

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 JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

April 15, 1991Hearing Room 357 1:00 p.m.Tapes 77 - 78

MEMBERS PRESENT:Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian  
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix  
Rep. Randy Miller

STAFF PRESENT: Jim Dole, Committee Counsel Jeff Steve,  
Committee Assistant

MEASURES HEARD:HB 3348 - EXEMPTS FROM LIABILITY PERSON ASSISTING IN  
RESPONSE TO OIL SPILL, EXCEPT FOR PERSON WHO IS PARTY RESPONSIBLE FOR  
SPILL, ACTIONS FOR PERSONAL INJURY OR DEATH AND FOR PERSON WHO IS  
GROSSLY NEGLIGENT OR ENGAGES IN WILLFUL MISCONDUCT. PUBLIC HEARING AND  
WORK SESSION.

HB 3165 - MODIFIES DEFINITION OF "DEBT COLLECTOR" FOR PURPOSES OF  
UNLAWFUL DEBT COLLECTION PRACTICES STATUTES. PUBLIC HEARING AND WORK  
SESSION.

SB 405 - CHANGES REGULATIONS OF ADJUSTABLE RATE INSTRUMENTS RELATING TO  
REAL PROPERTY. WORK SESSION.

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 77, SIDE A

004 CHAIR RAY BAUM: Opens Subcommittee On Civil Law and Judicial  
Administration at 1:35 p.m.

HB 3348 - PUBLIC HEARING Witnesses: Stephen Duca, Marine Spill Response  
Corp. John Burns, Marine Spill Response Corp. Charles Williamson, Trial  
Lawyers Assn.

010 JIM DOLE, COMMITTEE COUNSEL: Summarizes HB 3348.

030 JOHN BURNS, MARINE SPILL RESPONSE CORPORATION (MSRC): Submitted and  
paraphrased written testimony. Responder immunity is critical and vital  
to Marine Spill Response Corporation, a non-profit corporation. The

National Oil Pollution Act of 1990 applies in Federal waters outside the 12 mile limit. M.S.R.C. is seeking the same within the 12 mile limit in all coastal states. Ten states have passed it. Oregon is a critical state as M.S.R.C. is going to put an important site at Astoria.

058 STEPHEN DUCA, MSRC: EXHIBIT A MSRC is a non-profit corporation, chartered to be a mutual benefit corporation organized exclusively to promote the public welfare. Does this by mitigating environmental damage from oil spills to the tidal, coastal waters and coastal estuarine waters. Created after the Valdez spill in Prince Williams Sound. Response is their most important mission. The other mission is readiness. Each of their regions is being designed to respond to a spill of the size of the Exxon Valdez, which is an approximate 20,000 barrel spill. HB 3348 is essential for a response organization.

163 Burns: Not asking for immunity from liability for personal injury or from wrongful death or for gross negligence. Only seeking limited immunity from property damage from simple negligence.

193 REP. BRIAN: On page 2 of HB 3348, line 1 and line 8 contains the word "or". Suggests having the word "and".

200 Burns: M.S.R.C. General Counsel's answer is that the intention is to provide immunity for cost or damages or both. Either wording "and" or "or" would be acceptable providing it is intended to cover any and all claims.

218 REP. MANNIX: Agrees with the witness.

228 Burns: Feels it is inclusive and not one or the other.

238 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: If such is the case then the OTLA has no opposition. If the M.S.R.C. is negligent, under subsection 3, section 3, the original spiller or this fund would be responsible to the people injured.

HB 3348 WORK SESSION Witnesses: Jim Markee, Oregon Collectors Assoc.

264 REP. BRIAN: Moves to Full Committee do pass.

269 VOTE: Motion passed. Rep. Bell to carry.

AYE: 6 NO: 0 EXCUSED: 2

HB 3165 - PUBLIC HEARING

275 JIM DOLE COUNSEL: Summarizes HB 3165.

300 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: EXHIBIT B Talks about HB 3165. The state law regulates anyone collecting a debt. It doesn't distinguish between third party collectors and other people collecting debts as does the Federal law. Under O.R.S. 646.639, there is a section that states a debt collector shall not be construed to be anyone who is collecting on a bad check. Collection agencies are regulated under the Federal Government F.T.C. in the collection of all debts, including bad checks. They believe other people who are collecting debts in the State of Oregon ought to be regulated.

380 REP. MANNIX: Trying to figure out the rationale why someone who would collect on a bad check should be exempted. This bill does cover

conduct?

391 Markee: Yes.

392 REP. MANNIX: Why would this kind of exemption be put in, other than to allow some private businesses to do nasty things in order to collect on bad checks?

404 Markee: Technically, under the laws that exist today, people who are not collection agencies do have to live by the rules under the Unfair Debt Collection Practices Act of Oregon, which lists do's and don'ts. But someone collecting on a check does not have to live by those rules unless they are a collection agency.

TAPE 78, SIDE A

007 REP. MANNIX: Could see the abuse of the law by someone who had a garage sale. This bill never addressed that in the first place?

010 Markee: No.

011 REP. MANNIX: Businesses can be out there right collecting on bad checks and can use whatever means they want, but are not subject to this law. Is that right?

016 Markee: Correct. That same individual who sold something at a garage sale and allowed the person to make payments would be covered under the Act.

