

By

*Manus*

S B. No. 75

1. purposes which are to protect consumers against false, misleading,

[REDACTED]

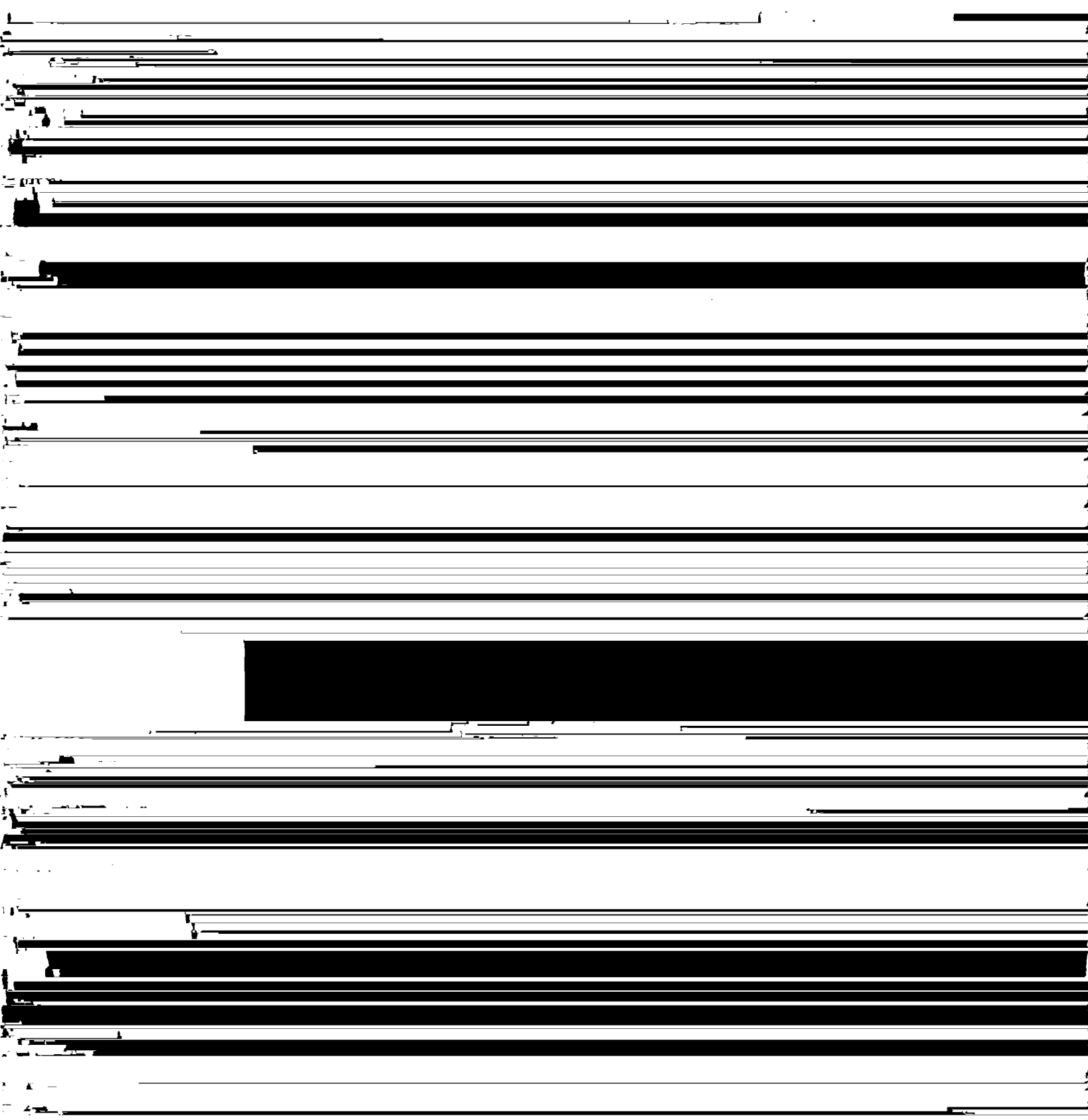


1 sponsorship. approval. characteristics. ingredients. uses.

1 representative or agent to negotiate the final terms of a consumer

1           "(c) It is the intent of the legislature that in construing

1                   "(3) make available for public inspection all  
2 regulations, written statements of policy, and interpretations,



"(e) The hearing shall be opened to the public and any

1 or denying of a hearing may be invalidated only if it is found

1 of business, is doing business, or in the district court of the

1 under this section shall forfeit and pay to the state a civil

1 under this subchapter. If an action is prosecuted by a district.

1 act or practice is false, misleading, or deceptive by this  
2 subchapter or by a regulation of the consumer protection division

1 suit any money or property, real or personal, which may have been  
2 acquired in violation of this subchapter or regulations issued

1 damages;

2 "(2) an order enjoining the act or failure to act;

1 prerequisites of Subsection (a) of this section are satisfied and  
2 in addition:

3           "(1) the prosecution of separate actions by or against  
4 individual members of the class would create a risk of:

5           "(A) inconsistent or varving adiudications

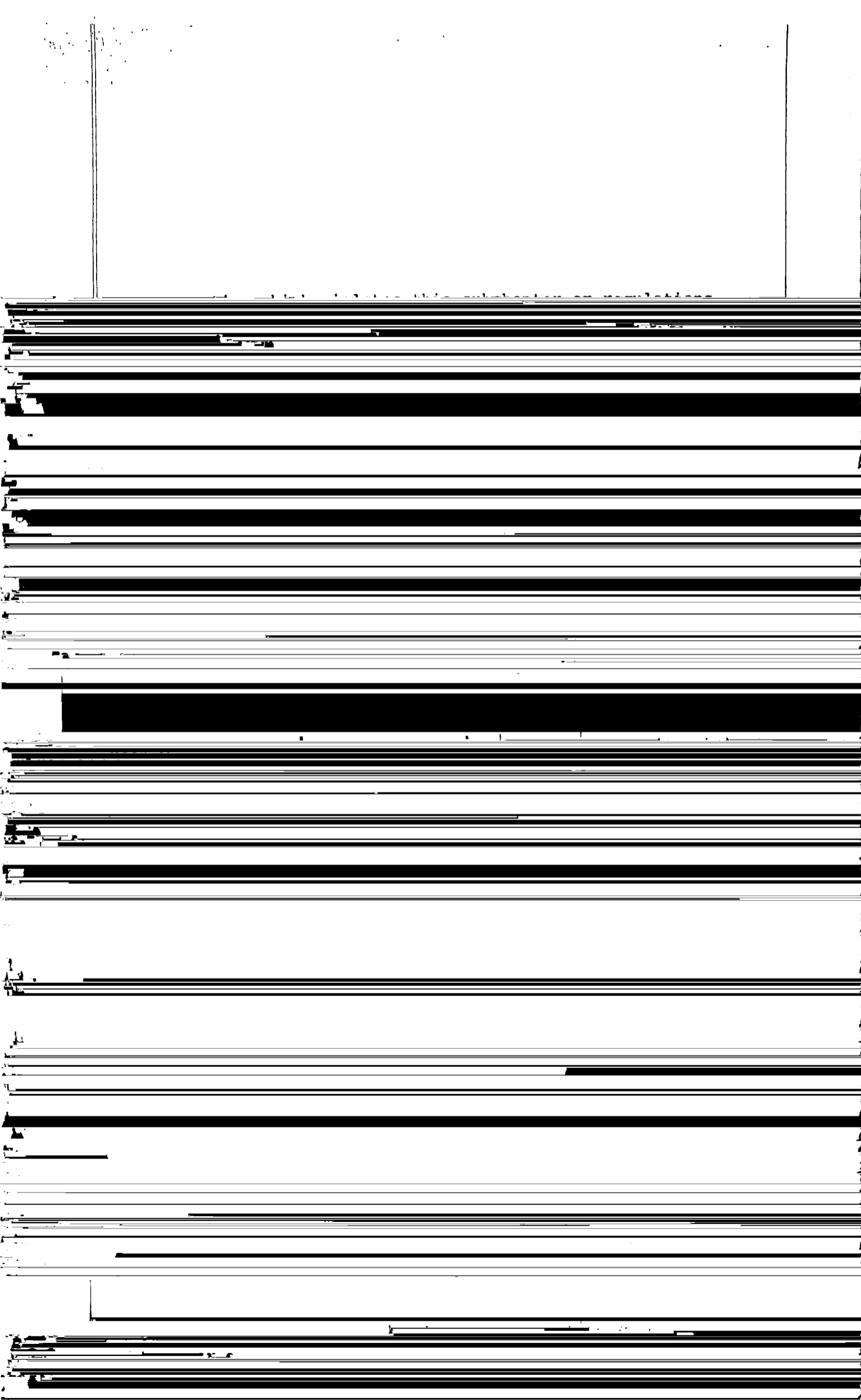
concerning the controversy already commenced in the State of New York

1. "(3) any member who does not request exclusion, if

1 the opportunity of members to signify whether they consider the  
2 representation fair and adequate, to intervene and present claims  
3 or defenses, or otherwise to come into the action;

1 Subsection (a) of this section. Not less than 30 days after the

1 against the seller plus attorneys' fees on a showing that:



"Sec. 17.61. POWERS OF RECEIVER. (a) When a receiver is

1 money, credit, real, personal, or mixed property, or any other  
2 thing of substantial value with the expectation of sharing in the

1 impound any sample of merchandise that is produced in accordance  
2 with this subchapter and retain it in the possession of the  
3 division under the completion of all proceedings in connection

1 under Rule 26 of the Federal Rules of Civil Procedure.

1 and copying by the person who produced the material or any duly

1 other means falsifies any documentary material or merchandise or

1 Texas Civil Statutes). is repealed.

April 10 1973

Honorable William P. Hobby

Sir:

We, your Committee on Jurisprudence,  
to which was referred S. B. No. 75, have had the same under

consideration, and I am instructed to report it back to the Senate

Committee Substitute adopted in lieu thereof do pass and be  
printed.



