These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 19, 1991 Hearing Room F 1:30 P.M. Tapes 31 - 33

MEMBERS PRESENT:Rep. John Schoon, Chair Rep. Hedy L. Rijken, Vice-Chair Rep. Jerry Barnes Rep. Lisa Naito Rep. Carolyn Oakley Rep. Beverly Stein Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2178 WS HB 2214 PH HB 2215 PH

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 31, SIDE A

301 CHAIR SCHOON calls the meeting to order at 1:35 p.m. and opens the work session on HB 217 8.

HB 2178 - ALLOWS OIL HEAT COMMISSION TO ESTIMATE AMOUNT OF ASSESSMENT DUE FROM OIL MARKETER AND MAKE DEMAND FOR PAYMENT. Witness: Lynn Frank, Oil Heat Commission

The Legislative Fiscal Analysis on HB 2178 is hereby made a part of these minutes (EXHIBIT A).

314 LYNN FRANK, Oil Heat Commission: In Section 2 we are addressing one of the problems that the commission and other commodity commissions confront. That is the voluntary participation in the payment of the assessment. We have found that in some cases the dealers begrudgingly go along with the assessment. We found the language in the enabling legislation that enabled the commission to assess a fine or interest for late payments didn't take into account if the person never reports because the amount due is based on the report they file. We turned to the attorney general's office for advice on how to address the problem and they recommended the model being used by SAIF. That is, if SAIF has a business that fails to report, they have authority to estimate what the payment should have been. Section 2 enables the commission to estimate what the payment should have been. The dealer would have the opportunity to come back and say that is wrong and submit the correct figures.

350 Issues discussed: >Dealers may miss a month or two, but there is only one dealer who has failed to make any payments. >If a dealer is bidding at 98 percent and not paying the 2 percent, they have competitive advantage. >Other dealers want equity.

044 REP. STEIN: On page 2 of the bill is a provision for reimbursement for installing heating oil tanks. You indicated people are installing lower grade tanks and that is the reason for the amendment. How do you know people are installing lower grade tanks?

369 MR. FRANK: We have an advisory group which includes members of the commission, members of the industry, DEQ, the attorney general's office and a clean-up contractor. They have advised us that because of cost considerations lower cost tanks are going in.

065 REP. NAITO: Is there federal or state regulations on the quality of the tanks sold and used?

384 MR. FRANK: There are Underwriter Laboratory (UL) standards. The older tanks were larger and therefore of heavier gauge; while the newer tanks meet UL standards, they are smaller and are a lighter gauge. The tanks do not meet our concerns of being able to last a long time. The commission will be adopting standards to encourage people to install tanks that will last longer.

408 REP. STEIN: I don't want the policy to be for us to pay the full amount because I think that might encourage people to continue to heat with oil when they might convert to something else. And I think people should have to pay for some of their tank.

419 MR. FRANK: We would not oppose the amendment. The intent was to give the commission the authority to address the issue. The commission had not contemplated giving full reimbursement. The only place that might arise is if it became an income consideration or someone needed some assistance. They have only contemplated partial reimbursement. The language does not oblige the commission to make full reimbursement; it only gives them the opportunity if they encounter special needs.

TAPE 32, SIDE A

007 CHAIR SCHOON: This assistance could be for an elderly lady with a fixed income whose tank had rusted out and the ground needed to be cleaned. The commission could, if it was necessary, pay for the full cost.

010 MR. FRANK: It could under the language that was proposed.

014 REP. STEIN: I support the idea of your being able to assist elderly people who can't pay, but I think this leaves it very open to turning it into a promotional activity by the Oil Heat Commission to promote the use of oil. There is no guidance in here to say it is only on the basis of income. If we could adopt some language that indicates payment should be made according to a sliding scale by income, I would be more happy.

