

House Committee on Business and Consumer Affairs
Subcommittee No. 1
April 2, 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

April 2, 1991
1:00 P.M.

Hearing Room F
Tapes 5 - 6

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 WS

HB 2307 PH

HB 2310 PH

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TAPE 5, SIDE A

006 CHAIR BARNES calls the meeting to order at 1:19 and notes the presence of a quorum; Rep. Naito is EXCUSED. He opens the public hearing on HB 2307.

HB 2307 - REQUIRES DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE TO NOTIFY FINANCIAL INSTITUTIONS AND RECEIVE COMMENTS BEFORE APPROVING OR DISAPPROVING AMENDMENT TO CREDIT UNION BYLAWS INVOLVING CHANGE IN CREDIT UNION COMMON MEMBERSHIP BOND.

Witnesses: Frank Brawner, Oregon Bankers Association
Tom Augustine, Oregon Credit Union League
Sharlyn Raymet, Division of Finance and Corporate Securities

The Preliminary Staff Measure Summary (EXHIBIT A) and the Legislative Fiscal Analysis (EXHIBIT B) are hereby made a part of these minutes.

006 FRANK BRAWNER, Oregon Bankers Association, submits and reads a prepared statement in support of HB 2307 (EXHIBIT C).

150 TOM AUGUSTINE, Oregon Credit Union League, submits a prepared statement in opposition to HB 2307, Oregon statutes and administrative rules (EXHIBIT D). He reads the prepared statement.

236 SHARLYN RAYMET, Division of Finance and Corporate Securities, submits and reads a prepared statement in opposition to HB 2307 (EXHIBIT E).

268 CHAIR BARNES: Do you feel there is a level playing field allowing credit unions to acquire new members and banks to acquire new depositors?

272 MS. RAYMET: I think it may go back to the different philosophies of the structures of the institutions.

293 REP. NAITO: Do other states require credit unions to give notice.

MS. RAYMET: I am not aware of any other states that require it.

302 CHAIR BARNES closes the public hearing on HB 2307 and opens the work session on HB 2306.

(Tape 5, 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 ISSUED.

Witnesses: Ray Gribling, Oregon Auto Dealers Association
Jim Austin, Motor Vehicle Manufacturers Association
Larry Wynens, Capitol Chevrolet

312 REP. NAITO: I did some legal research and will submit my notes to the committee (EXHIBIT F). Generally, this bill spoke to the relationship between the franchisee and franchisor. There is no clear relationship. The courts have interpreted it in different ways. In some cases they have held them to be a fiduciary relationship and sometimes more like independent contractors. These manufacturer contracts often have a take-it-or-leave-it tone and in some cases there is no ability to negotiate. The issues brought to us are recurring issues between manufacturers and dealers: warranty work, when and for what reasons a franchisor can terminate the franchise, etc.

I was particularly concerned about whether we should define, in statute, what constitutes irreparable harm for the purposes of allowing the dealer to obtain an injunction when a franchisor seeks to either put another dealership in the market area or to terminate the franchise agreement. Legislative Counsel did a search on the statutes and was not able to find any other instance where we, as a statutory definition, define what is "irreparable harm."

Generally a preliminary injunction is something one party does prior to the actual case. The other side is given notice and opportunity for a hearing. Often it is done to maintain the status quo between the parties. The preliminary injunction hearing may effectively decide the matter.

For instance, if a dealer is not able to get a preliminary injunction, it could essentially wipe out their business and the full trial would become meaningless if they wanted to continue their dealership.

I think, in looking at the bill, we would be making some policy determinations and I would be willing to get more information on whether we should make those. I would not be inclined to define "irreparable harm" but we may need to make it more clear to the courts they could be entitled to grant a preliminary injunction upon some showing. Some courts are unwilling to grant a preliminary injunction; they feel damages are the appropriate remedy.

409 TERRY CONNOLLY, Administrator: At the hearing the committee received amendments from Ray Gribbling representing the automobile dealers, HB 2306-1 (EXHIBIT G), and the committee has received proposed amendments to the HB 2306-1 amendments from Jim Austin, Motor Vehicles Manufacturers Association (EXHIBIT H).

TAPE 6, SIDE A

006 RAY GRIBLING, Oregon Auto Dealers Association, explains Section 3 of the HB 2306-1 amendments (EXHIBIT G).

032 JIM AUSTIN, Motor Vehicle Manufacturers Association, submits and reads a prepared statement (EXHIBIT I) in opposition to HB 2306.

