

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

April 9, 1991  
P.M.

Hearing Room F 1:30  
Tapes 63 - 64

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 2306 WS HB 2041 WS HB 2206 WS HB  
2214 WS HB 2215 WS HB 2176 WS HB 2334 WS HB 2132 WS HB 2133 WS

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TAPE 63, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:39 p.m. and opens the work session on HB 204 1.

HB 2041 - AUTHORIZES STATE DEPARTMENT OF AGRICULTURE TO SPECIFY LOCATION OF SIGNS NEAR DISPENSING DEVICES OF GASOLINE BLENDED WITH ETHANOL, METHANOL OR CO-SOLVENT.

010 REP. BARNES: Subcommittee No. 1 held a public hearing and work session on April 4 on HB 204 1. The bill authorizes the State Department of Agriculture to modify the location of signs near pumps dispensing gas with other chemicals. Subsection (2) of Section 1 permits the department to designate posting of signs on or near the dispensing devices rather than on specific sides. It is a housekeeping measure and the subcommittee recommends that the full committee recommend a do pass recommendation.

022 MOTION: REP. BARNES moves that HB 2041 be sent to the Floor with a DO PASS recommendation.

025 VOTE: In a roll call vote, the motion passes with REPS. BARNES, NAITO, WALDEN and CHAIR SCHOON voting AYE and BY UNANIMOUS CONSENT REPS. STEIN AND RIJKEN vote AYE upon returning to the meeting. REP. OAKLEY is EXCUSED.

027 CHAIR SCHOON declares the motion PASSED.

034 CHAIR SCHOON: We will refer HB 2436 back to Subcommittee No. 3 for

further hearing.

037 CHAIR SCHOON opens the work session on HB 2206.

(Tape 63, Side A) HB 2206 - REQUIRES PERSONS APPLYING FOR REGISTRATION AS COLLECTION AGENCY BUSINESS TO FURNISH \$10,000 SURETY BOND.

041 TERRY CONNOLLY, Administrator, reviews the Preliminary Staff Measure Summary (SEE EXHIBIT E OF SUBCOMMITTEE NO. 2 MINUTES DATED MARCH 21, 1991) and the amendments presented by the Oregon Bankers Association which were adopted by the subcommittee (EXHIBIT A).

051 REP. WALDEN: I understand there may be legislation that deals with this overall issue and perhaps these amendments are piecemeal.

057 CHAIR SCHOON: That is true, but we don't know if it will pass. The irrevocable letter of credit is just as good as a bond and bonding companies, more often than not, require an irrevocable letter of credit anyway. It is to the advantage of the individual to be able to pledge the letter of credit in the first place.

074 MOTION: CHAIR SCHOON moves that the HB 2206-1 amendments BE ADOPTED.

VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REPS. OAKLEY and STEIN are EXCUSED.

MOTION: CHAIR SCHOON moves that HB 2206, as amended, be sent to the Floor with a DO PASS recommendation.

087 VOTE: In a roll call vote, REPS. BARNES, NAITO, WALDEN, RIJKEN and CHAIR SCHOON vote AYE and BY UNANIMOUS CONSENT REP. STEIN votes AYE upon returning to the meeting. REP. OAKLEY is EXCUSED.

089 CHAIR SCHOON declares the motion PASSED.

093 CHAIR SCHOON opens the work session on HB 2306.

(Tape 63, Side A) HB 2306 - PROVIDES THAT VIOLATION OF MOTOR VEHICLE DEALERSHIP LAWS IS IRREPARABLE INJURY FOR PURPOSES OF DETERMINING WHETHER TEMPORARY RESTRAINING ORDER SHOULD BE RAISED. Witness: Ray Gribbling, Oregon Auto Dealers Association

094 REP. BARNES: HB 2306 was heard in Subcommittee No. 1. A number of amendments were put forth by the dealers association and reflect a minor change by the vehicle manufacturers association (EXHIBIT B). The amendments add to the bill creating more stipulations that manufacturers, distributors and importers shall do when dealing with dealers in the state. A lot of concern of the subcommittee was it is not exactly an arms-length transaction when dealers sign contracts prepared by the manufacturers. This levels the playing field for both parties.