022 CHAIR SCHOON: Can you come up with suggested language?

022 REP. STEIN: I will trust them enough to come up with a sliding scale system based on income and the ability to pay. We could say something like "reimbursement shall be based on ability to pay." It is legislative intent that would include both partial and full. I think the only people we should be doing this for are people who can't afford it, not just people who like to get a benefit from the fact they heat with oil.

043 MOTION: REP. STEIN moves to amend HB 2178: on page 2, after 21, add "Reimbursement shall be based on ability to pay."

042 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the motion PASSED. All members are present.

043 REP. OAKLEY: What is the current policy on paying replacement costs?

045 MR. FRANK: The current policy is reflected on line 19, "does not include replacement or installation of a new heating oil tank." There is no reimbursement.

055 MOTION: REP. BARNES moves that HB 2178, as amended, be sent to the Floor with a DO PASS recommendation and that the prior referral to

Revenue be rescinded.

067 VOTE: In a roll call vote, all members vote AYE.

070 CHAIR SCHOON declares the motion PASSED and designates Rep. Oakley to carry the measure on the Floor.

073 CHAIR SCHOON opens the public hearing on HB 2214.

HB 2214 - REQUIRES THIRD PARTY ADMINISTRATORS OF HEALTH AND LIFE INSURANCE PLANS TO BE LICENSED BY DEPARTMENT OF INSURANCE AND FINANCE AFTER JANUARY 1, 1992. Witnesses:Jim Swenson, Insurance Division Lewis Littlehales, Insurance Division Dorothy Fuller, Les Schwab Companies John Meenaghan, Health Future Peggy Anet, League of Oregon Cities and Association of Oregon Trusts Karen Hafner, Oregon School Boards Association

The Preliminary Staff Measure Summary (EXHIBIT B) and Legislative Fiscal Analysis (EXHIBIT C) are hereby made a part of these minutes.

080 JIM SWENSON, Administrator, Insurance Division, submits and reviews a prepared statement giving an overview of HB 2214 and HB 2215 (EXHIBIT D).

211 CHAIR SCHOON: What are the current relationships between insurance companies, managing general agents and third party administrators?

215 MR. SWENSON: Many are contractual and these bill spell out the specifics. We are in no way trying to eliminate the managing general agent or third party administrator relations. We are specifying certain standards under which they must operate. They must operate in a prudent fashion and insurance companies must make certain they are operating in a prudent fashion.

231 CHAIR SCHOON: Are they ever employees or subsidiaries of insurance companies?

232 MR. SWENSON: Some of the kinds of activities we have described that are performed by managing general agents or third party administrators are also activities that would be provided by employees of insurance companies and they are specifically exempt from this legislation.

239 REP. BARNES: Would this upset the fiduciary relationship between insurers and general managers?

241 MR. SWENSON: It would not. It merely spells how that relationship should take place in a prudent fashion. Managing general agents might be hired by a life insurance company to manage marketing of the insurance products. HB 2215 would not require that form of managing general agent to register. We are talking about managing general agents who perform what I characterize as the internal operations of an insurance company that could place them at a significant risk.

262 MR. SWENSON reviews HB 2214 section by section. >Peggy Anet will be suggesting an amendment to section 4 (h) and I have no objection to the amendment. >We do not require licensure of third party administrators who are involved with ERISA plans, but we do wish them to register. >A third party administrator in another state would be exempt from licensing unless they are transacting insurance for Oregon residents. The insurance companies would need to make certain they have control of the third party administrator. >If they are transacting business for the Oregon insurer in another state, they would not need to be licensed in Oregon. >We envision the insurance agent paying a fee of $45 per biennium.

TAPE 31, SIDE B

077 REP. STEIN: Is there a provision for an arbitration clause, or do they have to go to court if there is a breach of the agreement between the insurer and the third party administrator (under section 13 (2)?

083 LEWIS LITTLEHALES, Insurance Division: Section 12 would not give such a provision; it could be included. Section 12(3) at line 9 provides that the agreement shall include at least..."

