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

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS SUBCOMMITTEE NO. 3

May 3, 1991  
M.

Hearing Room 137 9:00 A.  
Tape 16 - 17

MEMBERS PRESENT: Rep. Hedy L. Rijken, Chair Rep. Lisa Naito Rep. John  
Schoon Rep. Beverly Stein

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

MEASURES CONSIDERED: HB 2551 PH HB 2591 PH HB 3117 PH HB  
3406 PH

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proceedings, please refer to the tapes.

TAPE 16, SIDE A

004 CHAIR RIJKEN calls the meeting to order at 8:39 a.m. and opens the  
public hearing on HB 255 1.

HB 2551 - EXEMPTS CERTAIN PERSONS FROM MOTORCYCLE HELMET REQUIREMENTS IF  
THEY ARE RIDING MOTORCYCLE THAT IS AT LEAST 25 YEARS OLD. (THIS BILL IS

BORROWED FROM THE HOUSE HUMAN RESOURCES COMMITTEE.) Witnesses: Rep. John  
Schoon Dr. Fred Schuster, citizen Stan Porter, Oregon Traffic Safety  
Commission Casey Humphrey, Oregon Traffic Safety Commission Steve  
Benson, BikePac of Oregon Art Keil, Oregon Health Division

009 TERRY CONNOLLY, Administrator, reviews the Preliminary Staff Measure  
Summary (EXHIBIT A).

REP. SCHOON introduces Dr. Fred Schuster, a constituent. He has done  
extensive work on this, had contact with Legislative Counsel and  
obtained information from other states. He is here to present his bill  
which deals with whether or not a helmet should be required for persons  
who are riding motorcycles when the motorcycles are over 25 years old.

029 DR. SCHUSTER, citizen and author of HB 2551: Although a member of  
two antique motorcycle groups, I am not here on their behalf and  
represent only myself. He submits a prepared statement, hand-engrossed  
bill containing proposed amendments, information on motorcycles 25 years  
or older, letter from Motor Vehicles on motorcycle statistics and  
information on safety classes (EXHIBIT B). He reads the statement  
explaining HB 2551, explains the amendments in the hand-engrossed bill  
and reviews the information on motorcycles.

179 REP. STEIN: Is the reason you want the exemption because you don't  
like wearing helmets or because people didn't wear helmets 25 years ago?

185 DR. SCHUSTER: It is for both reasons. I have a summary of reasons why I am against the mandatory helmet law (EXHIBIT B, page 2).

187 DR. SCHUSTER: The safety course addresses riding safely, how to avoid accidents, motorcycle maintenance, attitude, interaction and effects of drugs, and riding skills.

254 STAN PORTER, Motorcycle Safety Coordinator, Oregon Traffic Safety Commission: In the state of Washington they exempt riders of motorcycles that are 25 years or older from wearing a helmet if the motorcycle is one-fourth or one-half break horsepower. That minimizes the number of motorcycles that are exempt. A 1966 Harley-Davidson with an 80 cubic inch engine is not exempt from the helmet bill.

MR. PORTER submits and summarizes a prepared statement in opposition to HB 255 1 (EXHIBIT C).

A letter from the Oregon Traffic Safety Commission dated April 25, 1991 to Rep. Schoon is hereby made a part of these minutes (EXHIBIT D).

355 CASEY HUMPHREY, Assistant Administrator, Oregon Traffic Safety Commission: We are pleased to have a successful Team Oregon Motorcycle safety course. We believe riders are learning to ride more safely. There are dangerous places in Oregon where the best rider cannot avoid accidents. The riders of the 25 year old bike have no extra protection. In a parade or fair they don't have to ride helmets. The course makes sense for any rider. After five years some skills start to go, especially for the rider that rides very little. We question whether the rider that takes the 25 year old motorcycle out really has the peak skills to avoid even simple accident situations. We are not convinced that this small group of riders is protected by having had a course sometime in the last five or 10 years.

398 STEVE BENSON, BikePac of Oregon, submits and reads a prepared statement in support of HB 2551 and proposing amendments to exclude the mandatory rider education requirement (EXHIBIT E).