COMMITTEE SUBSTITUTE FOR S.B. 75

A BILL TO BE ENTITLED

AN ACT

relating to the definition and regulation of unlawful trade, acts and

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Chapter 17, Business & Commerce Code, as amended, is amended by

Section 17.41. SHORT TITLE. This subchapter may be cited as the Deceptive

"(3) 'Person' means an individual partnership corporation association

or other group, however organized.

"(4) 'Consumer' means an individual who seeks or acquires by purchase

lease, any goods or services, for personal, family, or household purposes.

"(5) 'Merchant' means a party to a consumer transaction other than a

"(6) 'Trade' and 'commerce' mean the advertising offering for sale

lease, or distribution of any good or service, of any property, tangible or in-

tangible, real, personal or mixed and any other article commodity or thing of

'(4) using deceptive representations or designations of geographic

origin in connection with goods or services:

'(5) representing that goods or services have sponsorship approval.

"(16) disconnecting, turning back, or resetting the odometer of  
any motor vehicle so as to reduce the number of miles indicated on the odometer

*gauge* language;

11(17) advertising of any sale by fraudulently representing that a

The consumer protection division may bring any action under this section against

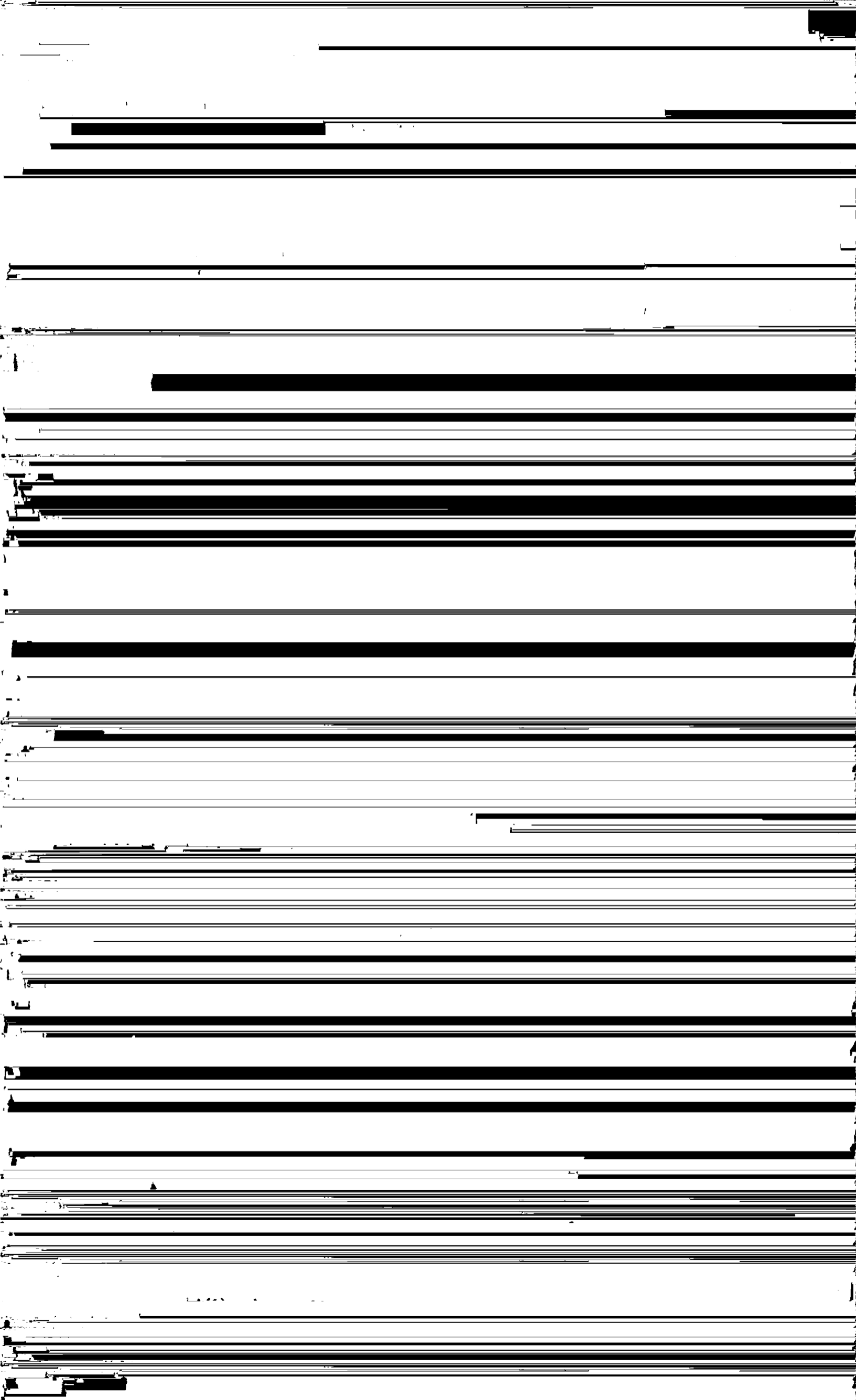
a licensed insurer or insurance agent.

11(d) The court may make such additional orders or judgments as are necessary

property, real or personal, which may have been acquired by means of any act or practice

restrained. Damages may not include any damages incurred by

"(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions against



<sup>tion</sup>  
"Sec. 17.51. CLASS ACTIONS. (a) If a consumer has been damaged in an amount in excess of \$10,000 by an unlawful method, act, or practice contained in Subsection (b) <sup>of</sup> Section 17.46 of this subchapter, an act or practice in violation

<sup>tion</sup>  
"Sec 17.52. CLASS ACTION: PROCEDURE. (a) The court shall permit

"(C) the desirability or undesirability of controversy  
concentrating the litigation of the claims in the \_\_\_\_\_

11(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds

'(b) The notice must be in writing and sent by certified or registered

mail, return receipt requested, to the place where the transaction occurred, the

intended defendants' principal place of business in this state, or if neither will  
effect notice, to the office of the Secretary of State of Texas.

*tion*  
"Sec 17 54

DAMAGES • DEFENSE

No record of damages was found

"(b) The acceptance of an assurance of voluntary compliance may be

11(b) If the claims of consumers remain unsatisfied after distribution.

<sup>11</sup>Sec <sup>two</sup> 17.61. CIVIL INVESTIGATIVE DEMAND. (a) Whenever the consumer

"(c) Documentary material demanded pursuant to this section shall be

sample of merchandise is guilty of a misdemeanor

such express provisions within the purposes of these Articles as it deems necessary  
or as is required to affect necessary uniformity with the laws of other states

"(f) The action of the Board in adopting, amending, repealing, or failing to adopt a regulation or denying a hearing may be invalidated only if it

6/6/68

1'(c) Any person who violates the terms of a cease and desist order

report such failure to the Attorney General and request the Attorney General to

^'(c) In addition to the request for a temporary or permanent injunction

on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17 46 of the Business and Commerce Code.

of the Business and Commerce Code as amended.

practices.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

(1) three times the amount of actual damages.

§(d) In an action under this section, damages may not include any

1'(A) the interest of members of the class in individually.

1'(B) the extent and nature of any litigation concerning

1(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into sub-

shall be construed and applied accordingly.

11 <sup>tion</sup> Sec. 19. Preliminary Notice. (a) At least 30 days prior to the

(4) the practice complained of has ceased.

(c) Attempts to comply with the provisions of this section by a person

“(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this Article or regulations issued under this Article or Section 17.46, Business and Commerce Code. However, unless an assurance

Sec. 5. The importance of this legislation and the crowded condition

of the calendars in both houses create an emergency and an imperative public  
necessity that the constitutional rule requiring bills to be read on three several

days in each house be suspended, and this rule is hereby suspended. and that this

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SENATE SUBCOMMITTEE ON CONSUMER AFFAIRS  
ADOPTION OF RULES -- Senate Bill 75

can file suit, of course, for certain specified deceptive trade practices which are set out in the act and commonly

referred to as the "laundry list" in the past. The "dirty laundry list" I guess you could call it, the things that honest

so long as he just ceases the practice. If he save all night

administering one law which can tell them what acts and practices

and to [REDACTED] that's what this bill does in bringing this into the

Attorney General's Office and bringing not only the citizen's  
suit based upon the same set of circumstances, but our remedies

on the same set of circumstances. So you get this consistency

of [REDACTED]

act is directed as Senator Mauzy said, to those who would not perform in an honest manner in the marketplace. We all realize that 95 percent or more of our business is honest and this

95 upward percent the black eye. And the ultimate effect of



does take time to read, of course,--takes time to look at the

he is not responsible, and there is a--just extensive procedures

throughout this bill to provide for good faith errors. When

I spoke to the Retail Grocers about this bill, this--what's today,  
I lose track of time, I believe it was this week--if it wasn't  
it was the latter part of last week that--because I think we  
are all twenty-one, we are down here to try to pass legislation.

that is in the public interest. There is no need going to one

group and talking one way.

Gammage, my name is Jack Welch

Federation is a trade association

dry good, jewelry, and specialty stores throughout Texas. Our  
membership recognizes that its members

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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the Attorney General's Office.

CHAIRMAN : Joe, which are the new deceptive

trade practices that have been added?

LONGLEY : On page 4 would be where we would

regards running back of odometers on automobiles, the mileage

a bill analysis coming out which will explain which ones are  
the new ones and which ones aren't.