096 REP. STEIN: I think it is positive to encourage recourse to arbitration and mediation when possible and not overload our court systems with processes that can be worked out. We might suggest it, but not require it.

101 MR. LITTLEHALES: We had not considered that question when we reviewed the model act.

104 MR. SWENSON: I think that is a reasonable proposal.

105 MR. SWENSON continues with review of HB 2214 at Section 14. >We have proposed amendments to Section 18 (EXHIBIT E) based on work done by the NAIC after this bill was drafted.

169 CHAIR SCHOON: On page 7, lines 18 and 19, where it talks about compensation based on the number of claims paid, does this assume the more claims paid, the greater the compensation rather than the fewer claims paid, the greater the compensation?

174 MR. SWENSON: Yes. Some agreements between third party administrators and insurers do consider the number of claims the administrator pays on behalf of the insurer.

188 REP. STEIN: Have these people been operating without agreements and disclosures?

191 MR. SWENSON: Much of what is being described are practices which many third party administrators and insurers are already furnishing to their clients.

193 REP. NAITO: Section 18(1) and (2) seem to be saying the opposite.

212 MR. SWENSON: These sections are saying it is proper for a third party administrator to be compensated additionally if they are handling a higher volume of claim transactions, but you don't want to provide them with such a large incentive to not pay a claim that they abrogate contractual responsibilities.

235 MR. SWENSON continues reviewing HB 2214 from Section 20 through 26.

265 REP. BARNES: What would be the liability of the state if the state fails to enforce these provisions.

275 MR. LITTLEHALES: Most of these requirements apply to the third party administrator and I don't see how we would be liable, particularly in Section 16, because it says the insurer has to approve the advertising first. I think we are far enough distanced that I don't think we would have a duty in that case.

306 REP. BARNES: Why would you use a non-governmental organization to set the standards for what is happening (Section 6, line 17)?

335 MR. LITTLEHALES: This could be written in a way to give the director authority to establish the standards. It could tell the director to consider the standards established by the National Association of Insurance Commissioners (NAIC). That would give some legislative intent about what kind of standards we are talking about, but in case the NAIC did disappear, the director could continue to adopt his own standards. I would propose to clean that up. Another issue is the problem of delegation of authority to set state law to a non-state entity. That can be clarified.

364 MR. SWENSON: This bill does follow the NAIC model and we can work out an appropriate reference to that fact.

368 REP. OAKLEY: If a union owns a health trust and they contract out to have it managed, would the agent be a third-party administrator?

MR. SWENSON: I believe we would have to consider whether or it not it was a legitimate ERISA plan. We do provide a specific exemption where the union itself is providing its own internal activities. If the union, however, had a full insurance plan and the insurance company were to engage the services of a third party administrator, I believe they would be required to be licensed under this.

396 CHAIR SCHOON: Why don't we define "third party administrator" in Section 2?

406 MR. SWENSON: It is the business entity we are concerned about. We are not subjecting a third party administrator to the standards that insurance companies are required to meet in having a certain amount of capital and surplus. We are requiring that they be of good financial standing, and are not close to bankruptcy.

421 CHAIR SCHOON: You might take a look to see if it is advisable to put a definition of third party administrator in the bill.

425 MR. SWENSON: That is a good idea.

425 MR. LITTLEHALES: I had incorporated the definition of third party administrator into Section 3 in the prohibition by saying you can't transact business as a third party administrator... The definition would probably read "The third party administrator is a person described in Section 3(2)" to make the tie.

439 CHAIR SCHOON: My question goes beyond that. The question is who the person is, whether it is the manager or the entity itself or both.

TAPE 32, SIDE B

014 CHAIR SCHOON: In Section 7 on page 3, in line 21 the words "may not" might be preferable to "shall not" but in (2) there is no provision for an appeal. The "shall not" wouldn't bother me if there was a way for the business to appeal. I think we need a device to enable the individual to make his case.