437 ART KEIL, Oregon Health Division, submits and paraphrases a prepared statement in opposition to HB 2551 (EXHIBIT F).

460 CHAIR RIJKEN closes the public hearing on HB 2551.

TAPE 17, SIDE A

025 CHAIR RIJKEN opens the public hearing on HB 3117.

(See also page 4) HB 3117 - REQUIRES AUTOMOBILE MANUFACTURER WHO REPURCHASES AUTOMOBILE TO DISCLOSE REPURCHASE TO DEALER TO WHOM AUTOMOBILE IS DELIVERED FOR SALE. Witnesses: Rep. Kevin Mannix

025 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (EXHIBIT G).

031 REP. KEVIN MANNIX: All we are doing is saying Oregon can adopt some other state's lemon law in terms of an ultimate protection for an Oregon Consumer. We have the HB 3117-1 amendments (EXHIBIT H) to add a missing link in the bill requiring the dealer to tell the consumer. The bill says if someone has returned a motor vehicle to a manufacturer, if it has been repurchased in another state under that state's lemon law, if the reason for the repurchase was failure or inability to conform the automobile to express warranties under the provisions of Oregon statutes or similar laws of other jurisdictions, the manufacturer shall inform the dealer of that fact. I have a letter from the Washington Lemon Law Administration (EXHIBIT I) which talks about their program. We are not trying to establish, because of fiscal restraints in Oregon, a new lemon law for Oregon. But at the very least we can protect Oregon consumers from some unscrupulous dealers. Manufacturers have no objection to

this bill because they already tell the dealer they bought the vehicle back under the lemon law and provide the paper work. The dealers know about it. Most dealers will let the consumer know. There is no obligation in Oregon that the dealer tell the consumer.

Recognizing fiscal restraints, there is no enforcement mechanism in the bill other than a private cause of action. It is assumed if a dealer were to violate this law as amended, the consumer could bring legal action to rescind the purchase on the basis that the dealer failed to fulfill his legal obligation to tell the consumer about where the vehicle came from.

082 CHAIR RIJKEN temporarily closes the public hearing on HB 3117 and opens an informational hearing on HB 2591.

(Tape 17, Side A) HB 2591 - ESTABLISHES TREATING MEDICARE PATIENTS AT MEDICARE RATES AS REQUIREMENT FOR GRANTING OR RENEWING LICENSE TO PRACTICE MEDICINE. Witnesses: Maxine Bush, Oregon State Legislative Committee of American Association of Retired Persons Alice Pickard, member, AARP, State Legislative Committee

089 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (EXHIBIT J).

095 MAXINE BUSH, Oregon State Legislative Committee of American Association of Retired Persons, introduces Alice Pickard, submits and reads a prepared statement (EXHIBIT K) in support of HB 2591.

165 ALICE PICKARD, member AARP, State Legislative Committee: >Only 22 percent of Oregon physicians participate in the assignment program. >Seniors are charged more than a reasonable rate in approximately six out of 10 cases and Oregon ranks 44th nationally. >The Health Care Financing Administration estimates that nationally the average senior paid \$120 beyond the reasonable charge in 1986. >In 1987 the Legislature passed SB 549 which required physicians to put a sign declaring whether they were enrolled in the Medicare finance program. Some doctors who accept Medicare assignments do not have sign posted. >Many seniors cannot afford the balance billing.

217 CHAIR RIJKEN closes the informational hearing on HB 2591 and reopens the public hearing on HB 3117.

(Tape 17, Side A) (See also page 3) HB 3117 - REQUIRES AUTOMOBILE MANUFACTURER WHO REPURCHASES AUTOMOBILE TO DISCLOSE REPURCHASE TO DEALER TO WHOM AUTOMOBILE IS DELIVERED FOR SALE. Witnesses: Jon Stubenvoll, OSPIRG Timothy Wood, Department of Justice John Mulligan, citizen Rep. Kevin Mannix

237 JON STUBENVOLL, Consumer Advocate, OSPIRG, submits and summarizes a prepared statement in support of HB 3117 (EXHIBIT L).

270 REP. NAITO: What happens if a lemon vehicle is sold privately to another private party?

MR. STUBENVOLL: We have not found a way to treat the private party and dealer sales equally. We have no problem with including private party sales.

317 TIMOTHY WOOD, Assistant Attorney General, Department of Justice: I am here to share Oregon's experience with the law. Rep. Naito's suggestion is a good one. When we did an informal survey we found that in many cases licensed dealers were making disclosures. I think we want to make it clear that the legislative intent is that it is not limited to licensed dealers. Another consideration is whether you want titles to be branded? It is a possibility to consider.