With regard to the rules and regulations

upon a petition by one hundred interested parties to hold

With regard to the restraining orders

through its Consumer Protection Division

present law there. Currently the Attorney General once he goes

Give the reasons. Prove up the case. And if he proves that

[REDACTED]

[REDACTED]

[REDACTED]

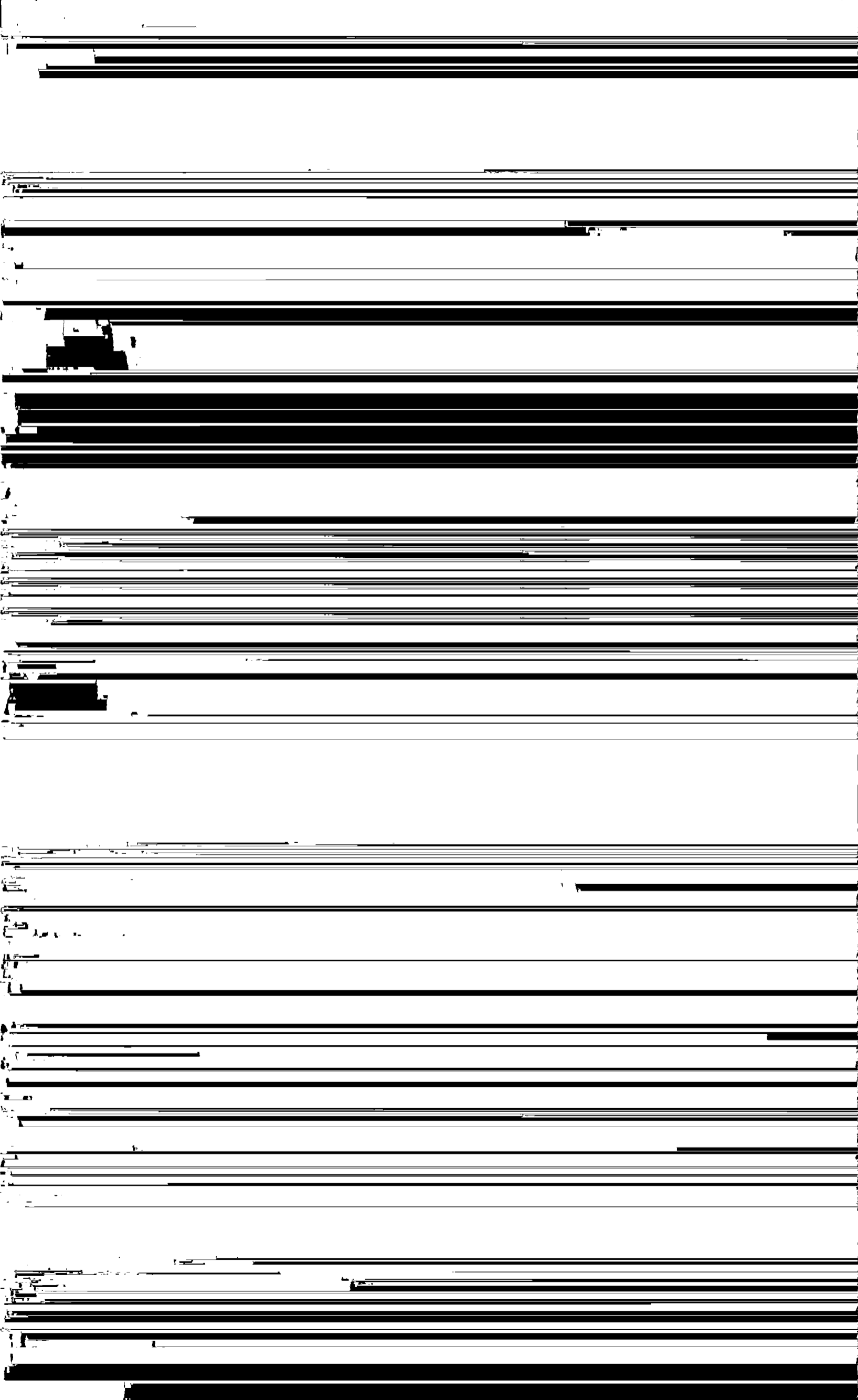
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

my face tell me, you know, I am going to keep doing this until  
some court tells me to stop. And so we are in the position of



SEN. ANDUJAR

: It does --

LONGLEY

: It does away with the insurance

and that's the reason for this exemption. However, on the other

hand, I think the public has an interest in being protected of --

Now. 1752 starts the new ground



know there is at least one bill analysis, there has not been one  
for the Committee Substitute. but there -- the changes have been

Subcommittee.

Be happy to try to answer any questions.

dealing with it equally. It would not be

to another. To permit fraud in the loan company area, and to prohibit it in the area of auto sales. So, this bill tries to go across the board, and deal fairly and equally with all types of businesses within the state.

I think that if the member businesses the many member businesses of the Retail Federation, which is the largest effective group, can live with this bill as they've indi-

cated that they can, that it's a bill that any responsible and honest business man can live with.

There's one exemption, in a way, that is provided in the Committee Substitute Bill, and I think probably properly so. It removes all of the references to the Consumer Credit Code. Under one of the earlier drafts there was

So, the first thing that this class action bill doesn't do is deal with the area of consumer credit, where if there have been any abuses of class actions, that's where they've occurred.

The second thing that it does is to limit the area where the class action can apply to a very narrow area. It applies only to those acts in deceptive practices that are innumerated in the statute

here provide -- well, really just a very substantial amount of safeguards for any type of harrassment.

which is nothing in the area of class action, it's not a perfect bill, but I think it's a workable one that represents a fair compro-

the same time meeting the needs of the business

Are there any questions?

CHAIRMAN

:

: Since Sen. Mauzy has gone I'm

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the importance of this particular departure from what might be considered the historical role of the Attorney General's office.

and Koscot International, which you may be familiar with. This

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be those presently involved in California Legislation.

While the -- this bill does not track any one state legislation, because we felt it had to fit our particular problem. This is the background on which some of the reasons why we have the provisions we have, and what other states you may want to look to to -- for comparison purposes. Thank you.

CHAIRMAN : Is -- I'd like to clarify one thing. What all is exempted from this Act now? Specifically exempts the news media.

: Okay. the new media is exempted...

the newspapers, unless it is established that they knew. And by establish, we are talking about a court proceeding...a complaint can be filed against them, but they have to -- you know, it's not established by a consumer complaining.

CHAIRMAN : All right. what about pawn shops and

loan companies -- ?

: No. none of these people are exempted

from the bill in so far as they engage in deceptive acts or practices

in trade or commerce. Now, as you know, there is -- there are

specific delineated acts and practices. and also the Attorney Generals

the changes....

SEN. GAMMAGE

: Everyone on the Committee has

the Subcommittee is unanimously in favor of a favorable report.

such time as the report for this transcript can be afforded us  
and the report made to the Committee. Thank you.

TESTIMONY OF TEXAS ATTORNEY GENERAL JOHN HILL ON SENATE BILL 75

BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES

SENATOR BROOKS, CHAIRMAN

February 14, 1973

Transcribed by  
Texas Senate Staff Services  
May 2, 1977

I, Vivian McVey, certify that this is a true, complete, and accurate transcript of the testimony of Texas Attorney General John Hill on

TESTIMONY ON S.B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES  
SENATOR BROOKS, CHAIRMAN  
February 14, 1973

Tape 1, Side 1

CHAIRMAN : Now we go to Senate Bill 75 which is in  
the hands of our Subcommittee on Consumer Affairs.

[REDACTED]

CLOWER : Mr. Chairman, last week we had a full  
hearing on this bill. We published notice of the hearing on  
Monday and we held a hearing on Thursday. Ample notice was  
afforded to all. The Attorney General appeared in support of  
the bill, as well as a couple of people from his staff, a couple  
of consumer groups appeared and testimony was unanimously in favor  
of it. I asked at that time for anyone wish to testify in opposition  
to the bill and no one did. It was passed out of the subcommittee  
unanimously. Now it appears that there is some people wanting to  
speak on this again and I think they are entitled to and Senator  
Gammage has about three amendments in the nature of housekeeping  
amendments that he would like to make to the bill.

[REDACTED]

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SENATOR BROOKS. CHAIRMAN

TESTIMONY ON S.B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES

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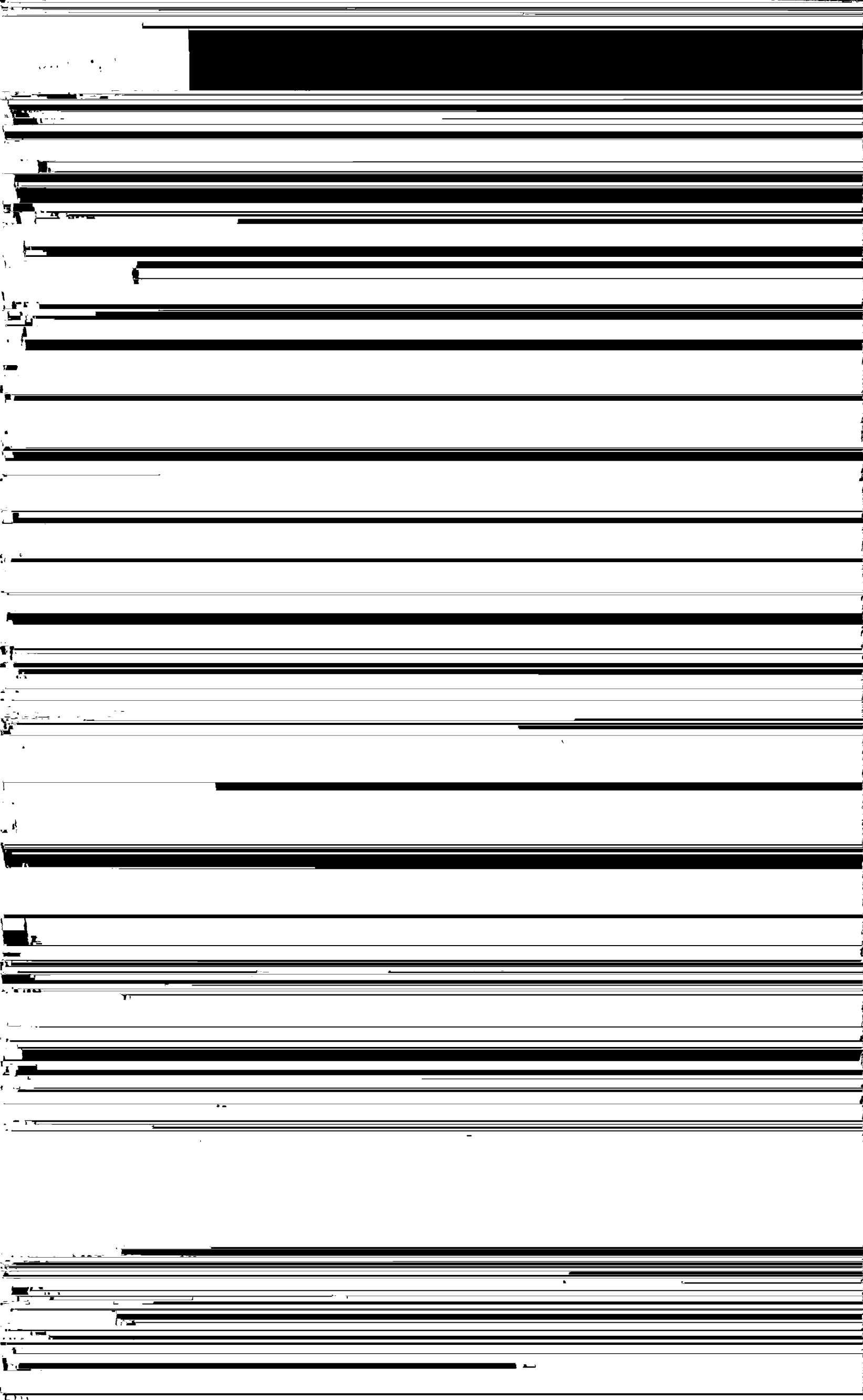
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it not. In my opinion, this bill not only sees that the consumer