024 MR. SWENSON: I believe we envisioned anyone being denied a license would have the normal recourse of a hearing and on to litigation.

028 MR. LITTLEHALES: I believe there is a procedure under the Administrative Procedures Act, but I would like to check that out.

034 CHAIR SCHOON: In Section 17 when we are talking about paying claims, I can see where they would not be able to pay claims out of a fiduciary account, but would this section make the time length longer for payment of claims.

042 MR. SWENSON: I would hope it would not lengthen the time, but would provide reasonable access to their drafts; the insurance company has the ultimate responsibility for permitting the claim to be paid.

050 CHAIR SCHOON: We want to look at Section 18 to make sure that (1) should not permit (2) to be used in a negative sense. Perhaps we can say it clearer to make sure we are talking about an upward number rather than a downward number.

054 REP. STEIN: The third party has to have a special account to deposit funds in.

MR. SWENSON: That is right.

075 DOROTHY FULLER, Benefits Administrator, Les Schwab Companies, Prineville: We have been self-insured for our medical insurance for approximately 22 years. We currently have 2,300 employees on the program. Our claims paid out in the past year are $3,500,000. This equates to a monthly cost per insured employee of around $175. We also have a group of 490 associated dealers that we self-insure. Their claims totaled $875,000 for the past year at a cost per month of

approximately $175 per insured employee. We are a financially secure company and have a very sophisticated program of administering the claims process. Our concern is with Section 4(1)(c). I would like to suggest we add an amendment (EXHIBIT F). This is needed for our dealership employers.

102 JOHN MEENAGHAN, Executive Director, Health Future: Health Future is a non-profit hospital service company. We have a membership of 16 hospitals, 6 of which are owners and corporate members. We have been in business for 10 years and our sole purpose is to provide certain services to those hospitals at the very lowest cost. We are a third party administrator for self-insured plans, health, dental and vision, for eight of our hospital members. Each hospital has its own plan. Each hospital funds it own program where there is an employee contribution in accordance with the federal law and we maintain separate funds for purposes of claims payment. Health Future does not have the fiduciary responsibility for those hospital plan. Operationally, we batch the claims for payment, call the hospital, give them a check register and they place the money in a zero balance checking account and we issue the checks. The checks have the hospital logos on them. The funding is strictly a hospital matter.

HB 2214 is supported by us; we think it is in the public interest. We do have a problem similar to the previous speaker. We are asking for an amendment to the same section. He submits the proposed amendment (EXHIBIT G) to Section 4. The amendment will allow us to continue our administration in the same manner we have done for nine years and provide us with similar treatment to an individual employer. As I read the bill, if one of our hospitals were to set up a third party administrator, that entity would be exempt. We do this for the eight hospitals.

We do not receive our compensation based on the number of claims paid or unpaid; it is strictly on the number of eligible employees per month. I believe any payment system that allows anyone to pay on the basis of claims paid is a negative incentive. We have always stayed away from payment as percentage of claims paid; it is a per-head-per-month program. That is totally independent of the financing that takes place with the hospitals for the administration of the claims.

191 REP. STEIN: Are you not exempt under ERISA?

MR. MENNAGHAN: We probably are, but if we are not we request the amendment.

REP. STEIN: Can we have the Department of Insurance and Finance check to see if this amendment is appropriate?

215 CHAIR SCHOON: The department acknowledges they will do that.

212 PEGGY ANET, Administrator, League of Oregon Cities Health Insurance Trust and Association of Oregon Counties Trust submits and summarizes a prepared statement proposing amendments to Section 4 (EXHIBIT H).

283 CHAIR SCHOON: We would like for the department to take a look at the amendment. The department acknowledges the request by nodding affirmatively.

286 KAREN HAEFNER, Oregon School Boards Association: The purpose of the Oregon School Board's association trust is to provide low-cost insurance for the small school districts. We do not receive any fees and don't handle any money. In addition, we do not handle claims.

