

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 28, 1991
P.M.

Hearing Room F 1:30
Tapes 60 - 62

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 2937 WS HB 2214 WS HB
2215 WS HB 2211 PH

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TAPE 60, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:48 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.

TERRY CONNOLLY, Administrator, reviews provisions of the bill and proposed amendments (SEE EXHIBIT E OF SUBCOMMITTEE NO. 1 MINUTES DATED MARCH 21, 1991). The Oregon Retail Council has notified the committee that they agree with the amendments and have no objection to the bill (EXHIBIT A).

021 MOTION: REP. BARNES moves that the HB 2308-1 amendments be adopted.

029 VOTE: CHAIR SCHOON, hearing no objection, declares the amendments ADOPTED. REPS. RIJKEN and NAITO are EXCUSED.

031 MOTION: REP. BARNES moves that HB 2308, as amended, be sent to the Floor with a DO PASS recommendation.

035 VOTE: In a roll call vote, REPS. BARNES, OAKLEY, STEIN, WALDEN, and CHAIR SCHOON vote AYE. REP. RIJKEN arrives and votes AYE. REP. NAITO is EXCUSED.

045 CHAIR SCHOON declares the motion PASSED.

CHAIR SCHOON will lead discussion on the Floor.

048 CHAIR SCHOON opens the work session on HB 2937.

HB 2937 - SPECIFIES PROCEDURES FOR LAUNDERERS AND DRY CLEANERS TO DISPOSE OF UNCLAIMED PROPERTY.

050 REP. STEIN reviews the HB 2937-2 amendments (EXHIBIT B). The amendments have added in the requirement that a notice be posted in substantially the language in lines 14 through 20.

067 MOTION; REP. STEIN moves that the HB 2937-2 amendments BE ADOPTED.

067 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. All members are present.

068 MOTION: REP. STEIN moves that HB 2937, as amended, be sent to the Floor with a DO PASS recommendation.

069 VOTE: In a roll call vote, all members are present and vote AYE.

072 CHAIR SCHOON declares the motion PASSED.

REP. STEIN will lead discussion on the Floor>

075 CHAIR SCHOON opens the work session 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: Lewis Littlehales, Insurance Division Frank Brawner, Oregon Bankers Association Chuck Gress, Oregon State Pharmacists' Association Robin Richardson, Pharmacists' Service Group

080 LEWIS LITTLEHALES, Policy Analysis Section, Insurance Division, explains the HB 2214-1 amendments (EXHIBIT C). >Amendments incorporate changes suggested at the public hearing on the bill. >We proposed to add exemptions to Section 4 which establishes exemptions to the license requirements. We do not object to that because the organizations seeking to be exempted are not the type that cause trouble which this legislation was intended to address. >(A) and (B) are a restatement of what is in the bill currently. (C) addresses the Les Schwab type of organizations. >(n) in line 11 of the amendments, addresses the hospital association. >(o) addresses the concern raised by Peggy Anet for the Associated Oregon Counties, League of Oregon Cities and the school districts. >The amendments on page 3 beginning at line 19, provide that the director may waive the filing requirements if requirements of the other state are similar to our requirements. >The amendment on page 5 inserts a provision that states a public policy favoring arbitration. It wouldn't require arbitration, but encourages it. >The amendment on page 6 is in response to the concern for a need for broadening the scope of availability of insurance beyond insurance available to authorized insurers. >The amendment on page 7, allows performance-based compensation for hospital or other auditing services. That is in addition to the NAIC standards. (3) requires a third party administrator to disclose all charges, fees and commissions received from all sources in connection with the administrative services provided for the insurer.

164 REP. STEIN: We might want to amend it to make it clear that people would have the option. I would say "Provisions establishing which dispute, if any, arising under the contract shall be decided by arbitration."

176 MR. LITTLEHALES: That is what I meant to say.

189 MOTION: CHAIR SCHOON moves that the HB 2214-1 amendments, with the

change suggested by Rep. Stein that on page 2 of the proposed amendment, in line 3, after "disputes" insert ", if any," and after "contract" insert a comma, BE ADOPTED.

195 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. All members are present

203 FRANK BRAWNER, Oregon Bankers Association: Prior to your work session, Mr. Littlehales and I discussed HB 2214 and the exemption that is contained on page 2 of the bill, line 19. It says "A trust exempt from taxation under Section 502(a) of the Internal Revenue Code." 501(a) refers to 502 and 503 and talks about trusts. Since we use the word trust, there is a 501(c)9 which is not a trust. It is a voluntary employee beneficiary association. One of those very few associations is the Oregon Bankers Association Employee Benefit Plan and Trust. We propose that in line 20, after the word "trust" insert "a voluntary employees beneficiary association described in Section 501(c) of the Internal Revenue Code, its agents and employees".

