

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

June 6, 1997 Hearing Room 357

1:00 P.M. Tapes 100 - 101

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judith Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Dave Amesbury, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

SB 160A Public Hearing and Work Session

HB 3730 Public Hearing and Work Session

HJR 34 Work Session

HJR 40 Work Session

SB 601A Work Session

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 100, A		
002	Chair Shetterly	Opens the meeting at 1:09 p.m.
<u>SB 160A - PUBLIC HEARING</u>		
006	Chair Shetterly	Opens the public hearing on SB 160A.
007	Rep. Bryan Johnston	State Representative, House District 31 >Introduces the -A8 through -A11 amendments (EXHIBIT A).
017	Mike Niemeyer	Department of Justice >The -A8 amendments delete a section of SB 160A.
025	Chair Shetterly	I am glad to hear that, I had some questions about that.
026	Rep. Johnston	The four amendments have been the continuing result of several parties working together.
029	Donna Silverberg	Dispute Resolution Commission >Providing confidentiality in the mediation process and public agreements is important.
037	Niemeyer	The -A9 amendments deal with public bodies and mediation.
050	Rep. Johnston	Discusses the three portions of the -A9 amendments.
055	Niemeyer	The -A10 amendments correct a drafting error in the bill. The -A11 amendments bring the language of the bill alongside the intent.
076	Rep. Johnston	The -A10 and -A11 amendments are technical fixes. The -A8 and -A9 amendments are corrections which expand the substance of the original bill.
079	Chair Shetterly	Closes the public hearing on SB 160A.
<u>SB 160A - WORK SESSION</u>		
081	Chair Shetterly	Opens the work session on SB 160A.
082	Rep. Bowman	Would you take a motion to adopt all four amendments?
	Chair	

084	Shetterly	Yes.
085	Rep. Bowman	MOTION: Moves to ADOPT SB 160A-8, 9, 10, 11 amendments dated 6/6/97.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
091	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
092	Rep. Bowman	MOTION: Moves SB 160A to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
098	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. JOHNSTON will lead discussion on the floor.
099	Chair Shetterly	Closes the work session on SB 160A.
<u>HB 3730 - WORK SESSION</u>		
104	Chair Shetterly	Opens the work session on HB 3730.
108	Bill Taylor	Committee Counsel >Refers to proposed amendments brought by Frank Brawner of the Oregon Bankers Association (EXHIBIT B). >Reviews the Oregon Supreme Court case which preceded this bill. >Reviews some of the discussion from the last meeting.
172	Frank Brawner	Oregon Bankers Association >There is an innocent party in the Supreme Court case.
193	Ken Sherman	Oregon Bankers Association >Submits and reads testimony in support of HB 3730 (EXHIBIT C). >There is no opposition to the bill.
208	Chair Shetterly	Are you talking about the original bill or the bill with the amendments?

210	Sherman	I am talking about the original bill. Continues testimony. >Discusses the Supreme Court case which brought this bill to life. >The -1 amendments require the disclosure of consignment, owner and security interest holders.
261	Brawner	This notice is normally given today. The Automobile Association is not opposed to this.
268	Chair Shetterly	Even with the class A misdemeanor?
269	Brawner	Yes.
270	Sherman	Continues testimony >It is easier to differentiate consignment sales on the basis of the price involved in the transaction. >We have a modified definition of a "buyer in ordinary course" involving a sale of goods for \$5,000 or more.
320	Sherman	Continues testimony >We are trying to impact big ticket collateral. >There is a need to reverse the Supreme Court's decision.
381	Rep. Starr	Do you want both amendments?
384	Sherman	The better law would be the original bill with only the -1 amendments. We have serious reservations about the -2 amendments.
394	Vice-Chair Uherbelau	You don't mean that this particular case will be reversed by what we do here?
400	Sherman	Correct. Nothing we do here will affect the outcome of this case. This case is, however, on appeal.
406	Mark Comstock	Attorney at Law >I support the bill's concept in its original form. >The proposed language does clarify the fact that the security interest is created by the dealer.
433	Rep. Prozanski	Can you repeat that last point for me?
435	Comstock	The proposed bill does appear to clarify the definition of the buyer in the ordinary course of business. The -1 amendments appear to deal better with disclosure. The -2 amendments could create a problem.
470	Rep. Uherbelau	Why did you offer the -2 amendments?
473	Sherman	It was my understanding that suggested amendments were asked for.