132 MR. GRIBLING: Mr. Austin's amendments would insert "manufacturers manuals or time studies." The franchise dealer agrees to pre-printed material. He is asking the dealers to take the manufacturers study for time. Ford was challenged on their time and motion studies and in most every case I have read Ford flunked the tests when the dealers have them work under the shop conditions in trying to do the work described in the manual. I don't know that the industry is willing to rely upon the book the manufacturers put out because it is the one they are using to tell the dealers what they are going to pay for. In line 23, he has suggested we say "provided such amount is reasonable." It is rather objective; I would assume the consumer will determine what is reasonable. We have no problem with the amendment in line 9 on page 2.

189 REP. NAITO: While it may be preferable to have national legislation, reality is there seems to

be a patchwork of various relationships in different states.

212 MR. AUSTIN: I can't be specific about how many states have dealer/manufacture franchise laws. I know most of the states do have them. This issue is being reviewed particularly as it relates to reimbursement for warranty work. We are saying that our concern is if each state takes it upon themselves to interpret and pass legislation we will end up with a patchwork situation. NADA is studying this and I think there will be some type of consensus come out on how warranty work reimbursement is done. My understanding is that West Virginia has passed this type of legislation and Montana has passed a modified version. In talking with dealer representatives in the Western Region, they are not considering it. They are waiting for discussion and resolution through the industry and not through the legislative process.

255 CHAIR BARNES: Could you comment on your amendments on lines 18 and 19?

277 MR. AUSTIN: The manufacturers have done labor-time studies and have factored in several things--5 percent for personal needs, 20 percent for vehicle age, conditions and the technicians proficiencies. They have come up with a factor to do a job and they have added 25 percent to that. If the dealer is not making money and is not healthy on warranty work, it would probably be a bigger issue than it is, excluding the state of Oregon.

312 REP. NAITO: What happens when there is a dispute over warranty work?

313 MR. GRIBLING: We are not trying to describe the zone managers or others who will approve or disapprove warranty claims. They want the dealers in business. We are saying there is a disparity in what they are paying for warranty work.

317 LARRY WYNENS, Capitol Chevrolet: The process currently is very set in a police and procedure manual. There are a couple of forms. We first generate a letter with the dealer's signature requesting a review. It is sent to the Chevrolet marketing center in Detroit. They request, by a form, what our previous labor rate has been and how long we have been at that rate. The second form is a survey asking me to survey my local market for other dealers and what I consider my market area to date. Once I show my market justifies a reasonable business decision to change my retail labor rate, they will follow suit with warranty (reimbursement).

TAPE 5, SIDE B

016 MR. AUSTIN: The intent behind the amendment in line 23 on page 1 is a qualifying statement more than anything else.

027 CHAIR BARNES: In terms of deciding what is reasonable, are we tossing the ball into the court's corner?

028 REP. NAITO: I don't think the language in the second amendment adds or detracts that much.
It does strike me that what the dealer charges non-warranty customer must be reasonable or they wouldn't have any customers.

REP. WALDEN: It just makes it less clear.

040 CHAIR BARNES: Perhaps the committee should go with HB 2306-1 and substitute the amendment from the manufacturers' amendment in line 9, page 2.

052 MOTION: REP. NAITO moves that the HB 2306-1 amendments be amended on page 2, line 9, by adding after "dealer for" "false or fraudulent claims or where the dealer failed to reasonably substantiate or properly submit the claim"

059 VOTE: CHAIR BARNES, hearing no objection to the motion, declares the motion PASSED. REP. SCHOON is EXCUSED.

062 MOTION: REP. WALDEN moves that the HB 2306-1 amendments, as amended, BE ADOPTED and that the subcommittee recommend to the full that HB 2306, as amended, be sent to the full committee with a DO PASS recommendation.

092 REP. NAITO: I still have a problem with the language in Section 2 of the bill. My concern is we are saying any violation of the sections of the dealership laws, no matter how serious, would constitute irreparable injury. I am not able to support that at this time. My preference would be to delete Section 2 or have more time.