251 MR. LITTLEHALES concurs with the OBA amendments.

255 MOTION: CHAIR SCHOON moves that HB 2214 be further amended on page 2, in line 20, after "trust," insert "a voluntary employees beneficiary association described in Section 501(c) of the Internal Revenue Code, its agents and employees".

267 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendment ADOPTED. All members are present.

277 CHUCK GRESS, Executive Director, Oregon State Pharmacists' Association introduces Robin Richardson, Administrator of a subsidiary of their organization, Pharmacists' Service Group: We would like to speak to some consequences of HB 2214 and how this will impact negatively on our subsidiary.

287 CHAIR SCHOON: Do you have suggested amendments?

MR. GRESS: We do and that is part of the handout Mr. Richardson has provided (EXHIBIT D). The suggested amendments would be to Section 4 on page 2 and are stated at the end of page 3 of Mr. Richardson's handout.

313 REP. NAITO: Would the amendments we just made including 501(c) cover your group as well?

315 MR. GRESS: No, this is a little different situation.

320 ROBIN RICHARDSON, Managing Director, Pharmacists' Service Group: We are

designated under 501(c)6 of the IRS code. Our program provides a managed prescription program to health trusts, some different insurance companies and small businesses throughout Oregon. In order to do that, we provide programs such as drug utilization review and a variety of managed care aspects. To be able to perform those services, we have to compile and collect data that a claims processing entity that we have a subcontract with performs. Under this legislation, they would be required to have a third party administrator license. If they chose not to do that, which they have indicated is not their primary business, not only would we lose the claims processing ability, but all the managed care services we provide for our existing groups.

473 CHAIR SCHOON closes the work session on HB 2214 and reschedules the bill for a week from Tuesday.

TAPE 61, SIDE A

035 CHAIR SCHOON opens the work session on HB 2215.

HB 2215 - DEFINES AND REGULATES MANAGING GENERAL AGENTS. Witnesses:
Lewis Littlehailes, Insurance Division Mary Alice Bjork, Insurance
Division

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

046 LEWIS LITTLEHAILES: The managing general agent bill is a preventive bill addressing the situations where managing general agents are given significant reinsurance, underwriting and other authorities by an insurer. In some cases there have been insolvencies where the managing general agent was more interested in selling than in running a tight ship. This bill requires that before a person can act as a managing general agent, the person has to obtain an endorsement on his agent license and must enter into a contract. The contract has to contain specific provisions governing review by the insurer and setting responsibilities of the insurer for loss reserves established by the managing general agent.

064 REP. STEIN: I think it would be helpful to understand the difference between the third party administrator and the managing general agent.

073 MARY ALICE BJORK, Manager, Rates and Forms Section, Insurance Division: The managing general agent is like a branch office of an insurance company where they are doing almost all functions of the insurer. They decide whom to insure, what the risk will bear in the way of premium, may also adjust the claims, and act for almost all purposes. During the 80's there was a rather significant insolvency in Mission Insurance Company. Their managing general agent, because of high interest rates being paid were taking all comers, was not showing responsible underwriting. Mission Insurance Company did not supervise their managing general agent to the point where they were aware of some of the practices and therefore, although it wasn't the sole reason for the insolvency, it was the heart of it.

Third party administrators are generally in life and health. The one I happened to have worked for in Idaho paid claims, received premium, enrolled employees, but did not set reserves. The problem came when the third party administrator got greedy and started overcharging fees for services per enrolles. There were large amounts of premium coming in and not a very good fiduciary responsibility. The third party administrator does not make the underwriting decisions that a managing general agent makes in property casualty.

122 LEWIS LITTLEHAILES: The amendments (EXHIBIT F) incorporate the changes that were suggested at the public hearing and related changes. He reviews the proposed amendments and suggests that on page 1 of the HB 2215-1 amendments, in line 20, delete "certification" and insert "reserve actuarial opinion."

244 CHAIR SCHOON: I will assign HB 2214 and HB 2215 to Subcommittee No. 2 and let them review the amendments and have them back to this committee for final action on the following Tuesday.

257 CHAIR SCHOON closes the work session on HB 2215 and declares the meeting in recess at 2:25 p.m.

258 CHAIR SCHOON reconvenes the meeting at 2:42 p.m and turns the gavel over to Rep. Naito for the remainder of the meeting.