receives protection, but also sees that the retailer is not  
penalized. And I submit to you in all due \_\_\_\_\_ to many

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my copy page five, Section 20, you would be guilty of failure to



(Laughter)

KOTHMANN

: But the reason I asked that because I

have seen these things take place



well, I want to file a lawsuit because I didn't understand the policy that way.

MEIER : That's wrong.

ATTORNEY GENERAL HILL : There would have to be a violation of this act and as deceptive trade advertising behind us. Now, if the advertisement came out in the newspaper and said you buy this policy and you send in your five dollars and if you do, you are going to get a policy that will cover you regardless of previous illness. That's what this bill means-- deals with. Then yes, the answer to

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ATTORNEY GENERAL : Well, the theory of course that arose out of  
anti-trust is--it is a penalty, Senator. It is a penalty for wrong

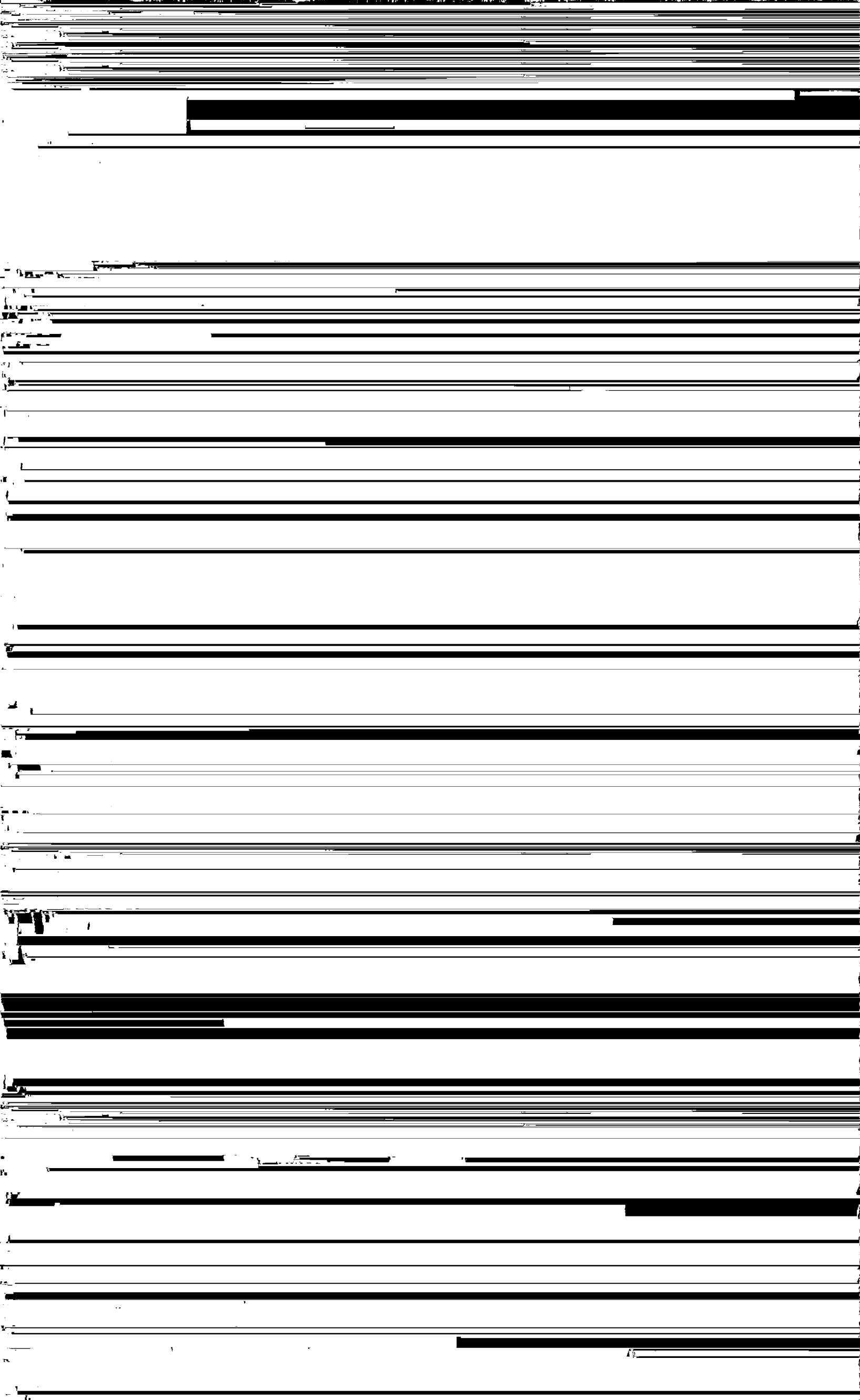
cumulative from that standpoint, and it (?). My feeling

you are talking about the individual situation dollarwise or not.

Senator Harris, very consequential most of the time and three times

is not all that consequential and punitive damage I think has to be





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GAMMAGE  
commission.

: Either, either.

:--or submitted by a state agency, board, or

: --or submitted. Okay.

GAMMAGE

: Number 3, Mr. Chairman, as you pointed out

1

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lack of resources I was not prepared to testify at all.

do appreciate this second opportunity here before the committee.

The Texas Automobile Dealers Association is comprised of 1450 franchise new car dealers who do business throughout the State of Texas. According to the U. S. Department of Commerce

retail automobile sales in Texas in 1972 total \$4.5 billion.

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the form leaves no middleground alternative. I either had to  
indicate that I was for the bill

I do want you to know that there are many things about Senate



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suits to be developed at the same time. It simply says that

I  
seeking the same relief, basically the same relief when we have the

is a very serious and far reaching remedy in the first place. Because  
it is such a remedy we firmly believe

proposed this for your consideration.

MEIER : Mr. Chairman.

FONDREN : As you know any number of individual suits  
could certainly be brought. This would not in anywise limit the  
right of an individual to have a suit brought or bring suit in

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it is actually filed against a group of Fort Worth dealers involving

transactions in Fort Worth but if the same kind of transactions

but different had transpired in Dallas that those Dallas ones could

that live in Dallas.

FONDREN

: Right They would have a right to sue

consider setting it out clearly in the bill.

MEIER

: Well. Mr. Eondren. I want to ask you

about that. If we are here in effect creating a new substantive

right, substantive cause of action--that is what this bill does--

interpretations thereof

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the federal rules and procedures, the federal court decisions and

federal rules and regulations.

CHAIRMAN : Excuse me, Senator Gammage has a question.

FONDREN : Yes, sir.