131 MR. CONNOLLY: The HB 2306-2 amendments contain the original amendments from the Oregon Automobile Dealers and one amendment from the Motor Vehicle Manufacturers Association.

247 RAY GRIBLING, Oregon Auto Dealers Association introduces Rich Keister, Executive Director. Section 3 of the HB 2306-2 amendments specifies what the manufacturer shall do by providing in writing to each dealer in the state the dealer's obligation for pre-delivery, preparation and warranty service, the schedule of compensation to be paid to the dealers for warranty work and the time allowances for performances of pre-delivery, preparation and warranty services. We

suggest the schedule of compensation shall include "reasonable compensation for diagnostic work, repair service and labor." That is not changed from the original amendment we proposed to the bill.

When Mr. Austin, representing the manufacturers was here, he proposed three amendments and I won the first two and he took the last one.

Subsection (3) of the amendments requires the manufacturer to notify the dealers of the date when the necessary parts for warranty work will be on hand so the dealer can perform the work and requires adequate compensation to the dealer for repair service performed under a recall of the vehicle.

286 MR. CONNOLLY: The manufacturers' language on false or fraudulent claims begins on line 16 of the HB 2306-2 amendments.

293 MOTION: REP. BARNES moves that the HB 2306-2 amendments BE ADOPTED.

VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REP. OAKLEY is EXCUSED.

299 REP. NAITO: I have talked with the dealers and manufacturers about another amendment in Section 2 of the original bill. We have come to a consensus. My concern was that we are mandating on the courts what constitutes irreparable injury for purposes of a temporary restraining order or preliminary injunction. My proposal with, concurrence of the dealers and manufacturers, is that we amend line 6, to delete the second "ORS 650.120 to 650.170" and insert "ORS 650.140 or 650.150" and in line 7 delete "shall" and insert "may."

323 MOTION: REP. NAITO moves that HB 2306 be further amended: in line 6 of the printed bill, delete the second "ORS 650.120 to 650.170" and insert "ORS 650 .140 or 650 .150" and in line 7, delete "shall" and insert "may".

338 REP. NAITO: It is my understanding that ORS 650.140 and 650.150 are the citations where a manufacturer wants to create a new dealership in the market area or where they want to terminate a dealership. They are fairly substantial and severe kinds of actions that a manufacturer might be taking. We want to make it clear the court has the authority in those circumstances to grant an injunction. Some courts have been unwilling to do so and considered monetary damages to be enough. But the decisions the manufacturer might make could have the effect of wiping out a dealership and money damages may not be appropriate. We want to make sure the court has the authority, but not mandate it for any violation, however slight.

374 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REP. OAKLEY is EXCUSED.

392 MOTION: REP. BARNES moves that HB 2306, as amended, be sent to the Floor with a DO PASS recommendation.

399 CHAIR SCHOON: We don't have the written amendments. Terry will provide the amendments for my review before reporting the bill to the Floor.

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

412 CHAIR SCHOON declares the motion PASSED.

426 CHAIR SCHOON: Rep. Walden will carry HB 2306 and Rep. Barnes will carry HB 2041.

438 REP. STEIN REQUEST UNANIMOUS CONSENT OF THE COMMITTEE TO SUSPEND THE RULES TO ALLOW HER TO VOTE ON THE BILLS WHICH SHE WAS NOT PRESENT FOR EARLIER.

450 WITHOUT OBJECTION, CHAIR SCHOON declares the rules suspended for purposes of allowing Rep. Stein to vote on HB 2041 and HB 2206. REP. STEIN votes AYE on HB 2041 and HB 2206.

453 REP. RIJKEN REQUEST UNANIMOUS CONSENT OF THE COMMITTEE TO SUSPEND THE RULES TO ALLOW HER TO VOTE ON HB 2041.

WITHOUT OBJECTION, CHAIR SCHOON declares the rules suspended for the purpose of allowing Rep. Rijken to vote on HB 2041. REP. RIJKEN votes AYE on HB 2041.

CHAIR SCHOON: REP. NAITO will lead discussion on HB 2206.

TAPE 64, SIDE A

019 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. Witness: Jim Swenson, Administrator, Insurance Division

023 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT B OF COMMITTEE MINUTES DATED FEBRUARY 19, 1991).