260 CHAIR NAITO opens the public hearing on HB 2211.

(Tape 61, Side A) HB 2211 - ADDRESSES REGULATION OF PROPERTY AND CASUALTY INSURANCE UNDER INSURANCE CODE. Witnesses: William Brooks, Insurance Division Julie Hansen, Valley Insurance Company Rich Rogers, Oregon Professional Insurance Agents Tom Bessonette, Oregon Mutual Insurance Co. Denis Walker, Oregon Mutual Insurance Co. John Powell, North Pacific Insurance Co. and State Farm Insurance Companies Ken Horner, North Pacific Insurance Co. Dave Davidson, Liberty Northwest Insurance Corporation Chuck Huggins, Independent Insurance Agents of Oregon Ed Davis, Potts, Davis and Company

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

269 WILLIAM BROOKS, Manager, Complaint Resolution and Investigation, Department of Insurance and Finance, submits and reads a prepared statement in support of HB 2211 (EXHIBIT H).

TAPE 60, SIDE B

MR. BROOKS continues with his statement.

026 The proposed amendments referenced in Mr. Brooks testimony and dated March 28, 1991 are hereby made a part of these minutes (EXHIBIT I).

Issues discussed: >Driver license information that could be used for excluding driver. It was agreed that the driving record in total would be used. Section 3 (6) (a) was inserted to give the department flexibility in case insurers were too heavy handed or arbitrary in the use of driving records. >Liability of person who allows a named exclusion to drive the car. >"Driving record" means report issued by DMV. >Provision in Section 2 reducing the 30 day notice to 10 day notice by insurer for non-payment of premium is to correct the change made last session. The reason is it is not advisable for other policy holders to be paying for insurance for somebody who is not willing to pay for it. The 30 days should remain for other reasons so policy holders have sufficient time to make other arrangements. >Policy endorsement identifying person excluded under policy. >Endorsements for driver exclusions must be filed with the division and approved by the Rates and Form Section before they can be used. They become a part of the contract.

200 JULIE HANSEN, CPCU, CPIW, Valley Insurance Company, submits and reads a prepared statement in support of HB 2211 (EXHIBIT J).

Issues discussed: >Guidelines for named driver exclusions vary.

317 RICH ROGERS, Oregon Professional Insurance Agents, submits a prepared statement and policy information. He reads the prepared statement in support of HB 2211 (EXHIBIT K).

TAPE 61, SIDE B

Issues discussed: >Victims of actions by a person excluded under policy. >Broad form named operator policies are not available. >Parents of the majority of young drivers with driving problems are responsible enough to be sure the young driver continues to carry insurance as long as the parents can be held financially responsible for the driver. >Need for availability of insurance for persons who do not own a vehicle.

164 TOM BESSONETTE, Oregon Mutual Insurance: I worked with Sen. Walt Brown, Jay Rupp of Motor Vehicles Division, John Purda of Nationwide Insurance Company and Joe Barkowfsky of Legislative Counsel trying to

draft a mandatory insurance law that would fill the bill and some of the problems that have been discussed here. That was in 1977 when the mandatory insurance law became a reality. My handout shows the history of what we are talking about today (EXHIBIT L). He reviews the history of the mandatory insurance law presented in the handout.

251 DENIS WALKER, President and CEO of Oregon Mutual Insurance Company of McMinnville, OR, submits and paraphrases a prepared statement (EXHIBIT M) in support of HB 2211 and recommends amendments.

TAPE 62, SIDE A

MR. WALKER continues with his prepared statement.

073 JOHN POWELL, North Pacific Insurance Company and State Farm Insurance Companies, introduces Ken Horner, President, North Pacific Insurance company: We support HB 2211 for reasons pointed out. Chair Schoon raised the question of people being hurt by someone not having insurance due to the passage of HB 2211. If a pedestrian or a child on a bike should be struck by an excluded driver, those people would have access to their personal injury protection coverage in their own policy.

This bill is designed to get more people insured by reducing the premium to the majority of those seeking insurance. The Insurance Division is to be commended for their efforts. I think they have tried to write the bill in a tight way so that it is controllable and will not allow insurance companies to exclude people for little or no reason.

Our purpose today, in addition to urging support for HB 2211, is to ask for an amendment on page 3, lines 40 and 41. This section requires a signed statement or endorsement for purposes of achieving exclusion status. In line 40 we would recommend deleting "and each person excluded from coverage by name". The reason we ask for the amendment is that in some instances it is difficult if not impossible to get the signature of the party that is being excluded. The person may be estranged from the family or might be overseas, in another state or away at college. This would still require us to get the name of those insured but not the one being excluded. There is some concern about the amendment from agents and perhaps companies. By this exclusion, the company could continue to require their agents to get the signature of the person being excluded if they wanted or if an agency wanted to continue the policy of making sure they had the person's signature, they could do that.

154 CHAIR NAITO: My preference would be to keep it in but provide some way out such as an affidavit.

160 MR. POWELL: The primary objection would be what constitutes a good faith effort. It would become part of litigation and would probably have to go back and show efforts. I am afraid it would make it so cumbersome we couldn't use the amendments.