GAMMAGE : Mr. Fondren, --trouble to point out to you

at this time the references to federal trade commission interpretations

that are included in this bill are included in the present law under

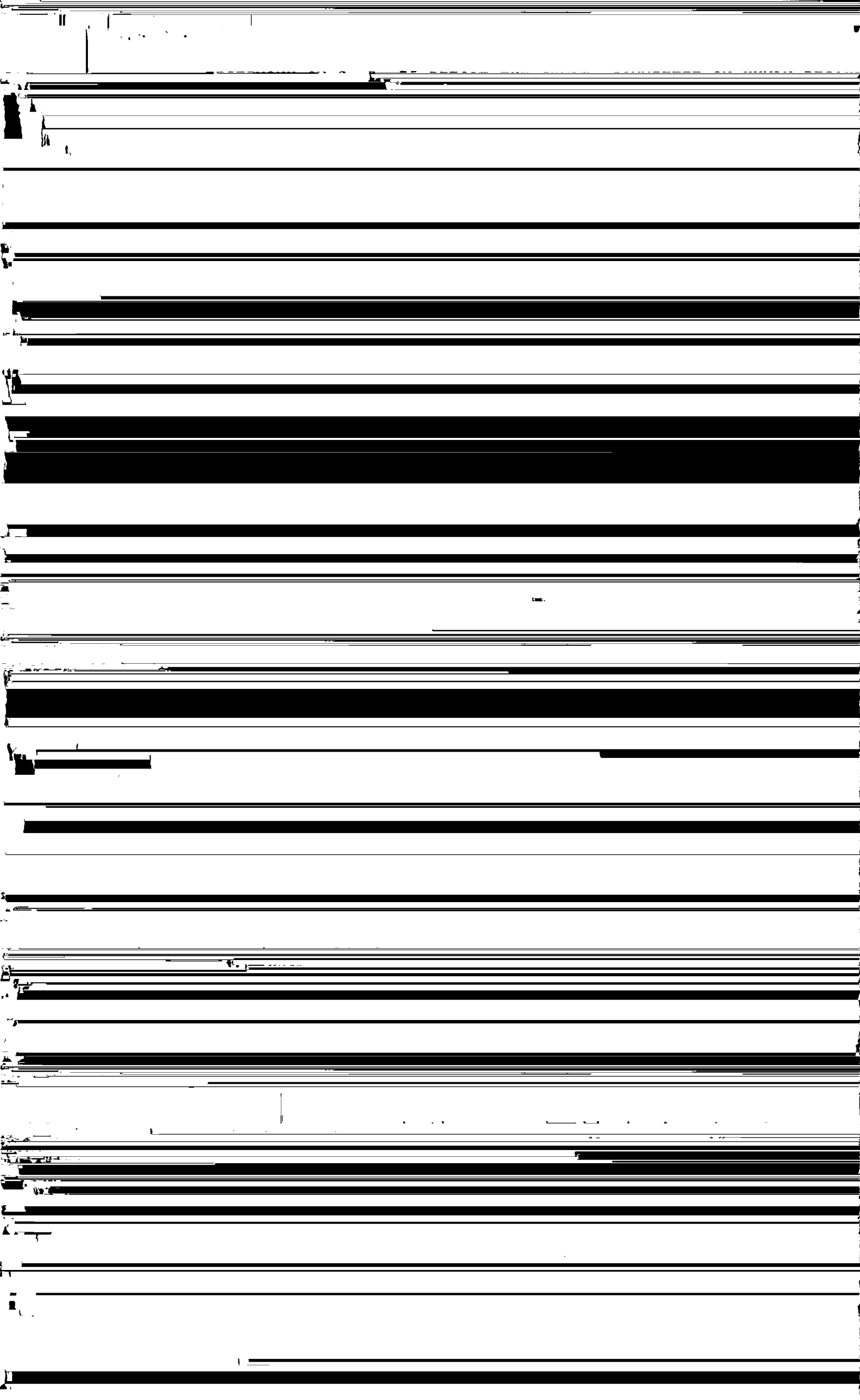
burdensome rules and regulations from every level that any business

operator is confronted with, that it is possible without setting out

on a deliberate course of action to find yourself in trouble and in

violation. I simply suggest that those penalties are very substantial and could well be excessive. I recognize that those are not minimum





but that said punitive damages

damages.

FONDREN

: It says court costs and attorney's fees

in addition to actual damages and

the court has the--is granted additional authority to make people  
(inaudible due to cough). restore property and

: Texas law though and this doesn't

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is entitled to his attorney's fees. As General Hill stated though,

there is no guarantee that he can recover those attorney's fees.

There is no provision for bond or surety or any showing of financial

might be able to recover attorney's fees is a very small compensa-

: You point out yourself in here a moment





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Tape 2, Side 1

FONDREN : --It is number 21 on page 5 and then  
on page 6 beginning with Section 17.47. sets out the rule-making

adding deceptive practices to the statute, and the manner

certainly is not with the manner in which rule-making power







think you can see the tremendously onus burden that a defendant

is placed under in going ahead and asserting his rights defend-

ing himself when he is confronted with--if he loses with that

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section on class action. Again, the drafters of this legislation

ought to be highly complimented on delineating and limiting the

connection with this bill. They have done a most careful and

expert job of draftmanship on the class action section. My



mainly for the benefit of a few lawyers ready and willing to

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function. The bill you have before you likewise exercises or

proposes and authorizes the Attorney General to exercise legis-

deceptive practice or what have you is a legislative function

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then we tried the 98th District Court and I get a jury verdict.

Who wins? In other words, the Commissioner or the State Board

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problem presently in the current law because some person out there

feels aggrieved by this case still going to court now? (?)



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: I am talking about just one single

[REDACTED]

[REDACTED]

[REDACTED]

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PATMAN : It will take us quite a while to vote on  
this--

: Let me ask this--in view of the magnitude

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: Yes, that would be all right.

CHAIRMAN

: Senator Harris moves that the Committee  
stand recess until 9 a.m. tomorrow morning, and Senator Patman

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by those regulations--

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SNEAD

: -- in a model act as I understand a model

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Commissioners then came in with model laws urging each of the

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SNEAD : They were adopted in 1971.

and regulations that were adopted

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Trade Commission. We are saying that the State Board of Insurance

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is the Federal Trade Commission. So all we are saving it --tie it

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the people that I represent that are engaged in the sale of stock

in interstate commerce.

PATMAN

: How about the Federal Trade Commission?

the Attorney General in effect?

CHAIRMAN : Senator Gammage has question.

GAMMAGE : Mr. Snead, you know, we have gotten off into the internal (?) imaginations of the insurance industry and all sorts of policy questions and what have you. Then the point of fact, this act, this bill deals with deceptive trade practices primarily in the enforcement area. If we want to talk about the dual rule-making, we can get off into that, but we have already avoided conflicts there, but primarily in the enforcement area-- it does not deal with all these internal workings and internal machinery of the industry. Under your proposition of prohibition that we followed--precedents that you want to set here--prohibition on overlapping functions, or any kind of a dual function here would exempt all sorts of industry, wouldn't it?

SNEAD : No, sir. No. sir.

GAMMAGE : What about the Comptroller, the \_\_\_\_\_  
\_\_\_\_\_ (inaudible due to overlapping conversations)

SNEAD : You are changing the precedent. You are making the judgment to change the precedent. The precedent is now

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[REDACTED]

[REDACTED]

: Yeah. Can they ever file a lawsuit--

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Now the State Board of Insurance can make one finding under this.

: But what does the Attorney General do

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WILLIAM J. BRYAN

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: Can you proceed individually?

SNEAD

: Yes, sir.

: And recover his attorney's fees under--

(inaudible due to overlapping conversations)

SNEAD

: What he does always, Senator, is he files

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GAMMAGE

I tried the first medical treatment

SNEAD : Here is what the sophisticated lawyer  
that comes in now. If there is any smidgen of misrepresentation.

any question of false advertising, misrepresentation, the standard

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Isn't that correct?

SENATOR BROOKS CHAIRMAN

SNEAD : That is not required.

: All right, if they submit it in advance.

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Just put us one place or the other. This is all we are asking.

CHAIRMAN : Thank you.

are lawyers and you are deep into this, but this is all we are asking.

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: What in fact that would be ?

privy to--on the thing at all. Frequently what's done is to

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SNEAD

: I do not know, and I apologize, but I do not

believe that that has been in there. So far as I know we have all

Tape 2, Side 1

FONDREN

: --It is number 21 on page 5 and then



that is an indication of that

and to initiate actions under the

final judgment is against me and the court of this statute says  
that I am in a defective trade practice, and not only am I then





provisions of this class action section are more likely to be

promote such cases."--quoting from the court in the

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proposed and authorized by the

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then we tried the 98th District Court and I get a jury verdict.

of Insurance can make a finding of fact and law: the Attorney General make the other, and we are in the courthouse.

: Well, I think bill recorded that, doesn't

it (?)?

SNEAD

: Rule-making. It does not, and the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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treble damages. Two, there is not the authority  
for the Attorney General to bring a class action suit on the

City Attorney or the District Attorney. And last, our fines

aren't as large. Now there may be that I have missed some of

this.

: You missed attorney's fees

SNEAD

: No, sir, it is already in the statute.

In other words, on any life, health, or accident policy that my  
people don't pay and you file a suit against them for--we say  
that--

: Deceptive practices?

SNEAD

: It would lie in the area of a class

SNEAD : The practical effect of that case was  
and I think the guidelines laid down to the court are very similar--to  
exactly what the guidelines are that you have here. I think that  
the main issue is duplicity of regulation. You see, you can't  
really pass upon a policy of insurance as to whether its  
advertising is or is not false without having in many instances  
an actuary, an accountant, an examination of the company, and  
as it exists right now--and I have here, let me pass these out  
and just completely out of order. These are the latest rules and  
insurance and guidelines established

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by those regulations--

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SNEAD : -- in a model act as I understand a model  
act as proposed. It exempted--

