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statements made during this session. Only text enclosed in quotation  
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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 1, 1991  
M.

Hearing Room 137 8:30 A.  
Tapes 14 - 15

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

MEMBER EXCUSED: Rep. John Schoon

STAFF PRESENT: Terry Connolly, Committee Administrator Carol  
Wilder, Committee Assistant

MEASURES CONSIDERED: HB 3356 PH HB 2939 PH HB 2990 PH/WS

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TAPE 14, SIDE A

011 CHAIR RIJKEN: Calls the meeting to order at 8:35 a.m.

HB 3356 - PROHIBITS COMMERCIALS W/MOTION PICTURES, PUBLIC HEARING

022 REP. LISA NAITO, HOUSE DISTRICT #15: Chief sponsor of bill.  
Submits and summarizes written testimony in favor of HB 3356 (EXHIBIT  
A). Rep. Naito also submits written testimony from other interested  
individuals in favor of HB 3356 (EXHIBIT B).

140 REP. STEIN: Whose clock is determinative here? Is it the theater's  
clock or the person who's watching the movie?

143 REP. NAITO: I suppose that would be a question of fact. If you  
brought a small claims action, you would say your clock said this and  
the movie theater said that.

145 REP. STEIN: It seems like a way that people would try to get \$200  
pretty easily. The theater's going to want to settle. It seems like  
there's a presumption that maybe needs to be included. This seems to be  
a problem to me.

150 REP. NAITO: In any kind of judicial action there are questions of  
fact. The one side would say what their clock said and I imagine that  
the movie theater would have a clock that they checked occasionally.

157 REP. STEIN: They would probably keep a log or something of when the  
movie started, etc. I find as irritating those commercials like, "Don't  
speak in the movie". But that wouldn't be included?

160 REP. NAITO: I don't know that those would be excluded under this, but the ones that have sold the popcorn in those would be excluded. But keep in mind this is only after the time. They could show something like that prior to the advertised time for the movie and still that wouldn't be affected.

165 CHAIR RIJKEN: I had a letter FAXed to me this morning and the person sending it would appreciate its reading into the testimony.

172 TERRY CONNOLLY, COMMITTEE ADMINISTRATOR: Reads a letter from Dick Speiz

from Milton-Freewater, OR, into the record opposing HB 3356 (EXHIBIT C).

190 RANDALL BLAUM, DIRECTOR OF ADVERTISING, ACT 3 THEATERS: Reads a letter from Timothy Wood, Vice President of Operations for Act 3. In these increasingly difficult business times, we've looked to various means of increasing revenues in order to offset ever-increasing expenses; however, we found the best means the public has to communicate their feelings to any service organization is to vote with their dollars, to notify local managers of their displeasure and their intent to use other venues until the complaint is corrected.

We believe that this is an unwarranted infringement of the rights of our theater owners to run their businesses based on their financial needs and wishes of the patrons. The central issue is whether we need to legislate something like this or whether we let the consumers vote with their dollars and ultimately go to another theater location if they're dissatisfied. Also concerned about the local advertiser. This bill basically bans any form of advertising after a selected showtime start. Virtually all of our advertising happens before the selected showtime start, but there are occasions if the movie's running late or there's a projection problem. How do you decide if the show is scheduled to start at 8:00, but it starts at 8:05 because of a mechanical failure at our slide advertisement program which runs in between all of our movies. Would we be in violation? The local advertisers are actually able to advertise much more cost efficiently through cinema advertising than virtually any other type of advertising available to them. In Portland someone could advertise at one of our busiest theaters for an entire month for \$250. In The Oregonian you could buy a small size or mid-size ad for that same price for one day. We're attracting local businesses that can't afford to advertise in the large newspapers or on radio and television to reach the people who go to the theater in their community.

Also concerned about public service announcements. This bill would have banned the running of the Portland International Film Festival trailer which was a form of advertisement to tell people to come out to see all the foreign films we were bringing in which netted the Northwest Film and Video Center thousands of dollars. Also affected would be the Trailblazers messages, "Duck and Buck say Yuk", (Mr. Yuk is the poison label put on a family's household goods that are bad for children), and eliminates all public service announcements. We are not showing cinema advertising in any Oregon theater and we have not for several months. Believes that owners can best address the audiences' wishes and requests. The government shouldn't force theater owners to make this decision.

292 JAMES LANE, STAR CINEMA, STAYTON: Doesn't believe it's government's place to legislate this; it should be up to the individual theater owners. Has run advertising in theater in the past but do not at the present time. Feels it's the theater owner's option to do that.

300 REP. STEIN: Why don't you show advertisements now?

303 LANE: We decided that we would try both ways. Has had people like the advertisements and people who didn't like the advertisements. Has owned the theater for eight years and we showed it for most of those eight years. Has not shown any since the first of the year. It's just an option that we decided to try.