170 KEN HORNER, President, North Pacific Insurance Company: Knowing the troubles that underwriters have, if it is made too difficult for them to do something, rather than trying to write the risk, they may just say it is not worth the effort to get the signature. I think it would permit the companies to write more risks in the preferred market if they didn't have to jump through hoops on certain situations that do arise.

187 DAVE DAVIDSON, Senior Vice President, Liberty Northwest Insurance Corporation: Liberty Northwest is the largest private writer of workers' compensation insurance in Oregon. I would like to speak to the part that hasn't been addressed and in support of the proposed amendments to HB 2211 as it proposes to change ORS 737.310 (12). The changes are in

Section 1 of the bill and in Section 10 in the proposed amendments (EXHIBIT I). The amendments are somewhat housekeeping changes but will be beneficial to us as the insurer and to our policy holders in allowing for a reduction in administrative expenses and perhaps some difficulties as far as adequately notifying policy holders so they are better informed about the coverage provisions of their policies. I am in support of the proposed amendments and the changes in 737 .710 (12).

218 CHUCK HUGGINS, Independent Insurance Agents of Oregon, introduces Ed Davis. You have heard from the industry that they are behind this legislation and we are also. We concur with the remarks of a number of the company people and the agents who have preceded us. John Powell spoke of an amendment on page 3, lines 40 and 41, and thought some agents might not support that. We concur with John's remarks. We have concern where there could be situations where it would be difficult to obtain that signature and feel it is a valid amendment. We have a written amendment to cover the issue (EXHIBIT N).

241 ED DAVIS, Potts, Davis and Company: I would like to focus on a couple of key points. We are dealing with allowing two parties to a contract to reach a mutual agreement; that is what an insurance policy is. There is nothing we are going to do to force a company to provide coverage in a circumstance where it is unable to define the risk in an acceptable fashion. Are there going to be uninsured drivers because of exclusions? Yes. We cannot keep accidents from happening. People are driving without insurance and we can't force people to buy insurance.

I agree with the comments made earlier that without the ability to define the risk properly by excluding unacceptable drivers, the risk you are taking is entire families if not being totally uninsured, being insured for substantially less coverage at substantially higher prices.

We would like to suggest in the bill, with the agreement on deleting the requirement that the excluded person sign the bill, that you differentiate between the minimum standards of law and what would be sound and reasonable underwriting practices by the carriers. I would suggest that in every case where the signature is reasonably available, every responsible carrier and agency will ask for the signature of the excluded party along with the named insureds to be sure everything is clearly understood. If you require that signature to be obtained, there will be situations where it is unavailable and those people will be forced into the nonstandard market because the carrier will not accept the coverage without all the required signature. We are asking for the flexibility to deal with those individual cases where they come up.

Our last suggestion is on page 4. We suggest that (7) be deleted in its entirety. We believe the acceptance of an exclusion or a limitation of coverage by contract law has to be acknowledged by both parties to the contract. We see no reason why the carriers should not have to have a signed exclusion with acceptance acknowledged by the named insureds who are the other parties to the contract.

Subject to the correction of (5) on page 3, we would suggest subparagraph (7) on page 4 be deleted entirely. We have discussed this with the Insurance Division and they have no objection to those changes.

381 REP. BARNES: Should we include in the bill a definition of "family?"

384 MR. DAVIS: I don't think that is necessary because there are certain provisions in the insurance policy forms that have been filed and approved by the Insurance Division. The language used in those policies has fairly stood the test of time in court decisions and it is probably best to leave the definition of what we wish to insure between

the parties involved.

CHAIR NAITO requests that the Insurance Division work with Legislative Counsel to prepare the amendments and that other groups get together to determine support for the amendments.

412 CHAIR NAITO closes the public hearing on HB 2211 and declares the meeting adjourned at 4:15 p.m.

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly Assistant

Administrator

EXHIBIT SUMMARY

A -HB 2308, letter from Oregon Retail Council, staff B -HB 2937, HB 2937-2 amendments, staff C -HB 2214, HB 2214-1 amendments, Lewis Littlehales D -HB 2214, prepared statement, Robin Richardson E -HB 2215, Preliminary Staff Measure Summary, staff F -HB 2215, HB 2215-1 amendments, Lewis Littlehales G -HB 2211, Preliminary Staff Measure Summary, staff H -HB 2211, prepared statement, William Brooks I -HB 2211, proposed amendments, William Brooks J -HB 2211, prepared statement, Julie Hansen K -HB 2211, prepared statement, Rich Rogers L -HB 2211, history of mandatory insurance law, Tom Bessonette M -HB 2211, prepared statement, Denis Walker N -HB 2211, proposed amendments, Chuck Huggins