019 REP. BAUM: Understanding of the bill is that it applies to commercial debts and creditors.

026 REP. MANNIX: There is already protection for the guy who runs a garage sale and gets out of sorts.

027 Markee: You are absolutely right.

029 REP. MANNIX: The real point of this bill is there is a nonsensical exemption that shouldn't be in the law.

033 REP. JOHNSON: Where is the line drawn as to who is subject to these unfair debt collection practices?

039 Markee: Under the Federal Act, the line is drawn between those individuals who are collecting their own debt and those individuals who are collecting for a third party.

044 REP. JOHNSON: When you refer to individuals, does that apply to companies collecting their own debts also?

045 Markee: Clearly the Federal Act applies to commercial transactions which are business to consumer transactions. As originally passed, the Federal Act specifically excluded from regulation attorneys who were collecting third party debts, but since exemption has been deleted. The State law applies basically to anyone collecting a debt as a business or business collecting a debt that is owed to it.

WORK SESSION - HB 3165 Witnesses:Ray Gribling, Oregon Mortgage Bankers Assoc. Carl Myers, Oregon State Bar

060 MOTION, REP. MANNIX: Move HB 3165 to the Full Committee with a do pass recommendation.

VOTE: Motion passed. Rep. Clark to carry.

AYE: 7 NO: 0 EXCUSED: 1

PUBLIC HEARING - SB 405

080 DOLE: Summarizes SB 405.

103 CHAIR BAUM: Directed the Committee's attention to the Senate vote.

110 DOLE: Discussed vote with Senate council and understood that Senator Bunn had some concerns about the status of junior lien holders. Believes his concerns have been resolved.

118 REP. BAUM: Asked for witnesses on SB 405. Suggests that representatives from the Oregon State Bar Debtor Creditor Section advocate for their bill.

129 REP. MANNIX: No one here to tell him why the law needs to be changed.

162 REP. JOHNSON: As he understands, what this is doing is taking out the requirement that the only kinds of mortgages that can be adjusted without impacting junior lien holders are the ones with variable rates. Is that what this is doing?

168 REP. BAUM: Allows the renegotiation. If you did that in the past and the mortgage didn't allow it or didn't state it, you could lose prior rights in a security interest. The senior mortgage holder would lose it to the subsequent filed junior lienholders.

172 REP. JOHNSON: End up with people who make forms making more money on new forms. If we think, as a body, that it is appropriate that people only adjust their mortgage if it says in bold print that this can be adjusted, then let's do it.

183 REP. MANNIX: Is concerned about moving on this bill until someone can show him what the further effects are from removing this language. This says you are not going to have a change in prioritization if you file certain documents. The provision being removed says you have to disclose on the document that the balance due may be indexed, adjusted, renewed or renegotiated.

208 REP. JOHNSON: There is a distinction between an adjustable rate mortgage, which seems to imply there will be an index that will go up and down with prime. That's different than a carte blanche statement that says anytime the two parties of this mortgage decide they want to renegotiate, they can.

220 REP. MANNIX: Would like to have some people come in and explain what the ramifications might be before a decision is made.

224 CHAIR BAUM: Do have a legitimate concern for the junior creditors that are relying on cash flow to be paid and they know the prior terms on the mortgage are fixed, unless it states in the mortgage it can be

adjusted.

238 REP. BRIAN: It is hard to imagine not having the disclosure would serve anybody. There are people who are not sophisticated enough to think that renegotiating the first might change the position of the second.

248 MOTION, REP. JOHNSON: Moves to table SB 405.

286 REP. BRIAN: Doesn't disagree with motion.

302 REP. MILLER: Is informed by the Chief Clerk that when Committee is not in a work session, cannot take action on a bill. So the motion to table would be out of order.

311 RAY GRIBLING, OREGON MORTGAGE BANKERS ASSOCIATION: Originally they were not in favor of SB 405. However, after talking with a member of the Bar, Mortgage Bankers decided they do like the bill the way it is amended. As he understands the bill, the original lienholder on the bill is maintained when terms and conditions of the mortgage are renegotiated. According to the Bar, the right to maintain a priority status, which is dependent upon the original obligation allowing for indexing or renegotiation, is very inflexible and has prevented people from being able to renegotiate their mortgages in times of economic difficulty. Asks the Committee to defer action until an expert can appear and explain.

350 REP. BRIAN: That would move him to the position of looking for language that is not restrictive, but still discloses that renegotiations may occur, rather than remove the language and not advise of renegotiation.

370 CARL MYERS: OREGON STATE BAR: Bill has significant positive affects not only on debtors, but on creditors. Positive step to eliminate some of the problems that are in this area. Asked that this bill be held over until someone can appear to answer their technical questions.

388 REP. BRIAN: Think of some other language rather than "removal of disclosure", but to modify the disclosure so it still works for the debtors and creditors, but doesn't leave anyone uninformed as to the fact the priority party could renegotiate.

407 CHAIR BAUM: Meeting adjourned.

Submitted by: Reviewed by:

Diane Bassett Pat Zwick, Office Manager Assistant

EXHIBIT LOG:

A - Testimony on HB 3348 - Duca - 10 pages B- Testimony on  
HB 3165 - Markee - 7 pages