310 REP. NAITO: I wish I had known that you had stopped showing at Act 3 because I had complained. Basically I stopped going to all of the theaters that had shown commercials. It breaks my heart because I like to go to movies and our family probably spends \$50-\$60 a month on movies. But I would limit it to only two theaters downtown, the KOIN Center and the Movie House, so I'm concerned that by putting more and more commercials on we are detracting from the whole industry. With T.V.'s and VCRs, we move into a whole video home entertainment. For the filmmakers, this is a serious trend. I wonder if you would respond to that.

322 BLAUM: I don't disagree with you necessarily. The problem is with the video cable industry; you can't rent a video any more without getting advertisements at the beginning. We have opted in Oregon not to run any commercials mainly because the ones that have been presented to us are not acceptable. We don't ever want to get to the point where you have five or ten minutes' worth of commercials before a film. As you indicated during your statement, even advertising our own popcorn sales, which is one of our #1 ways of revenue, would not be allowed. That's like telling The Oregonian that they can't advertise on billboards. It just seems like for some reason the filmmakers are able to have NIKE in their films but we're not able to advertise NIKE before the film, and that I think is the problem.

340 REP. NAITO: Did you read the bill? It's only after the time that's advertised that the film would begin. You could show unlimited ads before that advertised time without being subject to a consumer's taking a cause of action.

348 BLAUM: I think that particular statement is still a bit vague. As Rep. Stein said, it's an easy way for somebody to make \$200. My watch says 8:01; her watch says 8:00. At what point in time do you draw that line? Again, there are mechanical difficulties. We have theaters that seat 1,000 people or more and if 500 of those 1,000 people show up at 7:50, there's no possible way to get them seated safely and efficiently in that time. So of course the movie will start late; therefore, rolling stock commercials would start late. We can't have the theater dark when we have hundreds of people still coming in showing trailers and previews. So we do hold the shows quite frequently if we get a very big rush. I'm concerned about the mechanical failures as well. They do happen; machines are machines. So I think that statement's very vague in how we control that sort of time.

362 CATHY ASHER, CO-OWNER, COLUMBIA THEATER, ST. HELENS: Testifies in opposition to HB 3356 because it restricts the freedom of theater owners to operate their theaters the way that they want to and the way that they need to in order to run well. Has never had patrons complain about the advertising that plays before the movie starts. In fact, people seem to enjoy the ads. Ads usually feature local businesses which movie patrons find informative and fun to watch. They like the opportunity to learn more about the businesses that are run in the neighborhood while they are waiting for people to buy popcorn and get settled for movies. Oftentimes our movies start five minutes late because we like to comfortably seat the people before we turn down the lights and start our movies. Wants flexibility to determine what customers would enjoy seeing. Does not feel the government should force owners to change the way their businesses operate. Independent theater owners already face many restrictions from the movie studios. Budget movie theaters don't get the movies until after they are out of the full-price theater house. We don't benefit from any of the television advertising that pushes that movie to have people come to see it. So it's already harder to get people into these theaters. We survive on the amount of people that come in. HB 3356 will take away more freedom and ability to run business without interference; it hurts theater owners, local businesses, and hurts movie customers. Discount theaters don't make a lot of profit off the ticket sales. We rely heavily on the income from the concession sales and some cinema advertising to make ends meet. Movie patrons don't mind the cinema ads because they understand that the

advertising helps us keep our ticket prices low for them.

427 REP. NAITO: In this bill, government would not be deciding. It would be up to the customer whether or not they would want to bring a cause of action. In your situation, if your customers don't mind the advertising, you really wouldn't have anything to fear from this bill.

430 ASHER: But in a small theater that only charges \$2.50 for a person to come to the show, if they had three people decide that they were having a bad evening and they saw cinema advertising and decided to come after us for \$200 plus their attorney fees, in our case that would hurt us a lot. It doesn't necessarily mean that they particularly care that the next time they come that there's advertising, but that night they're having a bad evening. Therefore, if they come after us for \$200 plus their attorney fees, it would hurt a small business person a lot.

