

House Committee on Business and Consumer Affairs
Subcommittee No. 1
May 14, 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

May 14, 1991
1:00 P.M.

Hearing Room F
Tapes 17 - 18

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

Rep. John Schoon
Rep. Greg Walden

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

MEASURES

CONSIDERED:

SB 4 PH & WS

SB 492 PH & WS

SB 798 PH & WS

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.

TAPE 17, SIDE A

004 CHAIR BARNES calls the meeting to order at 1:10 p.m. as a subcommittee of the subcommittee and notes Rep. Schoon will be arriving later and Rep. Naito is on her way. Present are REPS. WALDEN and CHAIR BARNES.

008 CHAIR BARNES opens the public hearing on SB 4 A-Eng.

SB 4 A-ENG. - ADDS TO PUBLIC RECORDS LAW EXEMPTIONS CERTAIN INFORMATION IN POSSESSION OF STATE TREASURER RELATING TO COLLATERAL AT DEPOSITORY BANKS, UNLESS PUBLIC INTEREST REQUIRES DISCLOSURE IN PARTICULAR INSTANCE.
Witness: Mike Ryan, Office of State Treasurer

The Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT A).

011 MIKE RYAN, Executive Assistant to Oregon State Treasurer: The entirety of the bill is on page 2 of the bill. It represents a compromise in working with the representatives of the Oregon Newspaper Publishers Association and Mr. Seitz, former Oregonian investigative reporter. Currently in the statute there is a trigger provision that originates out of the Department of Insurance and Finance where there is a finding in that department reached that whatever financial information is in the possession of the director and they believe it would be in the best interest of the State to move from 25 percent collateral for public deposits to 110 percent collateral. Where upon that finding is forwarded to the State Treasurer, the State Treasurer then informs the banking question as well as retains a list on the 110 percent list as well as the collateral pool manager of moving from the 25 to 110 percent.

We were informed in the interim that while this financial information is exempt from public disclosure in the Department of Insurance and Finance, at the point of which we are notified to move from the 25 to the 110 percent, that information is not exempt from public disclosure. The reason for the bill is because of a lack of information relative to the financial considerations that cause the Insurance and Finance director to move from 25- to 110 percent. Having that information out potentially in a premature fashion could cause real economic hardship on a financial institution. This bill would keep that information confidential while allowing interested individuals to have access to the statutory time involved.

042 REP. NAITO arrives; a quorum is present.

049 CHAIR BARNES closes the public hearing and opens the work session on SB 4 A-Eng.

051 MOTION: REP. WALDEN moves that SB 4 A-Eng. be sent to the full committee with a DO PASS recommendation.

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

058 CHAIR BARNES declares the motion PASSED.

061 CHAIR BARNES opens the public hearing on SB 492 A-Eng.

SB 492 A-ENG. - REQUIRES MAIL AGENTS TO VERIFY SPECIFIED INFORMATION ABOUT TENANTS.

Witnesses: Diane Ness, First Interstate Bank
Frank Brawner, Oregon Bankers Association
James A. Prunty, Department of Justice

062 TERRY CONNOLLY, Administrator, reviews the Senate Staff Measure Summary (EXHIBIT B).

The Legislative Fiscal Analysis and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT C).

081 DIANE NESS, Assistant Security Director, First Interstate Bank of Oregon: Part of my responsibility is to be the fraud investigator for the bank. I would like to be color commentator in regards to how bad the problem is in regards to fraudulent accounts being opened with mail drop addresses. She cites two books: Counterfeit Ideas Made Easy and New Idea in America, How to Create a Fool Proof New Identity and reads from a chapter on mail drops.

We have compiled a mail drop list. I am Secretary of the Northwest Fraud Investigators Association, a 600 member organization comprised of investigators from Oregon, Washington, Idaho and California. We supply the mail drop list to other investigators.

We find there are certain mail drops that come up time after time. In the hour I spent looking at some of the files on losses in regards to mail drops being used as addresses, I found about \$20,000 of losses and an additional \$40,000 on one account was sent back to merchants. We are not saying all mail drop operators are bad people, but we do need to have some sort of regulation.

139 REP. NAITO: Where is this different than getting a post office box?

154 MS. NESS: It is very easy to get Oregon identification cards in different names. Cons are able to come in under fraudulent names and use mail drop. They like to use the mail drop because 1) the identification they use is not being verified and 2) in some instances no identification was required to open the mail box, which is different from a post office box. Also, some allow them 24-hour access. They can get mail in many different names. They will get an Oregon identification card, go to the mail drop, get the address and use the address at the bank to open an up account, they deposit counterfeit checks or checks from accounts in other states, take the money out before the checks come back and when we try to trace them back we end up at a dead end because all we have is a mail drop with phony information.