PATMAN : What is a model act? I don't even know

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

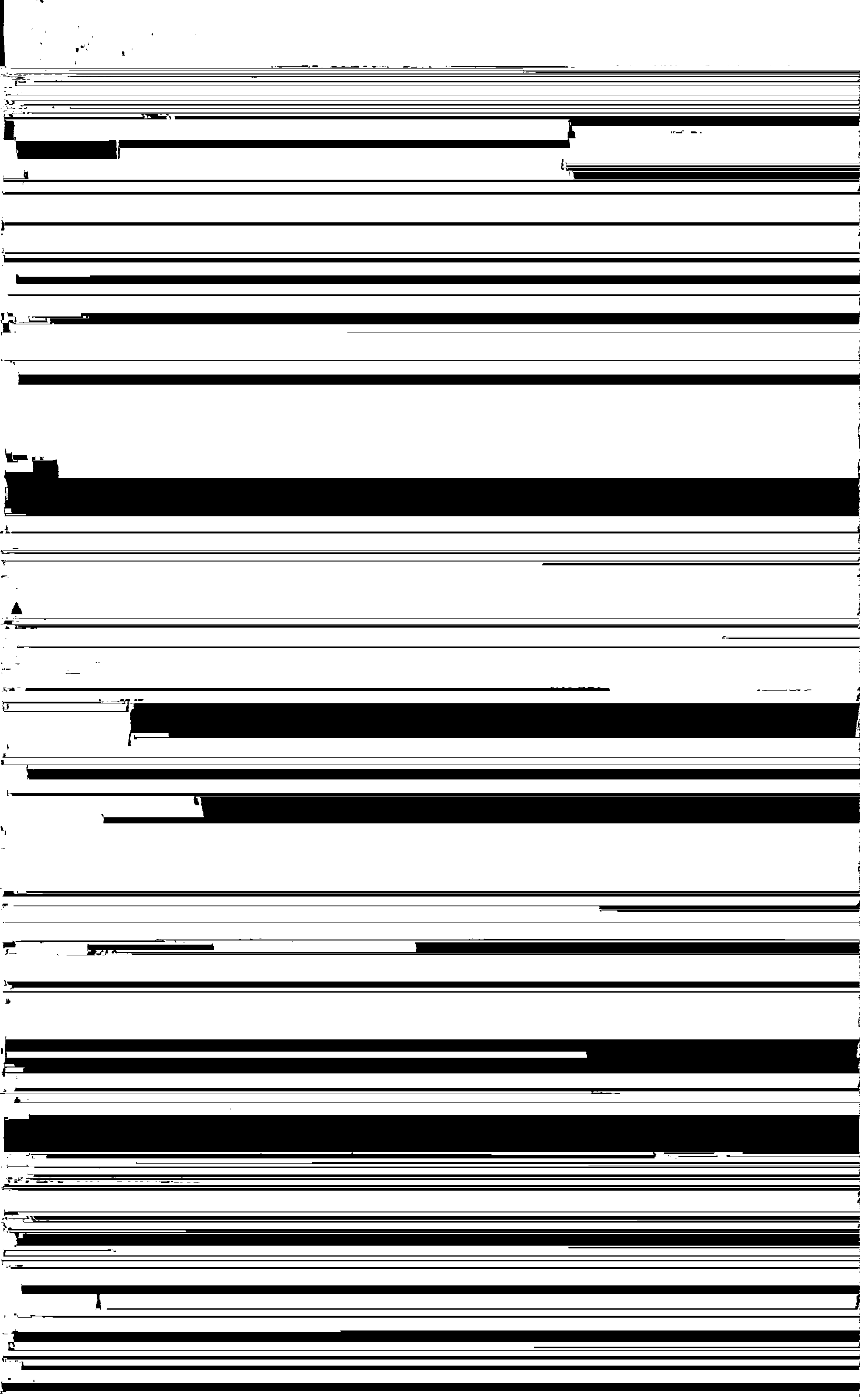
[REDACTED]

[REDACTED]

[REDACTED]

concerned. Now we say and we recognize in this bill the need for

is the possibility of conflict between the two...



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the people that I represent that are engaged in the sale of stock

in interstate commerce.

PATMAN

: How about the Federal Trade Commission?





TESTIMONY ON S. B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES

regulatory act. It exempts state agencies

: Yeah. Can they ever file a lawsuit?

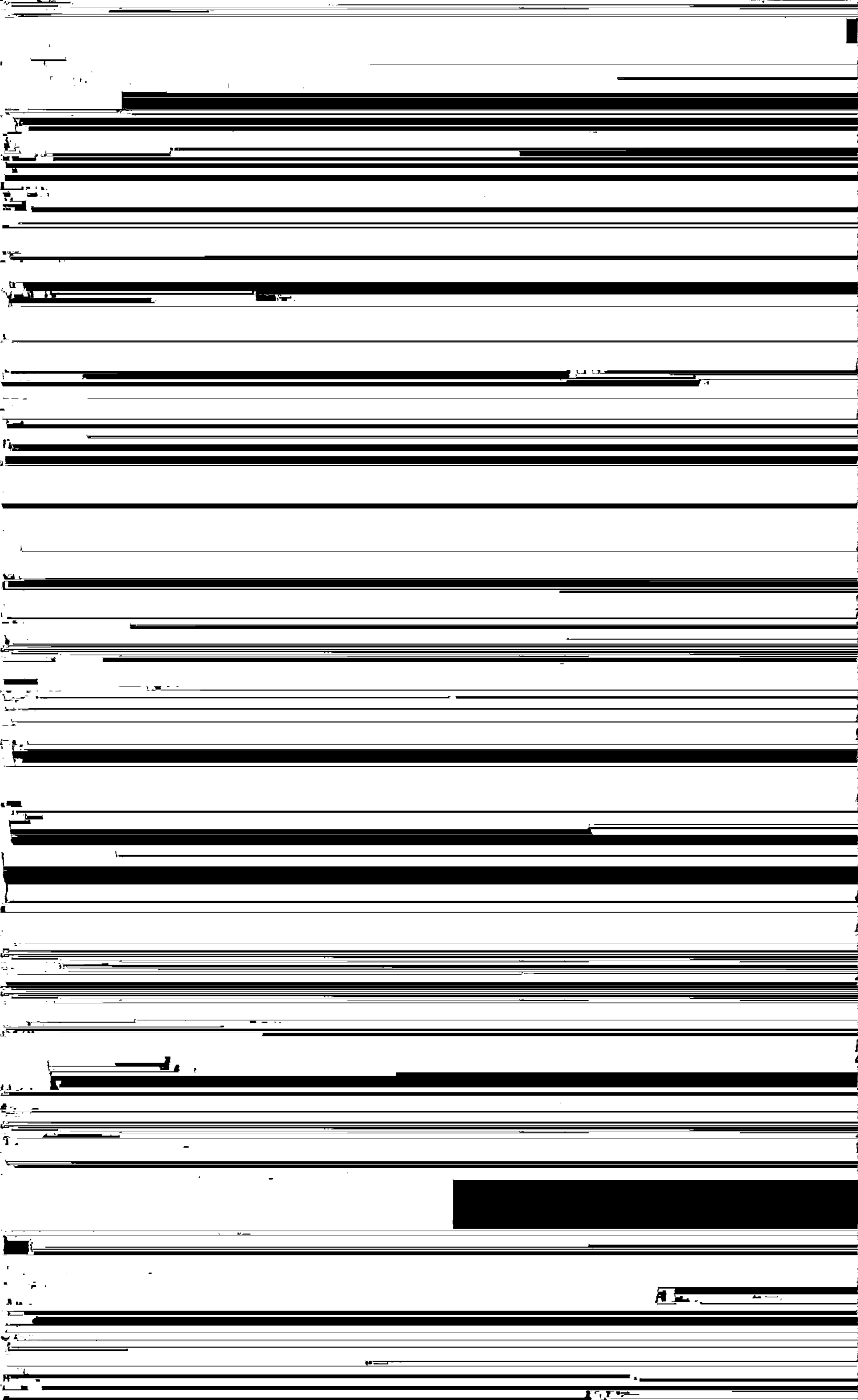
TESTIMONY ON S. B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES

SENATOR BROOKS CHAIRMAN









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SENATOR BROOKS, CHAIRMAN

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SNEAD : Here is what the sophisticated lawyer



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SENATOR BROOKS, CHAIRMAN

SNEAD : That is not required.

: All right, if they submit it in advance.

the Insurance Commission considers it. and then they don't even give

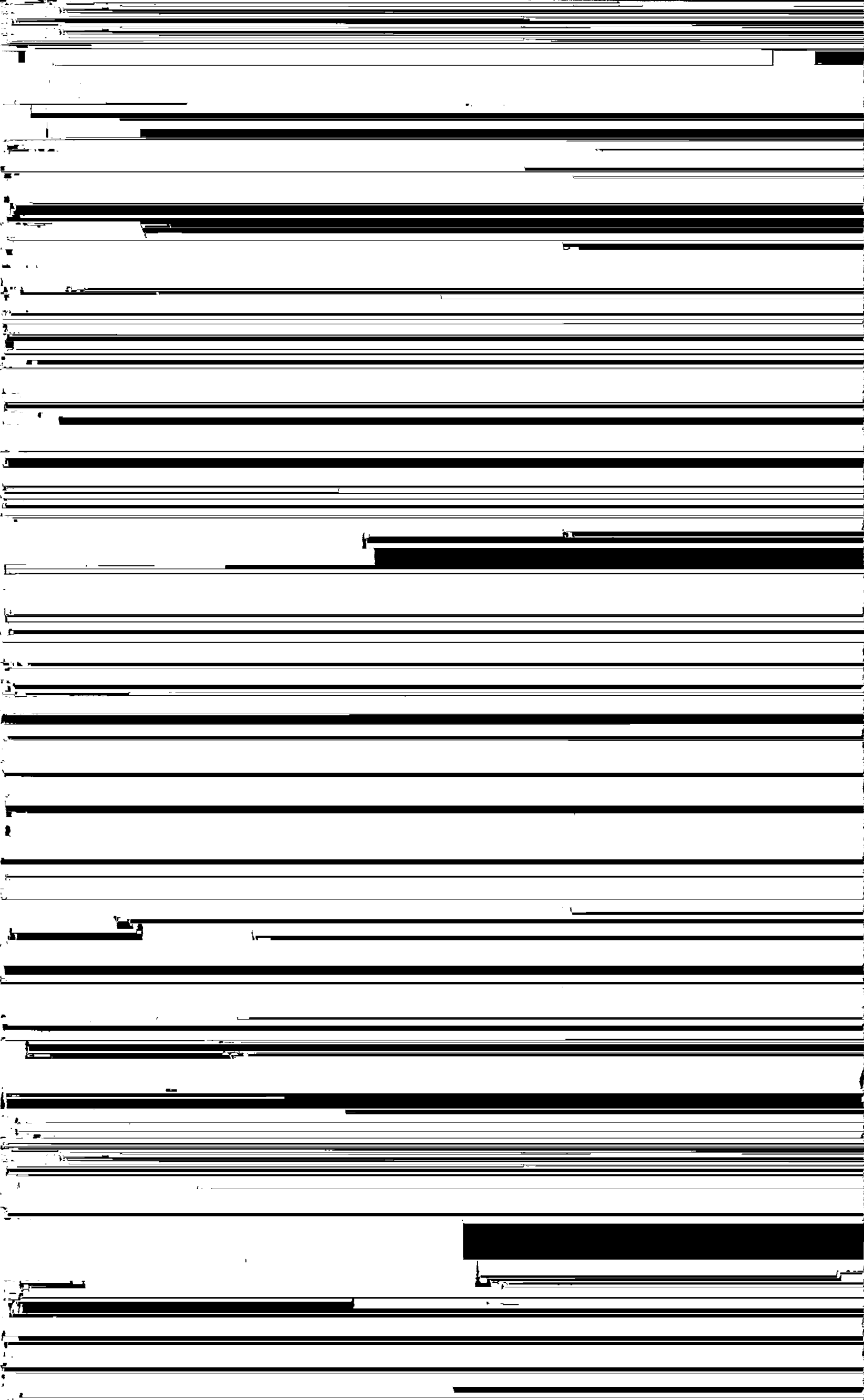
a stamp of approval to it.