057 JIM SWENSON, Administrator, Insurance Division, Department of Insurance and Finance: The third party administrator (TPA) bill is based on the National Association of Insurance Commissioners (NAIC) model which was developed by a regulator who is a former manager of a major third party administrator. It provides the opportunity for TPAs to be subject to a licensure requirement and that there be a written contract between the insurance company and the TPA. The bill specifies what is to be in the contract. The provisions that are required are quite reasonable and prudent for a contractual relationship. It also establishes certain standards of conduct for the TPA and gives the director the authority to examine the TPA operations. We believe this is an important bill from the perspective of helping to assure the solvency of an insurance company.

070 MR. CONNOLLY: The HB 2214-3 amendments (EXHIBIT C) include the new language added to the HB 2214-2 amendments: ", mediation or other means of dispute resolution.

087 REP. STEIN: The insurance business is becoming more competitive and there are various new forms of insurance arrangements being used. Solvency is becoming more of a concern due to the competition. It is a pro-active measure. It seems states are going to be required to have a higher level of oversight to make sure we don't experience insolvency in the industry. It is likely this type of legislation would be required at some point. It defines the proper relationship between the TPA and the corporation. The subcommittee spent most of the time understanding the exemptions and where the border line is for the exemptions. I think it became pretty clear that these are proper exemptions. They are either groups that have such a close relationship to the person they have contracted with that they don't need this kind of oversight or they aren't third party administrators and didn't perform those kinds of functions. The point was to try to delineate between protection of the general public and a contractual relationship

that protects the parties.

It requires the licensure, written contracts between the insurer and third party administrator, indicates what kind of issues have to be included in the contracts, insurers are required to be examined and the TPAs have to purchase errors and omission insurance unless it is unreasonably high priced and is not readily available.

126 MOTION: REP. STEIN moves that the HB 2214-3 amendments BE ADOPTED.

136 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REP. OAKLEY is excused.

139 MOTION: REP. STEIN moves that HB 2214, as amended, be sent to the Floor with a DO PASS recommendation.

142 CHAIR SCHOON: There is a revenue impact of less than \$20,000 and I think we can do this without referring it to the Revenue Committee.

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

150 CHAIR SCHOON: Rep. Stein will lead discussion on the Floor.

153 CHAIR SCHOON opens the work session on HB 2215.

(Tape 64, Side A) HB 2215 - DEFINES AND REGULATES MANAGING GENERAL AGENTS. Witness: Jim Swenson, Director, Insurance Division

156 JIM SWENSON, Director, Insurance Division, Department of Insurance and Finance: This bill is similar to HB 2214 in the nature of the requirement. It requires licensure and that there be a written contract between the insurer and the managing general agent (MGA). It specifies the items to be covered in the contract and standards under which they are to operate. It requires the insurers to examine the operations of the MGAs. The director is given the authority to review the operations of the MGAs and the bill requires the MGAs to purchase errors and omissions insurance coverage in an amount to be determined by rule, subject to availability at some reasonable cost.

A MGA is an insurance agent and is primarily from the property and casualty lines of insurance. An MGA, as defined by HB 2215, is an insurance agent who either manages the insurance business or binds ceding reinsurance contracts on behalf of the insurer and produces or underwrites premiums in any quarter which exceed five percent of policyholder surplus. It needs to be someone who has a significant role with the insurance company and either pays or adjusts claims or negotiates reinsurance on behalf of an insurer.

There would be very few managing general agents. However, the ones that would be governed by this law are ones that are in a very significant position to place the insurance company at some significant risk.

This was developed by NAIC and had extensive input from all parties, including managing general agents. It is one of the requirements that the State of Oregon must have on its books for us to be certified as doing an adequate job by the NAIC for solvency surveillance.

The bill is important in giving us the proper tools to regulate the business.

203 CHAIR SCHOON: The committee has a hand-engrossed bill including the HB 221 5 -3 amendments (EXHIBIT D).

215 MOTION: REP. STEIN moves that the HB 2215-3 amendments BE ADOPTED.

216 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. REP. OAKLEY is EXCUSED.

219 MOTION: REP. STEIN moves that HB 2215, as amended, be sent to the Floor with a DO PASS recommendation.

223 CHAIR SCHOON: HB 2215 has a minimal fiscal impact and would not need a subsequent referral.

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

230 CHAIR SCHOON declares the motion PASSED.

CHAIR SCHOON: Rep. Oakley will lead discussion on the Floor.