TAPE 15, SIDE A

002 LARRY MOYER, PRESIDENT, MOYER THEATERS: Testifies in opposition to HB 335 6. Thinks bill is frivolous and should not be enacted. This is the marketplace in action, and if a given policy of a theater is not what the public wants, the theater owner will soon find out whether he should either keep that policy or do away with it. He'll either be out of business or he'll make a lot of money. That's the basic question with this bill. There are some practical aspects that would cause some problems. Many times the owners receive the movie hours before it's put on the screen. Producers are in a rush to get the movies to the theaters and sometimes the playing time is not what they have said it would be because they made last-minute cuts or they made last-minute editions. This creates a problem in that if it's five minutes longer than what the owners were told, then the schedule would be wrong and it would take days to change the newspaper ad and they would be caught in a Catch 22 with having a lot of irate people come at the owners for \$200. This is untenable, not workable, and it shouldn't be placed on the operator of the theater because he has no control over it. There are sometimes emergencies in theaters. A projector breaks down in one of the other screens and it's important for that projector to be fixed and that will take the time from starting the other movie and you're caught with the show being late. There's been some talk about paying \$6 for a movie and I agree that's a high price. When my mother and father opened up their first theater, they paid 3 cents for a loaf of bread. They were playing third- or fourth-run movies. They didn't get to play first-run movies because the producers had those theaters all locked up and the government brought a consent decree on them and that allowed the small theater owners to get in on the first-run business. In 1933, movies cost 5 and 10 cents. The ratio of what a loaf of bread costs now for a second- and third-run movie you can buy that in Portland for \$1, \$1.50, or \$2.50. Our prices have not raised as much as producer's prices have raised in the cost of making the motion picture. When they pay \$20 million for a star to make a motion picture we have held the line pretty good because we pay the increased costs of construction, increased costs of labor, and we're still holding our costs of going to the movies in a very reasonable price compared to what a loaf of bread cost then and what it costs now and motion picture admission costs then and now.

070 REP. NAITO: Was not criticizing the price of movies. Thinks it's well worth it. Another approach to this bill would be to somehow notifying the potential consumer that they may be viewing advertisements and that would require some notice in your advertisement such as, "Commercials may be shown". Would that sort of approach be preferable to your group?

080 MOYER: The problem with that is it's still forcing the businessman to pay more costs. It would be cheaper to have a sign at the box office or something like that.

088 REP. STEIN: How many movie theaters are there in Portland?

095 MOYER: Probably about 90.

098 REP. STEIN: How many of those are in your chain?

100 MOYER: There's nine.

101 REP. STEIN: How many independent theaters do we have?

103 MOYER: In the first-run market there's just one independent; that's me. There are independent second-run and third-run movie theaters.

HB 2939 - RELATING TO INSURANCE, PUBLIC HEARING

092 WILLARD FOX, ALLIANCE OF AMERICAN INSURERS: Submits and summarizes written testimony in favor of HB 2939 (EXHIBIT D).

230 REP. STEIN: In your definition, a commercial vehicle is a vehicle that's used customarily in a business or occupation. What if you have a situation where you have a sole proprietorship. That person doesn't have to pay workers' compensation for themselves, so you're going to end up with a situation where you could have an uninsured driver. The reason we have this strict regulation is to close all the loopholes. If there's one complaint I get from constituents, it's they are furious when they're in an accident with someone that's not insured.

237 FOX: I think that's true; under HB 2939 a sole proprietor who is operating a business would be considered driving a commercial vehicle. I would suspect in that type of situation the coverage would be offered. You have to offer it to them. That might be cleaned up by requiring there to be workers' compensation covered. I noticed when I was reading the statute recently that in regard to the large truck exemption it requires workers' compensation. It says that you can reject uninsured motorists but you have to have workers' compensation before you can reject it. Certainly we would not be opposed to an insertion of language to that effect.

255 REP. STEIN: How big is a 8,000-pound truck?

255 FOX: I talked to Mr. Vanatter who is one of the log truckers and represents the Oregon Log Trucking Association. All of the log trucks, semi's, that sort of thing that you see on the road exceed by far the 8,000. That's the extent of my knowledge on that. They are fairly large trucks.

267 MICHAEL ADLER, OREGON TRIAL LAWYERS ASSOCIATION: Submits and summarizes written testimony in opposition to HB 2939 (EXHIBIT E).

380 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: There are some statistics like 10% of the drivers in the state are uninsured so the underinsured and uninsured motorist coverage is of greater importance to the consumers and passengers in these vehicles than it ever has been before.

