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

March 26, 1991 Hearing Room F 1:30
P.M. Tapes 58- 59

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 2308 WS HB 2306 WS HB 2212 Ws HB 2937 WS HB 2325 WS HB 2326 WS HB 2046 WS

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TAPE 58, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:41 p.m. and opens the work session on HB 230 8.

HB 2308 - EXEMPTS CERTAIN RETAIL SELLERS AND ASSIGNEES FROM PROVISIONS OF RETAIL INSTALLMENT CONTRACT LAW. Witnesses:Frank Brawner, Oregon Bankers Association Jim Whitty, Associated Oregon Industries and Oregon Retail Council

019 REP. BARNES: The subcommittee held a hearing on HB 2308 last week and thought we were ready to recommend a do pass with the amendment. It think it would behove us to have Mr. Brawner and a representative from AOI speak to us.

027 TERRY CONNOLLY, Committee Administrator, reviews the Preliminary Staff Measure Summary (SEE EXHIBIT D OF SUBCOMMITTEE NO. 1 MINUTES DATED MARCH 21, 199 1).

038 CHAIR SCHOON: Mr. Brawner will explain the bill and explain Mr. Reutlinger's memo regarding the bill (EXHIBIT A).

044 MR. BRAWNER, Oregon Bankers Association: HB 2308 is legislatively neutral; it does not change anything. I have read Mr. Reutlinger's letter and concur with his analysis. ORS 83.810 which is current law says that any retail installment contract or security agreement which complies with the disclosure requirements of Title I of the federal Consumer Protection Act, which is also known as Truth in Lending, Regulation Z. does not need to comply with the disclosure provisions of

the Oregon statutes.

We have always been uncomfortable as to the constitutional question of this body delegating to the U. S. Congress its authority by saying if you do what the Congress tells you to do, then you are automatically in compliance with state law. Even in this state there has been case law where that constitutional question has been decided and you cannot delegate this body's authority. There are several places in the statutes that concern us. This happens to be the most important. It was brought to our attention by the general counsels of First Interstate Bank and U. S. Bank.

The amendments which the subcommittee has adopted (EXHIBIT E OF SUBCOMMITTEE NO. 1 MINUTES OF MARCH 21, 1991) make it clear we are talking only about disclosure provisions. Legal Aid brought to our attention that current law seems to negate those disclosures made on the doorstep with home solicitation sales. We never thought the current law said if you are in compliance with Regulation Z you don't need to comply with these verbal disclosure when you are doing telephone solicitations or home solicitations, but the new ORS statutes contained in the amendments make sure we don't touch that. In the statutes, we use the four qualifiers that make you subject to Regulation Z both as a seller or purchaser of a retail installment contract: (1) if you regularly enter into retail installment contracts, (2) if the terms of the retail installment transaction provide for payment of a service charge or finance charge, (3) if the transaction has more than four installments, and (4) you have 25 or more retail installment transactions a year. If you do that, no matter what business you are in, you are subject to Regulation Z and need not comply with the disclosure requirements of the state statutes.

The intent of the legislation when passed in, I believe, 1969 was there would not be conflicting disclosures. You cannot comply with Oregon statutes and Regulation Z without providing two disclosures and a lot of confusion to the consumer.

It is true that if Regulation Z qualifiers change then we will be out of line and will have to come back and address that. They haven't changed in 10 to 15 years and we don't expect them to change.

100 I don't have a copy of Mr. Reutlinger's letter now, but there is some suggestion that the current statute dealt with Truth in Lending when this statute was passed. I don't find that in the statute. I believe if Congress changed Truth in Lending tomorrow it would change automatically; it is perspective. In a court I think there would be some question as to whether this provision is constitutional.

120 CHAIR SCHOON: If a person or business complies with the federal regulations as they have been doing, do they then meet the requirements of the proposed legislation?

121 MR. BRAWNER: HB 2308 does not change their world. Federal requirements go beyond what is required in the state statutes. The state statutes has and will deal with those who do not extend credit over 25 times in a year and who do not do these things. State statute applies to those who do not comply with Regulation Z.

131 REP. STEIN: Are the sanctions and remedies different?

132 MR. BRAWNER: The sanctions and remedies are the same in state and federal law. Banks will not be, are not now, and have never been, subject to the state disclosure. We are only concerned about the cross reference to the federal statute.