Tape 101, A		
001	Sherman	I apologize for this bill coming to you at such a late date. This bill will save consumer credit thousands of dollars over the next few years.
011	Bill Taylor	This bill will protect the security interests of the bank. What other interests will it protect?
015	Sherman	It will protect all security interests. Other forms of property that aren't titled would be protected after filing a financing statement with the Secretary of State's Office.
021	Bill Taylor	Those would be purchased money security interests?
022	Sherman	Any form of security interest. The general rule is that you take a security interest by filing a financing statement. We are primarily focusing on motor vehicles.
033	Rep. Wells	How does the purchaser get the information knowing that there may be security interests out there?
037	Sherman	Under the current system, there is no mechanism. We have proposed that the purchaser be given a disclosure.
043	Rep. Beyer	Can you clarify whether or not this applies to farm machines?
048	Sherman	It does apply to both titled and untitled property. Any personal property with a security interest is affected by this bill.
063	Rep. Beyer	Do the -1 amendments require the tractor dealer to disclose if the tractor is under consignment?
065	Sherman	No, it isn't a motor vehicle. The amendment we have proposed deals with motor vehicles.
072	Rep. Beyer	How do I know if there is a security interest on my tractor?
076	Sherman	You check with the Secretary of State to see if there is a filed financing statement.
079	Rep. Beyer	How many farmers know they have to do that?
080	Sherman	I don't know.
083	Chair Shetterly	It is like checking with the Courthouse to see if you have clear title on a piece of real property. The obligation is on the buyer.
088	Rep. Prozanski	It goes back to "buyer beware."
090	Rep. Beyer	I didn't know you could check with the Secretary of State until just now.
091	Chair Shetterly	You will get a notice of consignment on titled vehicles.
095	Rep. Wells	This really doesn't change the issues we previously discussed. We are just trying to fill a loophole in the law.
100	Sherman	There are two parts to the bill with the -1 amendments. The first part will clarify that the bank should have prevailed in the court case. The second part provides for a statutory form of notice.

112	Rep. Wells	I would have supported the Supreme Court decision.
117	Sherman	The court's decision was split. The majority opinion is not consistent with the majority of other states. Protecting the availability of consumer credit is tantamount. The majority opinion cuts off the rights of the financial institutions.
143	Chair Shetterly	It is ironic that we have to amend the Uniform Commercial Code so that it isn't uniform with other states.
145	Rep. Beyer	I am ready to move the bill.
148	Chair Shetterly	Closes the public hearing on HB 3730.
<u>HB 3730 - WORK SESSION</u>		
148	Chair Shetterly	Opens the work session on HB 3730.
149	Rep. Beyer	MOTION: Moves to ADOPT the amendments offered by the Oregon Bankers Association to HB 3730.
152	Rep. Prozanski	Referring to page 1, section 2 of the bankers amendments, can you tell me what will happen if someone doesn't have a certificate? Is there any reason to include non-certificate people?
165	Sherman	You can't operate as a dealer without that certificate.
167	Rep. Prozanski	They will be operating illegally without the certificate?
168	Sherman	Yes.
		VOTE: 8-0
170	Chair	Hearing no objection, declares the motion CARRIED.
172	Chair Shetterly	Does anyone need to have the -2 amendments in the bill?
174	Rep. Beyer	MOTION: Moves HB 3730 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0
177	Chair	Hearing no objection, declares the motion CARRIED. REP. BEYER will lead discussion on the floor.
179	Chair Shetterly	Closes the work session on HB 3730.
<u>HJR 34 and HJR 40 - WORK SESSION</u>		

189	Chair Shetterly	Opens the work session on HJR 34 and HJR 40.
190	Rep. Prozanski	Gives update on what has happened with these bills since April. >3/5 vote of the people is needed to amend the Oregon Constitution. >The next general election in November 1998 for the people to vote on this. >HJR 40 is the vehicle we would like to use. >Explains the -1 amendments (EXHIBIT D).
240	Rep. Prozanski	Continues explaining the amendments. >The requirements to put the initiative on the ballot don't change.
263	Rep. Beyer	Referring to the -1 amendments, line 7 deletes page 3 and inserts text.
267	Rep. Prozanski	You can do that, or you can take the existing text and insert the other. Either way, you come up with the same text.
272	Chair Shetterly	We will only have one paragraph 2?
273	Rep. Prozanski	Correct.
274	Committee	Discusses what needs to be done with this.
281	Rep. Wells	How does this affect referrals?
283	Rep. Prozanski	Referrals from the legislative body still require a fifty percent plus one approval.
285	Rep. Wells	Where is that addressed in here?
285	Rep. Prozanski	The bottom of page 2 and most of three are deleted. This section relates to referrals.
290	Rep. Wells	This doesn't change the current law for referrals?
291	Rep. Prozanski	We are not addressing anything regarding referrals.
294	Rep. Wells	What is happening with other bills similar to this?
300	Rep. Prozanski	Chair Minnis asked me to check on that. No one has told me of any others that are moving forward. Everyone felt comfortable with this.
309	Rep. Wells	There really isn't any interest in changing the number of signatures?
314	Rep. Prozanski	When you raise the threshold of signatures, you are basically raising the cost of putting them on the ballot. Getting more signatures doesn't really have an effect as to keeping something out of the Constitution. You limit grass roots organizations when you raise the threshold.
337	Rep. Eighmey	MOTION: Moves to ADOPT HJR 40-1 amendments dated 6/5/97.