131 CHAIR BARNES: We could send the bill to the full committee and bring the issue up there.

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

136 CHAIR BARNES declares the motion PASSED.

133 CHAIR BARNES opens the public hearing on HB 2310.

(Tape 5, Side B)

HB 2310 - REPEALS REQUIREMENT THAT PERSON FILING EFFECTIVE FINANCING STATEMENT WITH SECRETARY OF STATE'S CENTRAL FILING SYSTEM FOR FARM PRODUCTS ON CATTLE, HORSES, OR SHEEP ALSO NOTIFY STATE DEPARTMENT OF AGRICULTURE OF FILING.

Witnesses: Frank Brawner, Oregon Bankers Association
Claudette Olson, Oregon Department of Agriculture

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

138 FRANK BRAWNER, Oregon Bankers Association: In the late 70's a couple of

incidents

occurred in Eastern Oregon where buyers of livestock were required to pay twice for the livestock. We changed the filing of the security interest in the 70's to the Secretary of State. You protect your security interest by filing the UCC 1 with the Secretary of State. In an effort to provide information to those who deal in livestock buying and selling, we created a second filing of the UCC 1 with the Oregon Department of Agriculture (ODOA). ODOA was to compile a listing, provide it to brand inspectors, and in addition to the brand inspector checking on the health of the animals, they are to check the list to find out if the cattle are free and clear or if there is a lien holder.

In 1987, in response to the U. S. Congress, we created a third filing. It is called Central Filing and is located in the Secretary of State's office. When we take a lien on livestock today we file the UCC 1 with the Secretary of State, file an Effective Financing Statement (EFS) with the Secretary of State's office and we continue to file with the ODOA a copy of the UCC 1 filing. The grower pays for these fees and it is a cumbersome system.

HB 2310 we had hoped we would recognize we are in the modern world. Today you can access the files of the Secretary of State's office to determine whether the herd is free and clear of lien with a personal computer. You can file as a buyer with the Secretary of State's office and receive information on the commodity or type of livestock you are interested in on a monthly basis. When we adopted central filing we knew we had this other conflicting process, but the comfort it provided brand inspectors and their clients was such that we continued to use the ODOA. Today they get the filing from the Secretary of State's office using the EFS statements and using a paper driven system. Those are duplicated and given to the brand inspectors. Every 30 days the brand inspectors get a new load of paper.

HB 2320 does repeal our filing which is accompanied by a \$5 fee (it is not used by the ODOA); the \$5 is used to duplicate the Secretary of State's filing so the brand inspectors can get the information. We did not go far enough with the act. I think we should also repeal ORS 599 .710, .720, .730 and .740 which would remove the responsibility from the ODOA. Except if we do that the livestock people are going to say the security blanket has been removed from them and they are not about to use a personal computer to access the Secretary of State's office files. The Secretary of State's office ought to provide the listing in as many copies as necessary to the ODOA. We pay for that. It isn't the fee that is bothersome; it is the additional filing.

I would suggest we have more time or a work group involving a member or members of this committee. I think there is a solution and we would like to find it.

269 CLAUDETTE OLSON, Administrator, Livestock Health and Identification, Department of Agriculture, submits and reads a prepared statement in opposition to HB 231 0 (EXHIBIT K).

337 CHAIR BARNES: Mr. Brawner has suggested there be a work group with a member of this committee, the ODOA, and the Secretary of State's office. Would you be amenable to doing that?

339 MS. OLSON: We would.

345 REP. WALDEN: Perhaps the Cattlemen's Association could also be included.

CHAIR BARNES: We will get the Chair's approval for the work group.

A statement received by FAX from Al Haslebacher, Legislative Representative, Farm Credit Bank of Spokane, is hereby made a part of these minutes (EXHIBIT L).

355 CHAIR BARNES closes the public hearing on HB 2310 and declares the meeting adjourned at 2:38 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly
AssistantAdministrator

EXHIBIT SUMMARY

A -HB 2307, Preliminary Staff Measure Summary, staff
B -HB 2307, Legislative Fiscal Analysis, staff
C - HB 2307, prepared statement, Frank Brawner
D -HB 2307, prepared statement, Tom Augustine
E -HB 2307, prepared statement, Sharlyn Raymet
F -HB 2306, research notes, Rep. Naito
G -HB 2306, HB 2306-1 amendments, Ray Gribbling
H -HB 2306, proposed amendments, Jim Austin
I -HB 2306, prepared statement, Jim Austin
J -HB 2310, Preliminary Staff Measure Summary, staff
K -HB 2310, prepared statement, Claudette Olson
L -HB 2310, prepared statement, Al Haslebacher