>We are receiving more information from Washington of these cars being sold in Oregon. Last year we received probably one notice a week from

Washington that a car that had been purchased back as part of their lemon law program was being sold in our state. We get a form that identifies the vehicle and identifies the defect on the vehicle. >Manufacturers recognize this is a problem and are finding that disclosure is being made at the auction. The manufacturers are trying to make sure that everyone knows there was a problem with the vehicle. >When the cars are being bought back, they are being discounted at auctions. >On Feb. 20, 1990 we sent letter to the Oregon Automobile Dealers Association and the Oregon Independent Automobile Dealers Association. The position the department has taken is that if the dealer knows the car is a buy-back as a part of any lemon law, the dealer must disclose it and a failure to do that is a violation of Oregon's Unlawful Trade Practice statute. >There is no mechanism for enforcement in the legislation. While Rep. Mannix felt there was a private cause of action, this is something the committee should take a closer look at and make a determination as to whether you want to spell out what the remedies are in the event an individual violates the statutory scheme. I am not here to ask that this be included as part of the Unlawful Trade Practices Act because it would have a fiscal impact, but if the committee would want to make it clear there is a private cause of action, you want to take a closer look at the legislation.

TAPE 16, SIDE B

Issues discussed: >Provisions for private cause of action with provision of attorney fees and amount of damages.

>Fiscal impact. >Enforcement. >There is remedy under Unlawful Trade Practices Act, but this makes it easier to pursue.

149 JOHN MULLIGAN, citizen advocate for HB 3117: I purchased one of the 60 Washington lemon vehicles dumped in Oregon last year. I purchased a Jeep from a dealership for family protection. We drove off the lot and about 20 yards into the intersection the vehicle stalled. In the proceeding months I experienced one problem after another in trying to maintain and service the vehicle. In the process of purchasing the vehicle it was never disclosed that this vehicle had been repurchased from Chrysler. I am advocating that there be full consumer disclosure of these type of vehicles not only to protect the rights of the buyer but also to protect the long established reputation of dealers who either by error or omission sold a vehicle that later turned out to be a lemon.

192 CHAIR RIJKEN closes the public hearing and opens the work session on HB 311 7.

208 REP. STEIN: I would like to accept the -1 amendments and conceptually add the provision for the attorney fees. Should it be attorney fees for the prevailing party or just attorney fees?

214 MR. WOOD: You have to look at two things. As a policy point of view, do you want to put the consumer at risk for attorney fees if the consumer loses? In a case where you feel comfortable as a policy matter allowing attorney fees to go only to the plaintiff if the plaintiff prevails, then you should do so. I am also aware there are some constitutional questions as to whether there is an equal protection argument if you give attorney fees to one, whether you must offer it to the other. There are some cases where it is allowed for one side and other cases have said it is unconstitutional.

I think you can take your pick and decide as a policy matter as to what is appropriate in this case. Other committees have just made it clear that it is discretionary with the judge under the facts of the circumstance.

251 REP. NAITO: We might want to adopt another provision for private cause of action where the person has been notified by the dealer or manufacturer when they are the owner of the car. I don't see any reason not to include them even if it is difficult to enforce.

260 REP. STEIN: I think it would be good to ask staff to get the amendments drafted by Legislative Counsel, rather than adopting them in concept. I would like Legislative Counsel to give us a recommendation on attorney fees.

276 CHAIR RIJKEN requests that staff work with Legislative Counsel in drafting amendments.

280 CHAIR RIJKEN closes the work session on HB 3117 and opens the public hearing on HB 340 6.

(Tape 16, Side B) HB 3406 - REGULATES RELATIONSHIP BETWEEN SUPPLIER AND RETAILER OF FARM IMPLEMENTS. Witnesses: John McCulley, Pacific Northwest Association Bill Dolan, John Deere dealer Roger, Seifer, Cascade Farm Machinery Co.

272 MR. CONNOLLY reviews the Preliminary Staff Measure Summary on HB 3406 (EXHIBIT M).

284 JOHN McCULLEY, Pacific Northwest Association, submits a prepared statement (EXHIBIT N), the HB 3406-4 amendments and hand-engrossed bill (EXHIBIT O) and copies of a letter from Deere & Company (EXHIBIT P). He reviews each.