		VOTE: 7-0-1 EXCUSED: 1 - Shetterly
343	Vice-Chair Uherbelau	Hearing no objection, declares the motion CARRIED.
346	Rep. Eighmey	MOTION: Moves HJR 40 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Shetterly
353	Vice-Chair Uherbelau	Hearing no objection, declares the motion CARRIED. REP. JENSON will lead discussion on the floor.
354	Rep. Prozanski	Anyone who would like to add their name to the bill, I encourage you to do so. This can be a bipartisan bill so that we can show the state that this is what's best for us.
366	Vice-Chair Uherbelau	You have no objection to us adding our names onto your bill?
368	Rep. Bob Jenson	I would be happy for all of you to do that.
371	Vice-Chair Uherbelau	Closes the work session on HJR 40.
372	Vice-Chair Uherbelau	Recesses the committee at 2:05 p.m.
373	Chair Shetterly	Reopens the meeting at 2:13 p.m.
<u>SB 601A - WORK SESSION</u>		
377	Chair Shetterly	Opens the work session on SB 601A.
382	Chair Shetterly	Refers to the -A6 and -A7 amendments and the previous meeting's discussion about what the committee will do.
395	Rep. Uherbelau	We are deleting lines 18 through 21 of the bill and inserting new language.
400	Chair Shetterly	We have the -A6 amendments before us.
405	Rep. Uherbelau	MOTION: Moves to ADOPT SB 601A-6 amendments dated 6/2/97.
	Rep.	I received a letter from Dave Heynderickx of Legislative Counsel. he

408	Uherbelau	thinks the language may be too confusing. Wasn't this language taken right out of the malpractice statute?
425	Alan Tresidder	Oregon Trial Lawyers Association >Yes, that is correct.
		VOTE: 7-0-1 EXCUSED: 1 - Bowman
432	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
433	Chair Shetterly	Reviews the -A7 amendments as conceptually rewritten.
458	Bill Perry	Oregon Restaurant Association >I don't know if you need to change the language. I think it is clear now.
462	Rep. Prozanski	If this language is added, it won't change what is already in the amendment?
466	Perry	I don't think it makes a difference.
468	Rep. Prozanski	I would like to add those to both lines 11 and 13.
479	Chair Shetterly	Goes over more conceptual amendments. >We would add a new section stating the bill would become effective March 15, 1998.
Tape 100, B		
002	Committee	Discusses the effective date.
006	Chair Shetterly	This would make the entire bill become effective at once.
011	Rep. Uherbelau	MOTION: Moves to ADOPT SB 601A-7 amendments dated 6/2/97 and that the amendment be FURTHER AMENDED on page 1, lines 11 and 13, by inserting "or such an additional amount as required by administrative rule" after "\$300,000" and by adding a new section which will make this bill effective on March 15, 1998.
		VOTE: 7-0-1 EXCUSED: 1 - Bowman
024	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
026	Rep. Uherbelau	MOTION: Moves SB 601A to the full committee with a DO PASS AS AMENDED recommendation.

		<p>VOTE: 5-2-1</p> <p>AYE: 5 - Beyer, Starr, Uherbelau, Wells, Shetterly</p> <p>NAY: 2 - Eighmey, Prozanski</p> <p>EXCUSED: 1 - Bowman</p>
037	Chair Shetterly	<p>The motion CARRIES.</p> <p>REP. SHETTERLY will lead discussion on the floor.</p>
037	Chair Shetterly	Closes the work session on SB 601A.
049	Chair Shetterly	There was a bill on the agenda which we took off. The bill number was wrong. We have the right relating clause in SB 160, so we could put HB 3435 into it.
055	Rep. Shetterly	MOTION: Moves to SUSPEND the rules for the purpose of reopening the work session on SB 160A in order to insert HB 3435 into SB 160A.
		<p>VOTE: 7-0-1</p> <p>EXCUSED: 1 - Bowman</p>
061	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
<u>SB 160A - WORK SESSION</u>		
063	Chair Shetterly	Reopens the work session on SB 160A.
065	Rep. Prozanski	MOTION: Moves to AMEND SB 160A by inserting HB 3435 into SB 160A as we amended it today.
		<p>VOTE: 7-0</p> <p>EXCUSED: 1 - Bowman</p>
073	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
079	Rep. Eighmey	MOTION: Moves SB 160A to the full committee with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 7-0-1</p> <p>EXCUSED: 1 - Bowman</p>

082	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. JOHNSTON will lead discussion on the floor.
082	Chair Shetterly	Closes the meeting at 2:25 p.m.

Submitted By, Reviewed By,

Sarah Watson for Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 160A, -A8, -A9, -A10, -A11 proposed amendments (dated 6/6/97), Rep. Bryan Johnston, 4 pp.

B - HB 3730, written materials, Frank Brawner, 5 pp.

C - HB 3730, written testimony, Ken Sherman, 4 pp.

D - HJR 40, -1 proposed amendments (dated 6/5/97), Rep. Floyd Prozanski, 1 p.