286 CHAIR SCHOON closes the public hearing on HB 2214 and declares the meeting in recess at 3:00 p.m. for 10 minutes.

305 CHAIR SCHOON reconvenes the meeting as a subcommittee. Present are Reps. Barnes, Rijken and Schoon. He opens the public hearing on HB 2215.

HB 2215 - DEFINES AND REGULATES MANAGING GENERAL AGENTS. Witnesses:Jim

Swenson, Insurance Division Wade Coukendall, Pettit-Morry Co. Stewart Sawyer, Pettit-Morry Co.

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

295 JIM SWENSON, Administrator, Insurance Division, Department of Insurance and Finance: HB 2215 was developed within the National Association of Insurance Commissioner and is part of the series of bills we must have on our books in order to be certified as doing an adequate job of providing solvency surveillance within the state. (See prepared statement EXHIBIT D).

325 He reviews HB 2215 section-by-section.

315 CHAIR SCHOON notes the arrival of other committee members and announces the full committee is present.

348 MR. SWENSON: >Very few organizations in Oregon would qualify under this definition of managing general agent.

372 REP. WALDEN: What is meant by line 15 on page 1 of the bill?

372 MR. SWENSON: The managing general agent would be one working on behalf of a primary insurance company and actually negotiating with another insurance considered the reinsurer of the primary insurer's risks. The managing agent would be negotiating with the reinsurer and would be placing business on the books of that reinsurer on behalf of the primary insurance company.

387 CHAIR SCHOON: What is meant by "ceding" in line 15?

388 MR. SWENSON: It is a term within the insurance jargon where a primary insurance company is insuring ceding risks to another insurance company, a reinsurer.

397 MR. SWENSON continues reviewing HB 2215 at Section 3.

446 CHAIR SCHOON: Would you explain errors and omissions insurance?

TAPE 33, SIDE A

005 MR. SWENSON: Errors and omissions insurance would protect the insurance company and insureds from any violation of fiduciary responsibility by the managing general agent if they breached the fiduciary responsibility, or take the money and run.

020 MR. SWENSON continues reviewing the bill at Section 5.

038 REP. BARNES: Do managing general agents represent one or more insurance companies?

039 MR. SWENSON: It is quite prevalent that the managing general agent could work for a number of insurance companies, although I would envision there are situations which arise where a managing general agent might be managing the affairs of one business. It might be a very unique line of business and the person is a specialist in that line.

REP. STEIN: What is the difference between an insurance agent and a managing general agent?

052 MR. SWENSON: The managing general agent does more than solicit business. In this instance, we are saying a managing general agent is not only involved in the soliciting of business, but in some very critical aspect is actually managing much of the internal affairs of the insurance company as well. It is defined very tightly that they have to at least be involved in a certain amount of the company's business and payment of claims or negotiations of reinsurance. Very few agents, including some people who call themselves managing general agents, would fall under the parameters of this definition. These people are really operating almost as if they are their own insurance company, but they

are not bearing the risk; they are putting an insurance company at risk.

072 MR. SWENSON continues reviewing HB 2215 at Section 6.

094 CHAIR SCHOON: Is the responsibility for calculating loss reserves a part of the contract?

095 MR. SWENSON: I believe that would be the type of item of such importance that it would be covered in the contract. I don't believe we have included that in our definition of what is to be included in the contract.

My own personal preference would be that the insurance company should be responsible for calculating its reserves. They are the ones responsible for filing the statements with the department. This is saying if the insurance company has permitted the managing general agent to make the original calculation of loss reserves, those reserves need to be attested to and a certified opinion of an actuary obtained.

111 REP. BARNES: Should we have a requirement that they submit the actuary determination to the department at a pre-determined time or do they hold it in their files until the department audits them?

MR. SWENSON: It would be held in their files and be available for our review at time of financial examination. >Examinations are done typically on a tri-annual basis. >Insurance companies are required to file an annual statement and many are required to file statements quarterly.