SNEAD : They say it is--we accept it as of now  
subject to if you change.

: That would come within this exemption. even

the way you read it because that is not approved action That's





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SNEAD : I do not know, and I apologize, but I do not believe that that has been in there. So far as I know, it

during that two-year period. Nobody was disqualified (?)--  
(End of Side 2 of Tape 2)

(Continuation of testimony of Mr. Robert Snead)--where one  
body or the other regulates, and I think that is all that the

I would suggest the wording of it leading with the legislative



PATMAN : Well, I was just wondering how long is  
it going to take you?

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Page 6

whether it be banks, whether it be savings and loans, whether it

February 14, 1973

Page 8

trade practices he is not confined to promulgating rules and regula-

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DAVIS

: Yes, sir.

: It's the root of it right there

has been trying to do is get into other people's business is

exactly the same thing as attorneys given legislative power

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there is a considerable difference between a policing administrative

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: (Inaudible)

DAVIS

: All right, sir. (Laughter) I am interested

remedy type basis for these violations. Class action is exactly the same way except instead of treble damages it is actual damages but it is cumulative. It is a combining of these remedies if the court allows.

I am interested in--I think you ought to look at 17.57 over on page 21. This is really a unique case.

of one of these cases and I lose for my client, but I have simply used the promotional materials furnished to me by somebody else.

All I have got to do is file a lawsuit against that somebody else and attach a copy of the judgment and cease doing the violation myself and that is all he has got to pay. He doesn't have any

TESTIMONY ON S. B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES

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General under those two sections. To enforce the

act would raise serious doubts in my mind about the constitutionality

of it under the

: (Inaudible)

DAVIS

: All I know, Senator, is that a gambler  
doesn't have to pay his stamp tax because it is a 10 percent

SENATOR BROOKS, CHAIRMAN  
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of Insurance and the State Board of Insurance have carried out the

which deceptive trade practices can be regulated. But once again I

say to you, and the point I must try to get across is that if there

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think I am entitled to explain to you why.

PATMAN : Sure

: Well, in what kind of dispute (?)

DAVIS : The SEC. The SEC regulates interstate commerce, securities actions, etc.

who will proceed against any

(inaudible due to noise in

microphone)--who is guilty of a deceptive practice of any \_\_\_\_\_  
person \_\_\_\_\_ revenue for himself and others. Now what  
he does have is a very good force and a very fine agency \_\_\_\_\_

General's Office for that fellow who can find that

protects him, then I want an office with a sign on it that says

TESTIMONY ON S. B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES  
SENATOR BROOKS

advertising and

this bill says they are going to regulate



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(Inaudible--witness is not talking into microphone and other microphones)

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be in the

. You go to the

where

TESTIMONY ON S. B. 75 BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES  
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disciplined in a number of things that I had to

mba

fact that there are very few complaints about it.

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ANDUJAR : It says that on finding the court that  
the action was groundless and brought in bad faith, the court may

SENATOR BROOKS, CHAIRMAN  
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: Mr. Chairman, if I may, I would like to

SENATOR BROOKS, CHAIRMAN  
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Page 27

regard to

SCHWARTZ : I agree with the amendment that was adopted.

: Taking out a model act--model act.

had but different words.

: I don't think it does.

CHAIRMAN : Senator Patman sends up the following

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CHAIRMAN

: There is one more amendment up there.

The other amendment Senator Patman sent up was also discussed

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MEIER : I will do that quickly. It is also Section  
17.50 on page 12 under these . It would add Subsection

TESTIMONY ON S. R. 75 BEFORE THE SENATE COMMITTEE ON

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: Which section of the bill are we talking about now?

COTTON : I believe there are three sections in the bill that--I will locate them--that refer to receiverships and two of those sections also referred to revocation of license.



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SENATOR BROOKS

tion on the floor, and I am going to offer an amendment to the

floor.

: He exempts anything. Senator. (Verbiage

: Mr. Chairman, I think I understand the

speaking in opposition. and I would yield to Mr. Longley.

5171

DATE 01

SB 75  
63<sup>rd</sup>

I hereby attest that the attached is a true

FINANCE COMMITTEE

Erwin : All right. sir. The -- the last institution is our

system wide school of nursing, which now has institutions in Austin, El Paso, Ft. Worth, Galveston, Houston and San Antonio. And I'm as proud of this progress, Senator. as anything we've done.

schools -- I mean Sept. of '71. -- we had 3 nursing schools, one in

Austin, one Galveston, one in San Antonio with only 460 students. And with the help you all gave us and the financial support you gave

us, in the current September. this present school year, we've in-

creased that number from 460 to 870. And in '73, September of next year we will have 1,300 students. And I think that's a pretty remarkable progress in the face of nursing shortages everywhere that

we increased our enrollment from 460 to 1,300 in two years. And it's only because you've given us the money to make that possible.

UTS-2/21/73

2.

Erwin : We'd be very happy to talk to -- for you to talk  
to them about it, Senator.

3.

we'd like for the money in the first year of the biennium to be distributed. That means Austin will get an extra \$343,000.

And then, in line item 8, we need to increase that -- least the

facilities and services in Houston. we do not yet have a building.

UTS-2/21/73

5.

-- I beg your pardon, it's the El Paso, Ft. Worth and Houston schools  
that are being -- we would -- Dean Wilman tells me that she badly

6.

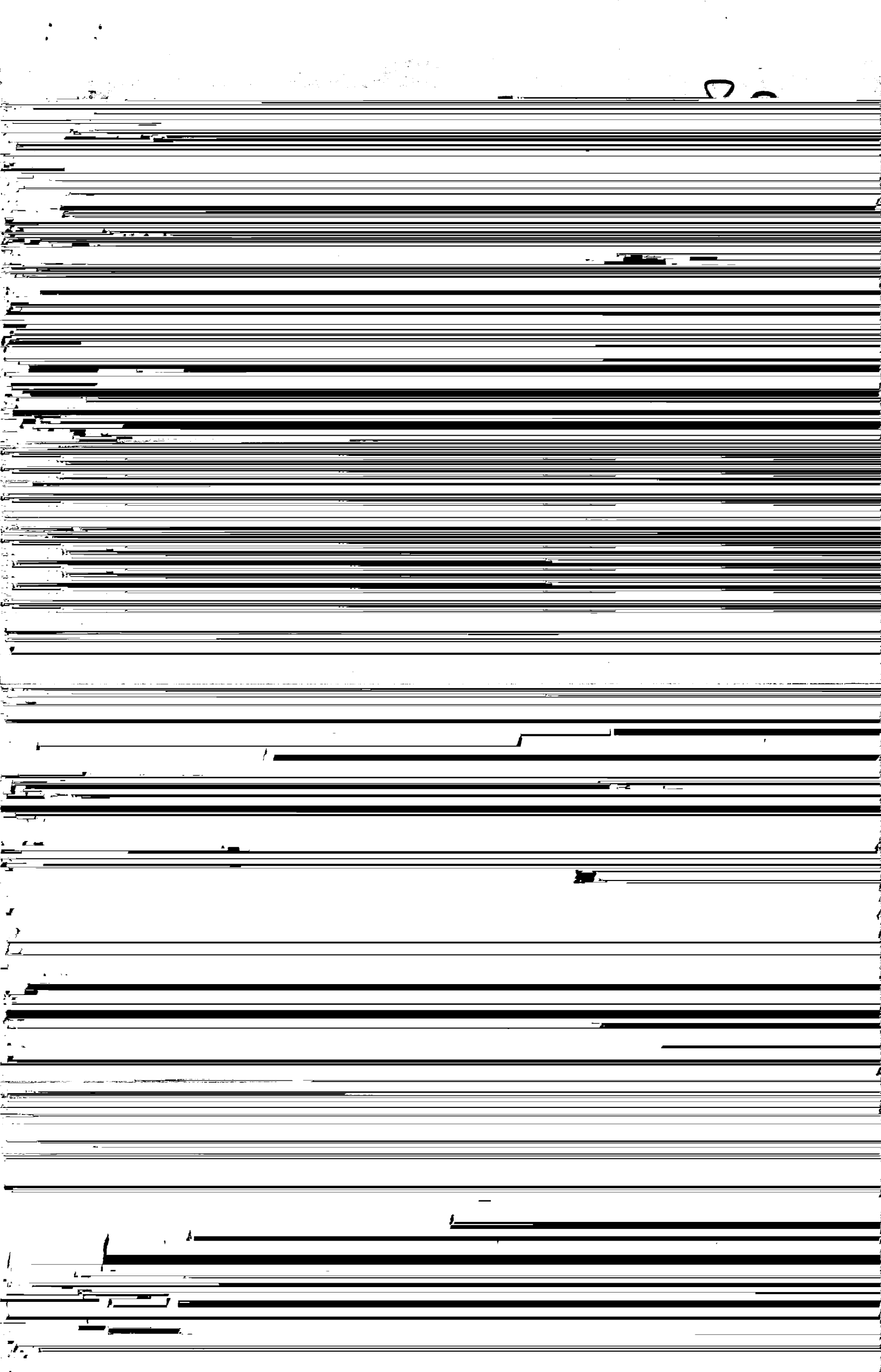
Aikin : Nurses?

Erwin: --for \$ 25,000. So that \$25,000 was well spent.

Mr. Chairman, that completes our presentation.

