

House Committee on Business and Consumer Affairs
Subcommittee No. 1
March 21, 1991 - Page

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
SUBCOMMITTEE NO. 1

March 21, 1991
1:00 P.M.

Hearing Room H170
Tapes 3 - 4

MEMBERS PRESENT: Rep. Jerry Barnes, Chair
Rep. Lisa Naito

Rep. John Schoon
Rep. Beverly Stein

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

MEASURES
CONSIDERED:

HB 2306 PH

HB 2308 PH

HB 2181 WS

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TAPE 3, SIDE A

010 CHAIR BARNES calls the meeting to order at 1:09 p.m. as a subcommittee of Subcommittee
2. Present are Rep. Naito and Chair Barnes. Rep. Schoon arrives constituting a quorum of the Subcommittee.

007 CHAIR BARNES opens the public hearing on HB 2306.

HB 2306 - PROVIDES THAT VIOLATION OF MOTOR VEHICLE DEALERSHIP LAW IS IRREPARABLE INJURY FOR PURPOSES OF DETERMINING WHETHER TEMPORARY RESTRAINING ORDER SHOULD BE ISSUED.

Witnesses: Ray Gribbling, Oregon Automobile Dealers Association
Craig Nichols, Legal Counsel, Oregon Automobile Dealers Association
Richard Keister, Executive V.P., Oregon Automobile Dealers Association

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

014 RAY GRIBBLING, Oregon Automobile Dealers Association, introduces Craig Nichols and

Harry Winans, submits a prepared statement and HB 2306-1 proposed amendments (EXHIBIT B) in support of HB 2306. He reads his prepared statement.

084 REP. NAITO: Do you see a need for this being statutorily required rather than being in the individual contracts?

090 CRAIG NICHOLS, Legal Counsel, Oregon Auto Dealers Association: I don't believe the manufacturers will take this action on their own and insert it in their franchise agreements. It is not a provision the dealers are going to be able to negotiate for. Normally the franchise agreement is set before the dealer and it is either a sign-or-don't-sign situation.

093 REP. NAITO: Do you know of other types of situations that have been deemed to be irreparable injury?

106 MR. NICHOLS: Wisconsin was one of the first states to enact a dealer franchise act. They included this provision in their act. We have found in checking the Oregon dealer franchise act that it is too short a period of time to gather the information necessary to stop the prohibited act by the manufacturer.

114 CHAIR BARNES: What do you mean by "irreparable harm?"

124 MR. NICHOLS: It is a judicial standard that is necessary for a temporary injunction. In order to meet that standard without this statute, we need a great deal of information. Most of that information has to come from the manufacturer or be generated by the dealership which is a costly process. If we had this in statute, the manufacturer could not be involved in the activity which is already deemed to be unlawful if the manufacturer has filed his petition seeking a hearing on good cause. It is a battle of information.

147 REP. SCHOON: Is this language a substitute for the provisions being repealed in ORS 650.160 in the proposed amendments.

161 MR. GRIBLING: This language replaces (1) and (2) of ORS 650.160.

CHAIR BARNES: Do other states have provisions similar to what you are proposing?

175 RICHARD KEISTER, Executive Vice President, Oregon Automobile Dealers Association:
States which have passed or are in the process of passing similar language are Texas, Illinois, New Jersey, Arizona, Missouri, Indiana, Montana, Utah, Alabama, Georgia and Rhode Island.
The current statutes permit the manufacturers to reimburse the dealer at the posted labor rates for warranty work. The manufacturers pay them dollars per hour but they don't allow enough time.

188 CHAIR BARNES: Is there an agency or fiduciary relationship between the dealers and manufacturers?

204 MR. NICHOLS: A number of relationships exist. The Legislature I think has tried to put them on an equal footing. The relationship is determined by the contract; that is what a franchise agreement is.

223 MR. KEISTER: Rep. Naito asked about the ability of the dealer to negotiate with the manufacturer. For instance, General Motors will write the franchise agreement with some or maybe no input from the dealers and every five years it is renewed. The dealers have to sign it; there is no opportunity for the small dealer to negotiate. It has been a thorn in their side for years. One of the things that has brought it to the state now is extended warranties that are wonderful for the consumers but are a detriment of the dealers having to do repair work. They certainly don't make the kinds of profits they are entitled to. The manufacturers have the opportunity to audit warranty claims.

284 REP. NAITO: Sometimes you have the ability to negotiate a contract and sometimes not. If someone wanted to negotiate, could they bring in their lawyer?

293 MR. KEISTER: I have been with the dealers association for 20 years and I have never know them to modify the standards.

297 REP. NAITO: As an association, do you have power to negotiate on behalf of the dealers?

300 MR. KEISTER: They have been somewhat successful with some lines and not so successful with others.

334 REP. SCHOON: How would the proposed amendment support your problem of not having enough time to respond or get the injunction?

347 MR. GRIBLING: We are addressing two problems with this bill: (1) we are making it so the dealer, by proving there is a violation of the dealer franchise act, can prove irreparable harm for purposes of getting a temporary injunction, (2) the amendments to the bill deal with manufacturers' reimbursement to the dealers for warranty work.