165 JIM WHITTY, Legislative Counsel for Associated Oregon Industries and Director, Oregon Retail Council: We don't understand the constitutional problem. I was presented with Mr. Reutlinger's letter. Although we don't understand the resolution of it yet. We know we do not have case law nor a threat of case law. That doesn't mean it is in error. I would like a couple of days to show the letters to our credit lawyers so we can look at it from our perspective.

189 CHAIR SCHOON closes the work session on HB 2308 and instructs the Committee Administrator to add the bill to the agenda for Thursday.

193 CHAIR SCHOON opens the work session on HB 2306.

(Tape 58, Side A) HB 2306 - PROVIDES THAT VIOLATION OF MOTOR VEHICLE DEALERSHIP LAWS IS IRREPARABLE INJURY FOR PURPOSE OF DETERMINING WHETHER TEMPORARY RESTRAINING ORDER SHOULD BE ISSUED.

195 REP. BARNES: We would like to have HB 2306 back in subcommittee. I received information this morning that Motor Vehicles, the manufacturers representative and the representative of the auto dealers association are getting some amendments together for the bill.

A letter from Ted Reutlinger, Legislative Counsel, explaining the importance of defining "irreparable injury" is hereby made a part of these minutes (EXHIBIT B).

207 CHAIR SCHOON closes the work session on HB 2306 and sends it back to Subcommittee No. 1.

210 CHAIR SCHOON opens the work session on HB 2212.

(Tape 58, Side A) HB 2212 - LIMITS CLAIM RESPONSIBILITY OF OREGON LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION TO OREGON RESIDENTS AND CERTAIN NONRESIDENTS. Witnesses:Lewis Littlehales, Department of Insurance and Finance Charles Nicoloff, Department of Insurance and Finance

213 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT E OF SUBCOMMITTEE NO. 2 MINUTES DATED MARCH 19, 1991).

230 REP. STEIN: The original theory for the guaranty association by the National Association of Insurance Commissioners was that all states would adopt legislation to accept liability of insolvent insurance companies. Although 47 or 48 states have a fund, thirty-four states cover their residents only. The national standard now is to cover residents only. The bill moves in the new direction. Only Oregon residents who are insured by Oregon and out-of-state insurers would be covered by the guaranty fund. Nonresidents would be covered if there is a similar kind of guaranty association in the nonresident state and the person is not eligible for coverage by that fund. It also extends the coverage to unallocated and annuity contracts for government employees. It caps the amount the fund is responsible for in individual claims and total per company. Because the amount the insurance companies pay into this fund is a tax credit, there will be less paid into the fund and potentially there is up to somewhere around a $10 million benefit to the general fund from avoiding the tax credit losses we would incur otherwise.

The bill is supported by the Guaranty Association and the life insurers. Our subcommittee recommends to the full committee that the bill be passed with a do pass recommendation with the amendments proposed by the department.

278 REP. BARNES: Is there a likelihood of retaliation by adjoining

states?

278 REP. STEIN: California and Washington have similar provisions.

282 MOTION: REP. STEIN moved that the HB 2212-1 proposed amendments BE ADOPTED (EXHIBIT C).

287 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED.

290 MOTION: REP. STEIN moves that HB 2212, as amended, be referred to the Committee on Revenue with a DO PASS recommendation.

302 LEWIS LITTLEHALES, Department of Insurance and Finance, introduces Charles Nicoloff. I would like to clarify the $10 million point. The insurers are assessed only when there is an insolvency.

327 CHAIR SCHOON: How do you estimate the tax credit for the Governor's budget in any biennium?

333 MR. NICOLOFF: You would have to make an estimate as to how many insolvencies there would be. We have never been asked to do that.

341 MR. LITTLEHALES: We have said there is no fiscal impact.

346 REP. BARNES: The Legislative Fiscal Analysis (SEE EXHIBIT F OF SUBCOMMITTEE NO. 2 MINUTES DATED MARCH 19, 1991) contains a statement "As a rough approximation, the agency estimates assessments against the General Fund due to total receiverships in 1991-93 is expected to be $13.6 million."

350 MR. NICOLOFF: I have not seen that. Any assessments that are going to be levied because of prior insolvencies are not affected by this bill. It is only new insolvencies. Since we are already stuck covering nonresidents, that is true. But if the bill were to become law, new assessments would only be levied because of Oregon residents. The savings is in the future and should have no effect on the General Fund for prior insolvencies.