Issues discussed:

>Use of lost or stolen identification.

>Systems have not been developed in all phases of banking system to detect fraudulent mail drops.

>Systems used by fraudulent operators.

>Need to clarify definition of what is required as identification when obtaining a mail drop box.

259 FRANK BRAWNER, Oregon Bankers Association: I think each enterprise would use their

own identification and it would probably depend on the clientele they are dealing with.

We began having these discussions last session. This was addressed during the interim. We have talked about it in the Senate. It is not our intention to cover, for example PGE in sorting mail for their tenants. The SB 429-4 amendments address that (EXHIBIT D) and say they are not covered by the bill.

Merchants have lost money because of this activity. I am positive there are legitimate businesses serving legitimate clientele using these kinds of services. I am hopeful we don't catch anybody in this web but that we help deter these kinds of activities.

MR. BRAUNER'S statement is hereby made a part of these minutes (EXHIBIT E).

365 JAMES PRUNTY, Civil Enforcement Division, Department of Justice: In response to Rep. Naito's comment whether people have a right to not be found out as long as they are serving a legitimate purpose, it seems there may be a minor change that could be done to accomplish this. Under (4) of Section 2, it reads "Whenever a mail agent has reason to believe that a tenant is using a mail box to escape identification,..." the question becomes is there anything wrong with escaping identification. Instead of "escape identification" other language like "commit a crime or engage in criminal activity without detection" could be inserted.

420 I have had a number of cases in the last year that involved especially the elderly receiving these notices that they are the recipient of a \$10,000 grand prize but they must Federal Express \$692 right away. They Federal Express it to a mail drop. I think this is beneficial for consumers as well.

A question is on the burden of proof under Section 4. The burden of proof being "beyond a preponderance of evidence..." and the possible recovery being limited to \$5,000 per occurrence and no provision for attorney fees makes it an unlikely remedy for a person to pursue or a lawyer to take the case. It would probably cost the person \$2,000 to \$5,000 and there is no recovery of attorney fees. We would prefer to have the same standard of proof as required under the Unlawful Trade Practices Act, which is proof of 50 percent plus one. I would object to the preponderance standard being applied here.

An additional request is in Section 5. Rather than making the initial violation only a \$1,000 penalty, simply make the very first time "up to a \$5,000 penalty." Under the Unlawful Trade Practices Act we can ask for as much as \$25,000 the first time. That will bring the parties to the negotiating table. It is a very useful tool.

TAPE 18, SIDE A

037 Issues discussed:

>Limitation of liability of operators.

>Honesty and cooperation of operators.

101 CHAIR BARNES: We want to give you enough authority to get their attention, but we don't want to hit them with a sledge hammer when a small hammer would be appropriate.

106 MR. BRAWNER: We had two hearings and a work session in the Senate and it passed the Senate 25-0. My concern is the day we are doing this. We did not want to go further than we should go. I understand the attorney fees section and realize it is weighted heavily from the evidence stand point. We prefer that because we would like to make sure we don't grab innocent people.

112 REP. SCHOON: I think it is important for us to keep in mind that we are talking about finding the person who failed to take the identification, not the person who perpetuated the fraud.

122 MR. PRUNTY: The bill in its current form would be more suitable than not having one. My concern is we could take somebody to court because even though they felt someone was trying to escape identification, they could be liable for a penalty of up to \$1,000. I share the concern that the mail agent should be protected.

130 REP. WALDEN: Is there anything in the bill that goes after the person who is acting fraudulently?

136 MR. BRAWNER: There are other statutes and that is where we would hope to proceed.

171 REP. BARNES: I am concerned with the language on page 2, line 6, "escape identification."

175 MR. BRAWNER: The language in (4) was to provide instructions to the mail agents as to what they should do when they discover that the person is using the mail box to escape identification.

Issues discussed:

>Surety bonds provision.

336 CHAIR BARNES closes the public hearing and opens the work session on SB 492 A-Eng.

338 MOTION: REP. WALDEN moves that the SB 492-A4 amendments BE ADOPTED.

345 VOTE: CHAIR BARNES, hearing no objection to the motion, declares the motion PASSED. All members are present.

346 MOTION: REP. WALDEN moves that SB 494 A-Eng, as amended, to sent to the full committee with a DO PASS recommendation.