345 REP. SCHOON: It has reimbursement for parts, which is not covered in the current statutes, by the manufacturer at the price charged non-warranty customers. Is there no relationship between the dealers and manufacturers that would provide for some lesser amount?

379 MR. WINANS: The inequity that tends to appear is our lack of ability to negotiate. One facility with a retail rate that was quite marketable took three years to reach parity with the manufacturer. They restrict dramatically their sale and markup processes as compared to our current market conditions for warranty work.

407 CHAIR BARNES: The committee has a letter from the Motor Vehicle

Manufacturers Association (EXHIBIT C). He closes the public hearing on HB 2306 and suggests that rather than have a work session, the committee can take the time to consider the proposed amendments.

429 CHAIR BARNES opens the public hearing on HB 2308.

(Tape 3, Side A)
HB 2308 - EXEMPTS CERTAIN RETAIL SELLERS AND ASSIGNEES FROM PROVISIONS OF RETAIL INSTALLMENT CONTRACT LAW.
Witnesses: Tim Martinez, Oregon Bankers Association

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

437 TIM MARTINEZ, Oregon Bankers Association, submits and reads a prepared statement in support of HB 2308 and proposing amendments (EXHIBIT E).

TAPE 4, SIDE A

MR. MARTINEZ continues with his prepared statement.

040 REP. SCHOON: I don't understand why it is a problem.

047 MR. MARTINEZ: The problem with this language is there is no date. It says whatever is in effect. Congress or the Federal Reserve could change Reg Z and by definition we would be in compliance without the state taking any action.

052 CHAIR BARNES: What does this do for the consumers? Are they protected under the new provision as they have been?

054 MR. MARTINEZ: I believe so. Currently, Reg Z and ORS 83.810 provide the same information. They are not going to get any different information. We just don't have to give them duplicate information.

062 CHAIR BARNES: Does this have any effect on the Uniform Commercial Code?

071 DON FORDYCE, Government Relations Officer, U. S. Bank: It does not relate to the UCC.

080 CHAIR BARNES closes the public hearing on HB 2308 and opens the work session.

096 MOTION: REP. NAITO moves that the Subcommittee recommend to the full committee that the proposed amendments to HB 2308 be adopted and that the bill DO PASS with the amendments.

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

116 CHAIR BARNES declares the motion PASSED.

118 CHAIR BARNES opens the work session on HB 2181.

(Tape 4, Side B)
HB 2181 - EXEMPTS FROM CERTAIN DEPOSITORY REQUIREMENTS CERTAIN MORTGAGE LOANS FINANCED BY THE HOUSING AGENCY.
Witness: Steve Smith, Deputy State Treasurer

122 STEVE SMITH, Deputy State Treasurer: It is usually not our style to talk to a bill once it is in work session, but I would like to share some information with the committee regarding the bill and ask the committee to not pass this bill out of subcommittee.

It is a problem we are working on and we think we have a resolution without changing the collateralization laws. We began working on this with the Housing Agency several months ago. The Housing Agency had a change of leadership in the interim and we were working with the leadership that agreed HB 2181 ought to be withheld. I assumed the bill wouldn't be heard; it was heard. We are working on the problem and we think we have a resolution to it. It will take some time. We are trying to work through (1) when the money is public funds and when is it not, (2) how long does it have to be in a servicing bank before they become public funds, and (3) the out-of-state and in-state problem. We believe we can do that and make it a win-win and an even playing field for everybody. We would like for the committee to hold the bill so we can work on the problem during the interim and get agreement with all the parties.

I heard the testimony Mr. Brawner presented to the committee and will respond to questions.

144 REP. SCHOON: Would you respond to Mr. Brawner's comments that the funds are considered public funds when they are in a bank and are not considered public funds when they are elsewhere, the collateralization and the insurance aspects?

155 MR. SMITH: We are attempting to get the funds in a bank on a daily basis. Then we can sweep those accounts on a daily basis. If we can do that, that resolves the problem. The question becomes when are public funds public funds and when are they not.

168 REP. SCHOON: Would this apply to non-depository institutions as well?

168 MR. SMITH: That is correct. One of the things we would ask the Housing Agency to do as part of their due diligence when they hire a servicing agency is to make sure they have a corresponding banking relationship with a bank in Oregon. If they don't, they won't service them. The other part is we want to make sure there are no problems in other state agencies.

177 CHAIR BARNES: Do you feel it will be necessary to get another readout from the Attorney General's office?

178 MR. SMITH: I am not sure. We have one. There are some things we need to clarify and that goes back to when is something a public fund.

191 CHAIR BARNES closes the work session on HB 2181. We will let it remain in committee.

195 CHAIR BARNES announces the committee will not be holding a work session

on HB 2696 and
declares the meeting adjourned at 1:52 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly
AssistantAdministrator

EXHIBIT SUMMARY

- A -HB 2306, Preliminary Staff Measure Summary, staff
- B -HB 2306, prepared statement, Ray Gribbling
- C - HB 2306, letter, staff
- D -HB 2308, Preliminary Staff Measure Summary, staff
- E -HB 2308, prepared statement, Tim Martinez