364 CHAIR SCHOON: I will accept Rep. Stein's motion as made and if we need to make a change to it, we can do it under Propositions and Motions on the Floor. It would appear there is potentially some revenue impact.

369 VOTE: In a roll call vote, REPS. BARNES, NAITO, OAKLEY, STEIN, WALDEN AND CHAIR SCHOON vote AYE. REP. RIJKEN is EXCUSED.

374 CHAIR SCHOON declares the motion PASSED.

383 CHAIR SCHOON opens the work session on HB 2937.

(Tape 58, Side A) HB 2937 - SPECIFIES PROCEDURES FOR LAUNDERERS AND DRY CLEANERS TO DISPOSE OF UNCLAIMED PROPERTY.

391 MR. CONNOLLY: Questions came up in the subcommittee hearing regarding proposed language for amendments to HB 2937 (EXHIBIT D).

398 REP. STEIN: HB 2937 was heard in subcommittee. It appears that currently a laundry establishment, in order to get rid of goods that have been left for a long time, has to go through the chattel channel which are structured to deal with getting rid of things that have real value. For the most part, even though the clothes are of value, they tend to either give them away or sometimes sell them. Other times they just keep them to avoid having to go through the process of the possessory chattel lien statute, ORS chapter 87.

The amendments were not considered officially by the subcommittee. The original bill indicated that if a garment was left at the dry cleaner and not redeemed within 90 days, it could be disposed of at a sale if the cleaner notified the person by certified mail at their last address. It further indicated that if the clothing was not redeemed within 180 days, they could get rid of the articles without notification. Certified mail can cost up to $10 and is a bother for people running a small business.

We are proposing that we amend HB 2937 by deleting Section 1 (1) and use (2) as the main part of the bill. The amendments require a letter be mailed first class indicating the person has 30 days from the date of the letter to reclaim their goods. I added that provision after the subcommittee meeting because I felt that due process really demands notice. I also added a section that would require the retail dry cleaner to post a notice indicating that if the clothes are not picked up within 180 days, they may be disposed of following a notice by first class letter.

TAPE 59, SIDE A

Issues discussed: >Obtaining customers' addresses for written notification. >Current efforts to contact customers. >First class mail versus registered or certified mail. >Cost of providing notice to customer. >Delete written notice and maintain the requirement that the goods must be held for 180 days before disposing of it. >Establishing date letter was mailed. >Allow the posted notice to be "substantially like" the one proposed in the amendment.

150 REP. NAITO: I would suggest to simply post the notice that articles could be disposed of and do away with the written mailed notice altogether.

185 CHAIR SCHOON: I would prefer to let it be 180 days and leave it up to the retailer to provide notice because they don't want the used clothes.

207 REP. WALDEN: Do the notices usually say this notice is required by ORS?

213 REP. NAITO: They would be free to put that on the notice if they wished.

215 REP. WALDEN: Who would furnish the notice?

215 REP. STEIN: They would have to provide it themselves, or as a service the Drycleaners Association could provide them.

228 REP. STEIN: We can use (2) of the original bill and (2) of the proposed amendments.

226 CHAIR SCHOON: Terry can get Legislative Counsel amendments to clarify that we want to indicate that the notice be "substantially as follows" and that the ORS be included in the notice.

257 CHAIR SCHOON closes the work session on HB 2937 and announces that the bill will be on Thursday's agenda for a work session.

263 CHAIR SCHOON opens the work session on HB 2206.

HB 2206 - REQUIRES PERSONS APPLYING FOR REGISTRATION AS COLLECTION AGENCY BUSINESS TO FURNISH $10,000 SURETY BOND.

268 MR. CONNOLLY: Sharlyn Raymet from the Department of Insurance and Finance is here to answer the questions the subcommittee had concerning who would execute the bond.

272 CHAIR SCHOON: We will refer HB 2206 back to the subcommittee to let it be worked out. He closes the work session on HB 2206.

277 CHAIR SCHOON announces that the committee will not open a work session on HB 2333 which deals with the State Mortuary and Cemetery Board but will schedule it back in Subcommittee No. 3 for their next meeting.

293 CHAIR SCHOON opens the work session on HB 2325.

HB 2325 - PROHIBITS USE OF TITLE OF "UNLICENSED TAX CONSULTANT" TO ANY BUT LICENSED TAX CONSULTANT OR FIRM OF LICENSED TAX CONSULTANTS.

297 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT A OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 20, 1991).

