to principle. I rarely see anyone who gets below the \$1,250.00 because they get in trouble long before that because of payments going to interest first. Do you, Mr. Markee, know how often this falls into the category of not being able to go after them?
362	Markee	I don't know the answer to that. Most of the concerns have been toward the statute of limitations.
384	Rep. Williams	Does the Oregon Law Center object to the proposal to change the statute of limitations.
390	Caley	We like the statutes currently as they exist. I am not prepared to say if we are flexible
405	Rep. Williams	Can you articulate any policy reason why you think there ought to be a 180 day limitation?
407	Caley	I do not know the history as to why it was created. It does limit the amount of time a creditor collection agency can come back for something that has already been removed from the possession of the debtor. Six years is a long time to continue this.
423	Paul Cosgrove	Oregon Financial Services
		Testifies in support of HB 2314. Statute of Limitations 830 and 840 are very strange statutes and is a malpractice trap for lawyers. States that lenders try to work out matters before they try to contact their attorneys and try to work out a voluntary payment plan. Discusses the Statute of Limitations and how this affects this bill.
Tape 10, Side A		
004	Monty King	Executive Director, Oregon Independent Auto Dealers Association. Testifies in support of HB 2314. I represent the small car lot dealers that cannot

		afford to lose even \$500.00. When a car goes to a dealer's auction, what it is sold for is the real value of that car. Most low income people are in the high risk credit range. A lot of their cars have no warranties because of high mileage.
072	Rep. Witt	Are there any underlying financing for these type of contracts or is the auto dealer providing the financing?
075	King	The auto dealer provides the financing either internally or through a bank.
085	Rep. Witt	If there is financing through a bank and the balance is down to \$1,200.00 and the debtor stops making payment on the car and the dealer moves to repossess the car; what happens to the dealer in terms of the dealer's potential obligation to the financing company?
093	King	A lot of times there is a buy-back where they get charged back for any losses. There is a really stiff recourse.
103	Rep. Uherbelau	When the car dealer sells the car and gets financing they become the lender and if they go into default, that lender can either repossess the vehicle or they have buy-back provisions in their contract. Then they make the dealer pay off the contract and then the dealer can repossess.
116	Rep. Witt	With this situation, under current statute, the dealer might not be able to collect from the debtor, then the dealer is out the money.
120	Chair Shetterly	Closes public hearing.
124	Chair Shetterly	Opens on public hearing on HB 2316.
<u>HB 2316 Public Hearing</u>		
127	Counsel Felton	HB 2316 specifies that definition of collection agency includes persons collecting debts owed public bodies. Public bodies are required to register as collection agencies.
135	Jim Markee	Oregon Collectors Association Testifies and submits written testimony in support of HB 2316 (Exhibit C). This bill closes a loophole in Oregon law which currently allows a collection agency, that is not registered with the Department of Business and Consumer Services to collect debts owed to an Oregon Public Agency. The amendment makes it clearer as to whom does not need to be registered as collection agencies such as a state agency.
203	Bradd Swank	State Court Administrators Office Testifies that they are in support of the bill with the amendment.

214	Rep. Wells	Is SB 440 from the 1995 legislative session the reason these collection agencies have not been registered within the state of Oregon that your department has been dealing with?
228	Swank	All of the collection agencies the court deal with are currently registered with the state and is not an issue with us. The issue is the way the language is currently drafted. We were afraid that our department, as employees, might have to register. We have no collection agencies we work with that are not registered in the state of Oregon.
239	Rep. Wells	How many state agencies are hiring collectors that are not registered in the State of Oregon?
246	Swank	I assume all of them that are hiring collectors that are within the agency are not registering their employees as collection agencies because they are state agencies.
249	Rep. Wells	I realize that, but how many state agencies are we talking about here?
246	Rep. Lowe	This bill would address the problem of unregistered collection agencies on the internet.
270	Lisa Zavala	Oregon University System Testifies and submits written testimony in opposition to HB 2316 (Exhibit D). Gives background of potential impact of this bill on higher education collections.
362	Rep. Edwards	Asks if the requirements on page 4, would still hold if the collection agency tries to collect outside of the state.
387	Zavala	Our concern is that we have 21 retainer agreements with collection agencies in and outside of Oregon, 19 of those are not registered to do business within the State of Oregon. We have agreements with them that run at least through the year 2000.
407	Markee	The higher education system is using many collection agencies, some are registered and some are not. If those same collection agencies were collecting for a private company they would need to be registered in this state. The statute requires, as part of the registration process, that a collection agency if they are to operate out of this state has to have an office within this state. This is for everyone other than a state agency. The rules should be applicable to private as well as state agencies.
445	Rep. Edwards	A collection agency collecting for a private agency would not be collecting for a state agency.
455	Rep. Witt	What is the purpose of the registration requirement and who is it designed to protect?