244 CHAIR SCHOON opens the work session on HB 2176.

(Tape 64, Side A) HB 2176 - REQUIRES BOARD OF NURSING TO ESTABLISH RENEWAL PROCEDURE FOR CERTIFICATES OF NURSING ASSISTANTS.

239 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT A OF SUBCOMMITTEE NO. 3 COMMITTEE MINUTES DATED APRIL 1, 1991).

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

266 MOTION: REP. RIJKEN moves that HB 2176 be sent to the Floor with a DO PASS recommendation.

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

293 CHAIR SCHOON: Rep. Rijken will lead discussion on the Floor.

297 CHAIR SCHOON opens the work session on HB 2334.

(Tape 64, Side A) HB 2334 - CONFORMS DUE DATE FOR SUNSET REVIEW OF CERTAIN AGENCIES TO PROCEDURES THAT DO NOT NECESSARILY REQUIRE A FIXED REPEAL DATE FOR AGENCY.

308 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (EXHIBIT F). Since the hearing I have been able to obtain some additional background information on the history of the interim committee action on the subject (EXHIBIT G).

332 REP. RIJKEN: The reference in line 12 to ORS 182.635, the statute which refers to the eight year period, is the statutory sunset for all agencies. This gives all agencies the same time frame.

370 MOTION: REP. RIJKEN moves that HB 2334 be sent to the Floor with a DO PASS recommendation.

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

378 CHAIR SCHOON declares the motion PASSED.

390 CHAIR SCHOON: Rep. Naito will lead discussion on the Floor.

402 CHAIR SCHOON opens the work session on HB 2132.

(Tape 64, Side A) HB 2132 - AUTHORIZES BOARD OF RADIOLOGIC TECHNOLOGY TO IMPOSE CIVIL PENALTY NOT TO EXCEED \$1,000 FOR VIOLATIONS OF STATUTES AND

RULES RELATING TO LICENSING OF RADIOLOGIC TECHNOLOGISTS. Witness: Jayne Bailey, Executive Officer, Board of Radiologic Technology

403 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT G OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 18, 1991).

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

425 CHAIR SCHOON: The proposed amendments (SEE EXHIBIT H OF SUBCOMMITTEE NO. 3 MINUTES DATED MARCH 18, 1991) appear to make the law applicable to anybody who violates the provisions of the statutes whether or not they are licensed.

435 REP. RIJKEN: The board brought information to the subcommittee that they had received complaints of violations dealing mostly with practicing without a license or permit, failure to renew license or permit or exceeding the scope of practice. Other comments were made in regards to the Board of Medical Examiners and some technologists working for a doctor being asked to do something beyond their scope of practice. The board said they are satisfied with how the Board of Medical Examiners is dealing with those situations.

456 REP. NAITO: There was also some discussion that the \$1,000 fee may not be enough, but the subcommittee decided to make that the recommended fee and hope that it will be a severe enough penalty and revisit this if it is not.

TAPE 63, SIDE A

465 MOTION: REP. RIJKEN moves that the HB 2132-1 amendments BE ADOPTED.

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

TAPE 63, SIDE B

033 MOTION: REP. RIJKEN moves that HB 2132, as amended, be sent to the Floor with a DO PASS recommendation and that it be referred to Ways and Means.

046 REP. WALDEN: How is the money from the penalties used? Some statutes specify the board keeps an x percent and the moneys are deposited in an account with the State Treasurer.

058 CHAIR SCHOON: We should consider that and look at other statutes to see how it is done. From looking at the Fiscal Analysis it appears that the money would go to the agency, but I think the language in the statute has to say that. We may want it to go to the General Fund.

073 REP. RIJKEN withdraws her motion.

078 JAYNE BAILEY, Executive Officer, Board of Radiology Technology: A section of our statute says that within the Health Division there will be a fund for the Board of Radiologic Technology. That is where any moneys received from civil penalties would go. Our existing statute is ORS 688.405 to 688.605 and expressly states "revenues" generated; it doesn't address civil penalties specifically.

090 CHAIR SCHOON: There may be a difference between a civil penalty and revenues generated by the division. Please bring us information on other agencies within the Health Division where something similar

occurs.