354 REP. SCHOON: I don't see language in this that would permit anyone to make a claim on the bond.

381 MR. BRAUNER: It is our intention that the attorney general through their Consumer Fraud Division would and they would write rules on how the claim would be made on the bond.

TAPE 17, SIDE B

002 JAMES PRUNTY: It would seem the only mechanism to use the burden of proof by preponderance of the evidence in conjunction with an action brought would be in front of a court. I think it contemplates a legal action before a Circuit Court judge.

008 REP. SCHOON: How does that apply to the bond proceeds and who could make a claim on the bond?

009 MR. PRUNTY: I would think we would obtain a judgement of some sort from the court and we would attempt to collect it either directly from the mail agent or from the surety for the mail agent. It depends on where this goes in the Oregon Revised Statutes, but under the normal Unlawful Trade Practices Act and other attorney general supervised laws we can also engage in rule making.

016 MR. BRAUNER: That is our intention and that was our advice as we drafted the bill.

027 REP. SCHOON: For the legislative record we have established it contemplates a legal action before a court, but what are we talking about forfeiting?

029 MR. BRAUNER: The intention was the civil penalty that would be determined by the court.

030 REP. SCHOON: For the record, the forfeiture would apply to the civil penalty of not more than \$1,000 and it is not accumulative or is not added to the civil penalty.

034 MR. PRUNTY: I believe that is correct.

035 MR. BRAUNER: That is the intention.

037 CHAIR BARNES: The court could direct you to attach the bond.

039 MR. BRAUNER: There are about 150 places in the Oregon statutes where we require a surety bond. Only in about a hand full of cases do we spell out how you claim against the bond. Most of it is done by rule making. As we drafted the bill that was our feeling as the way to do it. I think this committee is correct that we should address the procedure and I

wish we would
somewhere in the statute place a procedure as to how the agencies write
rules on these bonds.

052 REP. NAITO: I hope the bankers and the AG's office report back to the
next session on
whether this is working, is the bond amount sufficient, and should we
require that the mail drops
register. I am concerned about the level of evidence that is required both
for the AG's office and
the banks and the lack of attorney fees to allow individuals to avail
themselves of this.

065 MR. BRAWNER: We will report back to the next session and if it is not
working we will be
back. Hopefully this bill will send a signal and the illegal activities
enhanced by the illegal mail
drops will disappear.

071 REP. SCHOON: Would another bill we passed permit the use of a letter of
credit in lieu of the
bond?

075 MR. BRAWNER: SB 666 passed out of committee and is headed for the
Senate Floor. It does
provide for an irrevocable letter of credit in 140 or 150 different
statutes.

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

094 CHAIR BARNES declares the motion PASSED.

096 CHAIR BARNES opens the public hearing on SB 798.

SB 798 - SPECIFIES CERTAIN RECORD KEEPING REQUIREMENTS FOR BANKING
INSTITUTIONS EXERCISING FIDUCIARY POWERS.

Witness: Frank Brawner, Oregon Bankers Association and State Chartered Banks
of Oregon

The Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and
Revenue Impact
Analysis are hereby made a part of these minutes (EXHIBIT F).

099 FRANK BRAWNER, Oregon Bankers Association and State Chartered Banks of
Oregon,
submits and reads a prepared statement in support of SB 798 (EXHIBIT G).

Issues discussed:

- >Industry Practices Manual has been used in courts.
- >Legislation applies only to state chartered trust companies and the
nationally chartered trust
companies that are a part of a national bank.
- >Period of retention of records.
- >Availability of trust records.

200 CHAIR BARNES closes the public hearing and opens the work session on SB
798 .

201 MOTION: REP. WALDEN moves that SB 798 be sent to the full committee
with a
DO PASS recommendation.

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

207 CHAIR BARNES declares the motion PASSED and meeting adjourned at 2:22 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly
AssistantAdministrator

EXHIBIT SUMMARY

A -SB 4, Senate Staff Measure Summary, Legislative Fiscal Assessment and Revenue Impact

Analysis, staff

B -SB 492, Senate Staff Measure Summary, staff

C -SB 492, Legislative Fiscal Analysis and Revenue Impact Analysis, staff

D -SB 492, SB 492-A4 amendments, Frank Brawner

E -SB 492, prepared statement, Frank Brawner

F -SB 798, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue

Impact Analysis, staff

G -SB 798, prepared statement, Frank Brawner