388 FOX: I'm a little concerned about the argument made that there would be a large number of people left unprotected because most of the people who are driving commercial vehicles are going to be involved in business so they're going to have coverage. A lot of the passengers are going to be likewise involved in their own employment so they're going to be employees and have workers' compensation coverage under their own employer. If this occupant who the trial lawyers believe is not going to have coverage is not an employee then they would have a cause of action against the business because the passenger would have no fault at all. They're not a driver. In our comparative fault system if the driver of the commercial insured vehicle is 1 percent at fault, he can bring a cause of action against the business under the standard liability policy. They would also have their health insurance. If they were employed by someone else, they would also have their worker's compensation coverage. In terms of sheer numbers, there's no way for us

to have statistics on this. I think it's clear if you apply common sense that there will be very few people who are unprotected. I do concur with counsel that Oregon does not have double coverage. I assume also that the carriers do actuarially when they're computing the costs of these commercial liability policies consider all the facts. I believe there would be very few instances where the person would remain unprotected. In terms of comparing the benefit level under workers' compensation and the benefit level under a liability policy, if there's a serious injury that results in a lot of medical bills, workers' compensation pays all of the medical bills if they are \$100,000 or \$200,000 or whatever. So in the serious injury case all of the bills are paid under workers' compensation. Also in the serious injury case usually there's a loss of employment and the individual in the workers' compensation system receives wage loss subsidy for the entire time that they are off work. In the real serious injury cases, the amount paid out by the workers' compensation carrier is substantial and may in that type of case be more than what would be paid out under an underinsured motorist coverage.

440 ADLER: Taking the last argument first, in the serious injury case if in effect the medical expenses and loss income have been paid by workers' compensation as I stated and, as is currently required by law that's deducted from any UM coverage, so that would be a case where those payments would not be made under the UM coverage. The UM coverage in those instances only applies to the extent that the economic or noneconomic damages exceed the workers' compensation benefits. As to the argument that if a passenger in a commercial vehicle was injured

TAPE 14, SIDE B

(ADLER continues:) because the negligence of an uninsured driver they may also have a claim against the company. Contrary to what a lot of people believe, an injured person has to prove negligence in order to recover. If a driver of the company vehicle was not at fault they're not going to be able to prove negligence. Secondly, under our current joint and several liability, if the fault is less than 15%, joint and several liability is severally limited. Finally, I would think even the proponents of this legislation would not want to encourage litigation against businesses solely to avoid paying the small premium for uninsured motorists coverage. If the result of this bill were to encourage litigation against business owners to seek out liability because there was no uninsured motorists coverage that would be a very bad impact.

020 WILLIAMSON: I do think it's important to note that you don't have businesses coming in here complaining about their premiums and asking to be relieved of the ability to pay for this coverage. You have insurance companies in here trying to get out of their risk. The insurance that's covered under auto insurance is to have the auto system essentially cover the damages that cause it. If you take this away and say people are covered by health insurance you'll have an effect on health insurance rates, and so I think you're better off to have the auto insurance pay for the auto insurance damages. The last few times I've rented a car I've always been on vacation. I think people ride taxis when they're not working; they rent cars when they're not working; they ride in business cars when they're not working. There would be a pretty big gap in insurance coverage if this bill passes.

035 FOX: If you are on vacation, I believe your own personal liability coverage covers you.

HB 2990 - RELATING TO BONDS, PUBLIC HEARING

039 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Submits and summarizes written testimony in favor of HB 2990 (EXHIBIT F).

080 REP. STEIN: What was the original intent of the law as it is right

now?

085 BRAUNER: I asked that question of my trust officers that proposed this bill rather late in the session. They said the original purpose was to comply with the then IRS Code.

090 REP. STEIN: When was the new Code provision put in that we're now trying to comply with?

092 BRAUNER: I believe it was the 1986 Tax Act. I will check that out and make sure that I am accurate.

097 REP. STEIN: Where a trust company's holding in trust assets for a beneficiary, is there any reason a beneficiary would be concerned about this change you're making? Any reason whatsoever?

100 BRAUNER: No, the dollars and the disclosures will be the same. The accounting will be different, but the disclosures will be there and they earn the same. There is absolutely no reason why they will be penalized to any degree. The transaction is identically the same.

110 REP. STEIN: Is there any difference in the tax treatment that might affect a beneficiary in terms of the difference in treating a dividend premium or principal?

115 BRAUNER: No, the tax treatment is identical. There is absolutely no reason why the beneficiary would oppose this legislation because the accounting that we give them now is in conformance with IRS anyway.

HB 2990 - WORK SESSION

115 MOTION: Rep. Stein moves HB 2990 to the Full Committee with a Do Pass recommendation.

VOTE: In a roll call vote, the measure is passed with all members voting AYE. Rep. Schoon was excused.

125 CHAIR RIJKEN: Adjourns the meeting at 9:50.

Submitted by: Reviewed by:

Carol Wilder Terry Connolly Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB 3356 - Rep. Lisa Naito - 5 pages.  
B - Testimony on HB 3356 - Dick Speiz - 1 page.  
C - Testimony on HB 3356 - Movie celebrities, etc. - 4 pages.  
D - Testimony on HB 2939 - Willard Fox - 8 pages.  
E - Testimony on HB 2939 - Michael Adler - 2 pages.  
F - Testimony on HB 2990 - Frank Brawner - 3 pages.