103 REP. NAITO: There would be some costs in the hearings process. Would those costs be incurred by the board?

107 MS. BAILEY: In looking at the Legislative Fiscal Impact statement, we are probably not going to make a lot of money off the civil penalties, but the board would pay any fees associated with imposing the penalties.

114 CHAIR SCHOON: We will get the information and reschedule the bill for Thursday.

116 CHAIR SCHOON closes the work session on HB 2132 and opens the work session on HB 213 3.

Tape 63, Side B) HB 2133 - INCREASES FEE FOR LICENSES OR PERMITS TO PRACTICE RADIOLOGIC TECHNOLOGY. Witness: Keith Mobley, Oregon State University Jayne Bailey, Executive Officer, Board of Radiologic Technology

131 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (SEE EXHIBIT D OF SUBCOMMITTEE NO. 3 COMMITTEE MINUTES DATED MARCH 18, 1991).

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

151 REP. NAITO: It is my understanding the application fee was doubled but the fee is for a two- year license. There is no real fee increase.

168 KEITH MOBLEY, Oregon State University: One of our faculty members engaged in research in osteoporosis and part of the equipment she is working is called a densitometer which uses xray technology to test bone density. She informs me there is not an adequate provision in the statutes for a permit for the use of that equipment. Her problem could be solved by addition of language to give authority to the board to adopt rules to govern such permits. Having spoke to Ms. Bailey, I believe she is in agreement such an amendment would be appropriate.

188 JAYNE BAILEY, Executive Officer, Board of Radiologic Technology: Mr. Mobley is correct. The bone densitometers in the past were generated by radio isotopes. We do not license individuals who deal with radio isotopes; we license those dealing with ionizing radiation. Very recently these machines were changed. Our existing law says that any individual who uses ionizing radiation on an individual for diagnostic or therapeutic purposes will be licensed or hold a permit. Although this machine uses ionizing radiation, it is a much smaller degree than the standard xray machine used in a medical setting. I presented to the board last Friday the recommendation of our Assistant Attorney General which Mr. Mobley presented to you. It would allow the board, by administrative rule, to address this situation. The board is supportive.

220 Issues discussed: >Projection difference of \$3.85 average per license. >Amendment to raise fee to \$70 is a housekeeping amendment due to amendment in 1989 allowing the board to go to a biennial renewal. >Bill allows prorating of fees. >Staff work load reduction due to biennial licensure. >476 new licensees are expected in coming biennium; 1,900 radiologic technologists and 800 limited permit holder are presently licensed. There are approximately 200 temporary permits.

>Board currently employs one and one-half staff persons and contracts with an investigator for 10 hours per week. The half-time person will go to 90 percent in July.



319 MR. MOBLEY: The Assistant Attorney General has suggested an amendment on page 1, line 16, before the colon, insert "one of the categories listed below or as established by rules of the board."

347 MS. BAILEY: The board will probably require a certain number of hours of radiation use and safety and that they also attend the three-day courses offered by the manufacturers of those machines.

355 MOTION: CHAIR SCHOON moves that HB 2133 be amended: on page 1, in line 16, before the colon, insert "one of the categories listed below or as established by rules of the board."

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

370 CHAIR SCHOON: We will have Legislative Counsel prepare the amendments and reschedule the bill for Thursday.

379 CHAIR SCHOON: HB 2436 is being re-referred to the subcommittee for further discussion.

384 CHAIR SCHOON declares the meeting adjourned at 3:01 p.m.

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly Assistant

Administrator

#### EXHIBIT SUMMARY

A -HB 2206, HB 2206-1 amendments, Frank Brawner B -HB 2306, HB 2306-2 amendments, Ray Gribbling and Jim Austin C -HB 2214, HB 2214-3 amendments, Jim Swenson and Lewis Littlehales D -HB 2215, HB 2215-3 amendments, Jim Swenson and Lewis Littlehales E -HB 2176, Legislative Fiscal Analysis, staff F -HB 2334, Preliminary Staff Measure Summary, staff G -HB 2334, background on sunset review process, staff H -HB 2132, Legislative Fiscal Analysis, staff I -HB 2133, Legislative Fiscal Analysis, staff