459	Markee	This statute protects one business from another. There are other statutes outside the registration act to protect consumers. Under Chapter 646 of Oregon Laws, we have the Oregon Fair Debt Collection Practices Act that protect debtors from collection agencies. There is also the Federal Fair Debt Collection Practice Act regulating creditors who are collecting third party debts only. The Collection Registration Act is to protect those who assign claims to collection agencies.
501	Rep. Witt	This bill is for the purpose of having a registered agent within the state that a business, that employed a collection agency, could go to assert a claim? Should the collection agency collect dollars that are owed to the creditor and not properly refunded to the creditor?
487	Markee	That is correct.
Tape 9, Side B		
045	Chair Shetterly	Would either of you want to explore more about this issue of the contracts that are made with the collection agencies.
049	Markee	If we require a collection agency to register, it should be for private as well as for the state. Both should be regulated in the same manner and that is what this bill does. There is \$1.8 billion in uncollected claims to the state. Perhaps if they used private sector collectors, there wouldn't be this debt.
066	Chair Shetterly	Out of 21 collection agencies for the state, only 2 are Oregon agencies. Is that a reflection of anything?
070	Markee	I have no idea.
071	Zavala	Of those 21, 2 are within the state of Oregon and only 1 has the experience collecting student debt.
074	Rep. Witt	Any of these collection agencies outside the state could do business with the state system by meeting the minimal requirements of the statute, isn't that correct?
076	Zavala	I do not know.
081	Markee	States that some out-of-state collection agencies use an office in Oregon just for residency.
088	Rep. Wells	Why do you hire out-of-state agencies?
095	Zavala	I do not know, but will call the Controller's office and get back to you with that information.

096	Rep. Wells	According to the statute, these out-of-state collection agencies need an office in Oregon to register. If Oregon is uses someone in Maryland to collect a debt, how does this work?
103	Chair Shetterly	Do you have any feeling as to the contracts already signed with out-of-state collection agencies and how will this bill affect those?
112	Markee	I am sure there would be no problem with that.
118	Chair Shetterly	I am sensitive to the contracts already in place and then that creates some liability.
122	Rep. Lowe	Isn't this just a matter of requiring all collection agencies to have a registered agent within this state, so a consumer can sue them under an Unfair Debt Collection Practices Act if necessary? Isn't this that sum total of the burden that this bill would put on somebody?
128	James Cruger	Manager, Department Consumer and Business Services My understanding is that offices provision had two purposes; one was the agent for service and process, and the second one was a physical location that a consumer could go to check on the account. There is no business transacted at those offices. We have about 100 licensees that maintain such an office.
142	Chair Shetterly	Closes public hearing.
<u>SB 28 Public Hearing</u>		
144	Chair Shetterly	Opens public hearing on SB 28.
154	Counsel Felton	SB 28 establishes rules for persons who receives both garnishment and order to withhold income.
177	Tim Martinez	Oregon Bankers Association Testifies in support of SB 28. Income withholdings orders are very clear as to what priority they are in accordance with garnishment.
197	Ken Sherman	Counsel, Oregon Bankers Association. Testifies and submits written testimony of SB 28 (EXHIBIT E). This legislation provides garnishees with guidance in cases where they are simultaneously dealing an income withholding order and a garnishment on the same individual. The withholding order receives priority.
241	Chair Shetterly	You mentioned nonsubstantive and I think this bill does not establish those priorities. This bill just brings it into the garnishment statutes so the

		garnishments are done right in compliance with the Welfare Reform Act legislation.
248	Sherman	That is correct.
250	Bradd Swank	State Courts, Administrators Office. Testifies as being neutral toward SB 28. A garnishee reading lines 24 through line 27 on page 5, and that might confuse a garnishee, so if they refer to Section 2 of the act or S25722, it might make it clearer.
290	Sherman	It is really not necessary to elaborate this notice language as to what kind of orders we are talking about. The only income withholding order in Oregon statute is the one that is referred to here and it is widely understood.
314	Rep. Wells	What are the penalties if this notice is not given to creditors, debtors, etc?
321	Sherman	Explains that there are two notices built into SB 28. The one to be given if the garnishees are already given the garnishee's certificate and as a failure to give that notice there is no penalty provided by law. If the garnishee has received the garnishment, but has not yet sent out the certificate and there the law says the certificate must be provided within 5 days. There are statutory penalties built into the garnishment statute for failing to provide the certificate. The penalty for garnishee failing to comply with a garnishment is the potential forfeiture of the amount that has been garnished.
351	Rep. Witt	Is that currently in the law?
352	Sherman	Yes.
354	Chair Shetterly	Closes public hearing.
<u>SB 28 Work Session</u>		
357	Chair Shetterly	Opens work session.
360	REP. LOWE:	MOTION: Moves SB 28 be sent to the floor with a BE ADOPTED recommendation.
360	Rep. Witt	Has this garnishee's requirement, which has been in the law, been enlarged now to include responding to the garnishment with in 5 days in terms of notifying a creditor that there is another order to collect that has priority.
388	Sherman	The 5-day response requirement is tied to the giving of the certificate of the garnishee and we are not changing it in any way. There is nothing in this bill that

		establishes a specific time frame wherein the garnishee must send this new notice that tells the creditor. There is no statutory penalty built into this bill for failing to do that.
416	Rep. Witt	So as long the garnishee responds within the statutory time period to the initial garnishment, the garnishee will escape any potential liability?
421	Sherman	Vote: 9-0. Carrier: Rep. Uherbelau.
452	Chair Shetterly	Adjourns meeting at 2:40 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 2314, Testimony, Jim Markee, p. 3

B ñ HB 2314, Written testimony, Sylvia Caley, p. 2

C ñ HB 2316, Written testimony, Jim Markee, p. 3

D ñ HB 2316, Written testimony, Lisa Zavala, p. 2

E ñ S 28, Written testimony, Ken Sherman, p. 2

F ñ HB 2314, ORS Explanation of retail installment contracts, Aaron Felton, p. 2