314 MOTION: CHAIR SCHOON moves that HB 2323 be sent to the Floor with a DO PASS recommendation.

317 REP. BARNES: I did some research and found there are some people who didn't pass the examination who are calling themselves tax consultants, and some of the students in colleges are also doing that. The public is somewhat confused and I think this is a good law.

328 MR. CONNOLLY: There are amendments to HB 2325.

337 CHAIR SCHOON: The amendments are attached to the Fact Sheet from the Secretary of State (EXHIBIT E). It appears the amendment addresses Rep. Barnes' comments that people are calling themselves tax consultants. The original bill limited this to licensed tax consultants. They would not be permitted to call themselves tax consultants unless they were licensed.

345 REP. NAITO: That is the more specific problem, but there apparently are already prohibitions against anyone calling themselves a licensed tax consultants under ORS 673 .705 (3). Those who are calling themselves tax consultants don't appear to be in violation of the requirements that they obtain a license. The amendments speak to the intent of what we are trying to accomplish--to prohibit the use of tax consultant.

358 CHAIR SCHOON withdraws his previous motion.

369 MOTION: CHAIR SCHOON moves that the proposed amendments dated March 20 (EXHIBIT E) to delete the word "licensed" on lines 5 and 8 BE ADOPTED.

366 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REPS. WALDEN AND RIJKEN are EXCUSED.

371 MOTION: REP. NAITO moves that HB 2325, as amended, be sent to the Floor with a DO PASS recommendation.

375 VOTE: In a roll call vote REPS. BARNES, NAITO, OAKLEY, STEIN AND CHAIR SCHOON vote AYE. REPS. WALDEN AND RIJKEN are EXCUSED.

381 CHAIR SCHOON declares the motion PASSED.

REP. NAITO will lead discussion on the Floor.

390 CHAIR SCHOON opens the work session on HB 2326.

(Tape 59, Side A) HB 2326 - CONTINUES STATE BOARD OF TAX SERVICE EXAMINERS.

381 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT B OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 20, 1990).

The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT F).

413 REP. NAITO: I think we should continue the board in existence.

MOTION: REP. NAITO moves that HB 2326 be sent to the Floor with a DO PASS recommendation.

444 VOTE: In a roll call vote REPS. BARNES, NAITO, OAKLEY, STEIN AND CHAIR SCHOON vote AYE. REPS. WALDEN AND RIJKEN are EXCUSED.

447 CHAIR SCHOON declares the motion PASSED.

REP. RIJKEN will lead discussion on the Floor.

TAPE 58, SIDE B

018 CHAIR SCHOON opens the work session on HB 2046.

HB 2046 - DELETES AUTHORITY OF BOARD OF RADIOLOGIC TECHNOLOGY TO ISSUE THREE-MONTH TEMPORARY PERMITS TO PRACTICE RADIOLOGIC TECHNOLOGY.

021 MR. CONNOLLY: There are amendments to HB 2046 (SEE EXHIBIT C OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 18, 1990). He reviews the Preliminary Staff Measure Summary (SEE EXHIBIT A OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 18, 1991).

044 MOTION: REP. NAITO moves that the HB 2046-1 amendments be adopted.

053 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REPS. WALDEN AND RIJKEN are EXCUSED.

054 MOTION: REP. NAITO moves that HB 2046, as amended, be sent to the Floor with a DO PASS recommendation.

057 VOTE: In a roll call vote REPS. BARNES, NAITO, OAKLEY, STEIN AND CHAIR SCHOON vote AYE. REPS. WALDEN AND RIJKEN are EXCUSED.

059 CHAIR SCHOON declares the motion PASSED.

REP. STEIN will lead discussion on the Floor.

065 CHAIR SCHOON: We will not open a work session on HB 2132 and HB 2133 at the Subcommittee Chair's request.

070 The committee and staff discuss workload and planning for the subcommittee and full committee meetings.

128 CHAIR SCHOON declares the meeting adjourned at 2:46 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly Assistant Administrator

EXHIBIT SUMMARY

A -HB 2308, memo from Ted Reutlinger, staff B -HB 2306, memo from Ted Reutlinger, staff C -HB 2212, HB 2212-1 amendments, Lewis Littlehales D -HB 2937, HB 2937-1 amendments, Rep. Stein E -HB 2325, Fact Sheet and proposed amendments, unknown F -HB 2326, Legislative Fiscal Analysis, staff