383 Issues discussed: Definition of "lawn and garden equipment." >Intent is to extend protections under these statutes to those retailers of lawn and garden equipment; "lawn and garden equipment" means power equipment. >Term "acts of God."

TAPE 17, SIDE B

REP. NAITO: What is the purpose of this bill?

020 BILL DOLAN, manager and part owner of a John Deere dealership in St. Paul and McMinnville, Oregon: We enjoy an excellent relationship with the John Deere Company. Our firm has been a John Deere dealer for 57 years. Deere representatives have told me that when I leave the business or retire, there will probably not be an extension of the franchise to any successor. That would impact approximately 40 people at our St. Paul location and the McMinnville operation is a break even situation. We employ approximately 20 people there. It is a smoking-gun situation for us that creates some uncertainty.

049 CHAIR STEIN: Is this legislation to prevent John Deere from taking the franchise away? Does this say you are entitled in perpetuity to the franchise?

051 MR. DOLAN: As long as we perform.

050 REP. NAITO: Are you saying you are similarly situated and disadvantaged as the vehicle dealers with their manufacturers?

060 MR. DOLAN: We would be at a disadvantage in dealing with the manufacturer.

060 ROGER SEIFER, Cascade Farm Machinery Co., Silverton: We sell Massey Ferguson, Kubota, McKessons and other product lines. examples. Our situation is a little different. There have been an extreme amount of buyouts and sellouts. When this happened, sometimes the smaller dealer didn't get a fair shake. We are familiar with the Heston Corporation. Ford-New Holland is working out a deal with Fiat-Agra, an Italian manufacture, who owns Heston Corporation, to form a London-based company to run the whole thing. The latest information we received from Heston was that the Justice Department won't let this happen unless Fiat sells Heston. Our Heston line is out in the open and it sounds like Doitz-Allis is the first player. They are poorly financed. We are starting a harvest season. They say everything will go on as always, but we don't know this. We have to bring in stock in advance.

104 MR. McCULLEY continues reviewing the bill at Section 4.

147 REP. STEIN: Is there any reason to not require a written agreement?

150 MR. DOLAN: We have an on-going written agreement with John Deere. It is not renewed yearly but if there are any changes they are pointed out to us. We do rely on oral agreements with some of our other suppliers.

173 CHAIR STEIN: Would it impede your work to say this statute is not available unless you have a written agreement?

176 MR. DOLAN: Our relationships have been ongoing with the same suppliers for years and years. It has just been a handshake. I would have no objection.

193 MR. SEIFER: I don't think it would be a problem. There are a lot of short lines that would have maybe a dozen different lines. I suppose there could be a written agreement made with the distributor and dealer. He would be the middle man with the manufacturer.

209 MR. DOLAN: Of the farm machinery business, approximately 90 percent of it is John Deere- related and 10 percent is everybody else.

229 MR. McCULLEY: There is a drafting error on page 5 of the hand-engrossed bill in line 21. It appears "any provisions" does not need to be there. That is not included in the -4 amendments.

241 CHAIR STEIN: We need to have you do some work on this and contact the Chair when you are ready to see if she wants to proceed.

245 CHAIR STEIN closes the public hearing and declares the meeting adjourned at 10:24 a.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

#### EXHIBIT SUMMARY

A -HB 2551, Preliminary Staff Measure Summary, staff B -HB 2551, prepared statement, hand-engrossed bill containing proposed amendments, information on motorcycles 25 years or older, letter from Motor Vehicles on motorcycle statistics and information on safety classes, Dr. Fred Schuster C -HB 2551, prepared statement, Stan Porter D -HB 2551, letter from Oregon Traffic Safety Commission to Rep. Schoon E -HB 2551, prepared statement, Steve Benson F -HB 2551, prepared statement, Art Keil G -HB 3117, Preliminary Staff Measure Summary, staff H -HB 3117, HB 3117-1 amendments, Rep. Kevin Mannix I -HB 3117, letter from Administrator, Washington Motor Vehicle Lemon Law, Rep. Mannix J -HB 2591, Preliminary Staff Measure Summary, staff K -HB 2591, prepared statement, Maxine Bush L -HB 3117, prepared statement, Jon Stubenvoll M -HB 3406, Preliminary Staff Measure Summary, staff N -HB 3406, prepared statement, John McCulley O -HB 3406, HB 3406-4 amendments and hand-engrossed bill P -HB 3406, letter from Deere & Company, John McCulley