140 MR. SWENSON continues reviewing the bill at Section 8 (3).

165 CHAIR SCHOON: Take a look at Section 8 (2) to see if the language needs to be strengthened to make sure that the state is adequately satisfied that the insurance company has complete knowledge of reserves. You expressed the opinion that you thought the insurance company ought to be calculating their reserves, but would you look at that area to see if we need to strengthen the language. Also on (4) we talk about binding authority for all reinsurance contracts "shall rest with an officer of the insurer" and it appears to contradict the language in line 15 on page 1 where the agent negotiates and binds contracts.

190 MR. SWENSON: I believe Section 8(4) says the responsibility for reinsurance contracts rests with the insurance companies and they do at times permit the managing general agent to put some reinsurance business on the books or to cede reinsurance. I think lines 23 and 14 on page 3 talks about controls under which the managing general agent could bind reinsurance. This is saying the real responsibility of the insurance company, if they do give some responsibility to the managing general agent, must be done under a very controlled circumstance.

203 WADE COUKENDALL, President, Pettit-Morry Co., an insurance agent in Portland and Legislative Chairman, Surplus Line Association of Oregon: We are here in support of HB 221 5 with some modifications. The Surplus Line Association of Oregon directly is not involved. As Mr. Swenson testified, very few people will come under the auspices of this bill. However, some of our members may, in addition to being surplus lines brokers, become managing general agencies under this bill and for that reason we would like to have clarifications made. He introduces Mr. Sawyer, Vice President and actuary who worked with the formation of the bill.

233 STEWART SAWYER, Vice President and Actuary for Pettit-Morry Co., submits and reviews a prepared statement proposing amendments (EXHIBIT J).

275 CHAIR SCHOON: It seems we are trying to address good management more than fraud. We already have means of regulating insurance companies and if they own the agencies acting as their general managers, does the bill address the fraud aspect going on inside an insurance company, or are we trying to strengthen the management and supervision so the honest operators stay honest?

289 MR. SAWYER: We are trying to a little of both. I think there is a great deal of danger in those situations where an insurance company directly controls an managing general agent that is placing most of the business with the insurer. Those situation can lead to a great deal of collusion between the insurance company and the agent itself. As a consequence, I see little reason to exempt those types of relationships from this bill.

308 MR. SAWYER continues reviewing page 2 of his statement on Section 4(1).

406 REP. BARNES: Should we be including a dollar amount for the errors and omissions insurance?

413 MR. SWENSON: I believe we have given ourselves the latitude to specify the dollar amount by rule.

425 MR. SWENSON: I appreciate Mr. Sawyer's testimony and believe his suggestions will strengthen the legislation.

406 CHAIR SCHOON: It appears there will be a fiscal impact on both HB 2214 and HB 2215. Has someone prepared some figures for us?

433 MR. SWENSON: Fiscal impact statements have been prepared. We can handle this with our current staff. A fee would be required of the managing general agents and third party administrators, but we will get back with the specifics on revenues that will be collected and the fiscal impacts.

449 CHAIR SCHOON, having determined there was no further business to come before the committee, declares the meeting adjourned at 3:48 p.m.

Respectfully submitted,Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -HB 2178, Legislative Fiscal Analysis, staff B -HB 2214, Preliminary Staff Measure Summary, staff C -HB 2214, Legislative Fiscal Analysis, staff D -HB 2214 & HB 2215, prepared statement, Jim Swenson E -HB 2214, proposed amendments, Lewis Littlehales F -HB 2214, proposed amendments, Dorothy Fuller G -HB 2214, proposed amendments, John Meenaghan H -HB 2214, prepared statement and proposed amendments, Peggy Anet I -HB 2215, Preliminary Staff Measure Summary, staff J -HB 2215, prepared statement and proposed amendments, Stewart Sawyer