(This is the end of discussion of the nursing school.)





AMENDMENT NO. \_\_\_\_\_

BY many

Amend Committee Substitute for S.B. No. 75 by  
striking "Rule 26 of the Federal" in subsection (c) of quoted

AMENDMENT NO. \_\_\_\_\_

BY

*Maury*

Amend Committee Substitute for S.B. No. 75 by

inserting the following in quoted Section 17.51 subsection (a)

Floor Amendment No. \_\_\_\_\_

By: Mann

Amend L.S.B. No. 75 as

*read caption*

S.B. No. 75

1  
AN ACT



S.B. No. 75

1 this subchapter are not exclusive. The remedies provided in this

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

S.B. No. 75

1 wherever situated, and shall include any trade or commerce directly  
2 or indirectly affecting the people of this state.

3 "(7) 'Documentary material' includes the original  
4 or a copy of any book, record, report, memorandum, paper,

S.B. No. 75

1                   "(4) using deceptive representations or designations  
2 of geographic origin in connection with goods or services;

S.B. No. 75

- 1                   "(13) knowingly making false or misleading statements
- 2 of fact concerning the need for parts, replacement, or repair
- 3 service;
- 4                   "(14) misrepresenting the authority of a salesman,
- 5 representative or agent to negotiate the final terms of a consumer

S.B. No. 75

1 of an event subsequent to the time the buyer purchases the  
2 merchandise or goods;

3 "(19) representing that a guarantee or warranty

S.B. No. 75

consumer protection division has reason to believe that any person

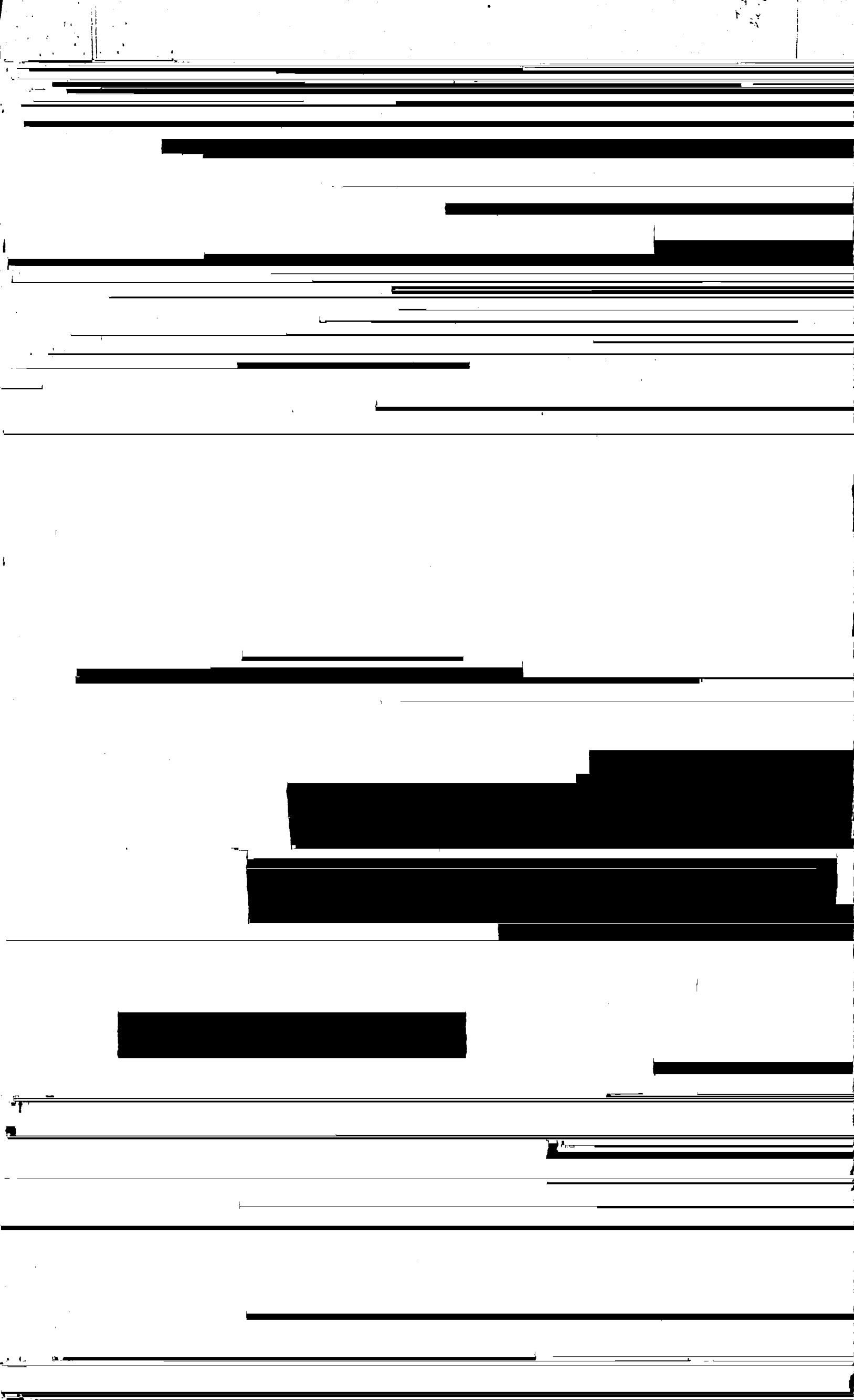
S.B. No. 75

1 prior contact were made or that such person would destroy relevant

S.B. No. 75










1 person who has been ordered by a court to make restitution under

[REDACTED]



S.B. No. 75

1 by this subchapter or regulations issued under this subchapter,



S.B. No. 75

1 as amended, or rules or regulations issued by the State Board of

S.B. No. 75

1

"Section 17.51. CLASS ACTIONS. (a) If a consumer has

S.B. No. 75

1 or certificate to engage in business in this state if the judgment

S.B. No. 75

- 1           "(4) the representative parties will fairly and
- 2 adequately protect the interests of the class.

S.B. No. 75

1

"(A) the interest of members of the class in

S.B. No. 75

1        "(f) The notice shall contain a statement that:

2        "(1) the court will exclude the member notified from

S.B. No. 75

1 in the presentation of evidence or argument;

S.B. No. 75

1

"(b) The notice must be in writing and sent by certified

S.B. No. 75

1 or communication which the intended defendant is providing to the

S.B. No. 75

- 1 seller of the goods or services has a cause of action against a
- 2 third party for the amount of damages or civil penalties assessed

S.B. No. 75

1

"Section 17.58. VOLUNTARY COMPLIANCE. (a) In the

S.B. No. 75

1 are governed by the terms of the voluntary compliance.

2 "Section 17.59. POWERS OF RECEIVER. (a) When a receiver

S.B. No. 75

1 consumer claims if such person:

2 "(1) contributed substantial personal services,

S.B. No. 75

1 deemed necessary and proper; and  
2 "(4) pursuant to an order of the appropriate court,  
3 impound any sample of merchandise that is produced in accordance

60-2

**1**

2

5

6

S.B. No. 75

1 the person has no place of business in this state, to his principal

S.B. No. 75



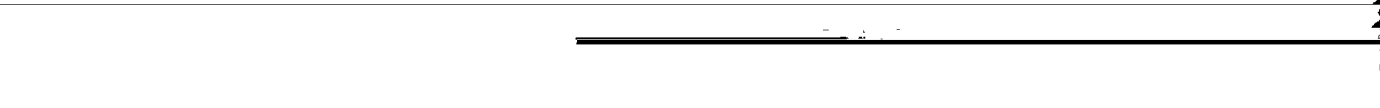
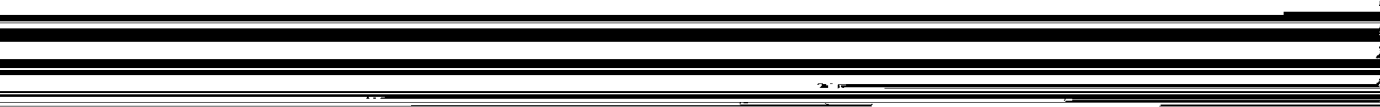

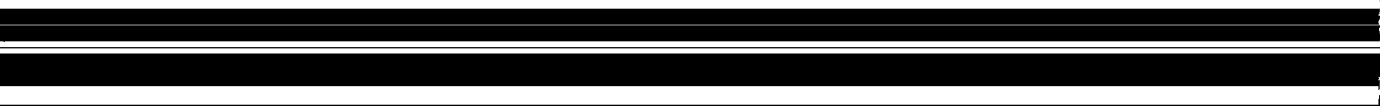
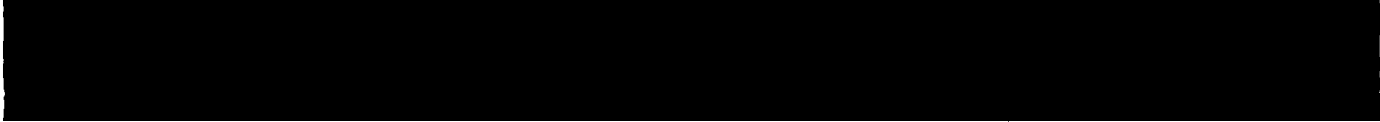
1 for, or to modify or set aside the demand, stating good cause,

S.B. No. 75

1 done and the person refuses to surrender the material, the consumer

S.B. No. 75

1 enforce reasonable rules and regulations and may order such  
2 provision as is necessary in the accomplishment of the purposes  
3 of this Article and Article 21.20, including, but not limited to,  
4 such express provision within the purposes of these Articles as  
5 it deems necessary or as is required to affect necessary uniformity



S.B. No. 75

1 to hold a hearing. such hearing shall be open to the public and

341  
E  
S.B. No. 75







1 probative. and substantial evidence in the whole record as

S.B. No. 75

1 modify or set aside in whole or in part any order issued under

S.B. No. 75

1 or upon finding by the Board that the aggrieved person and persons



S.B. No. 75

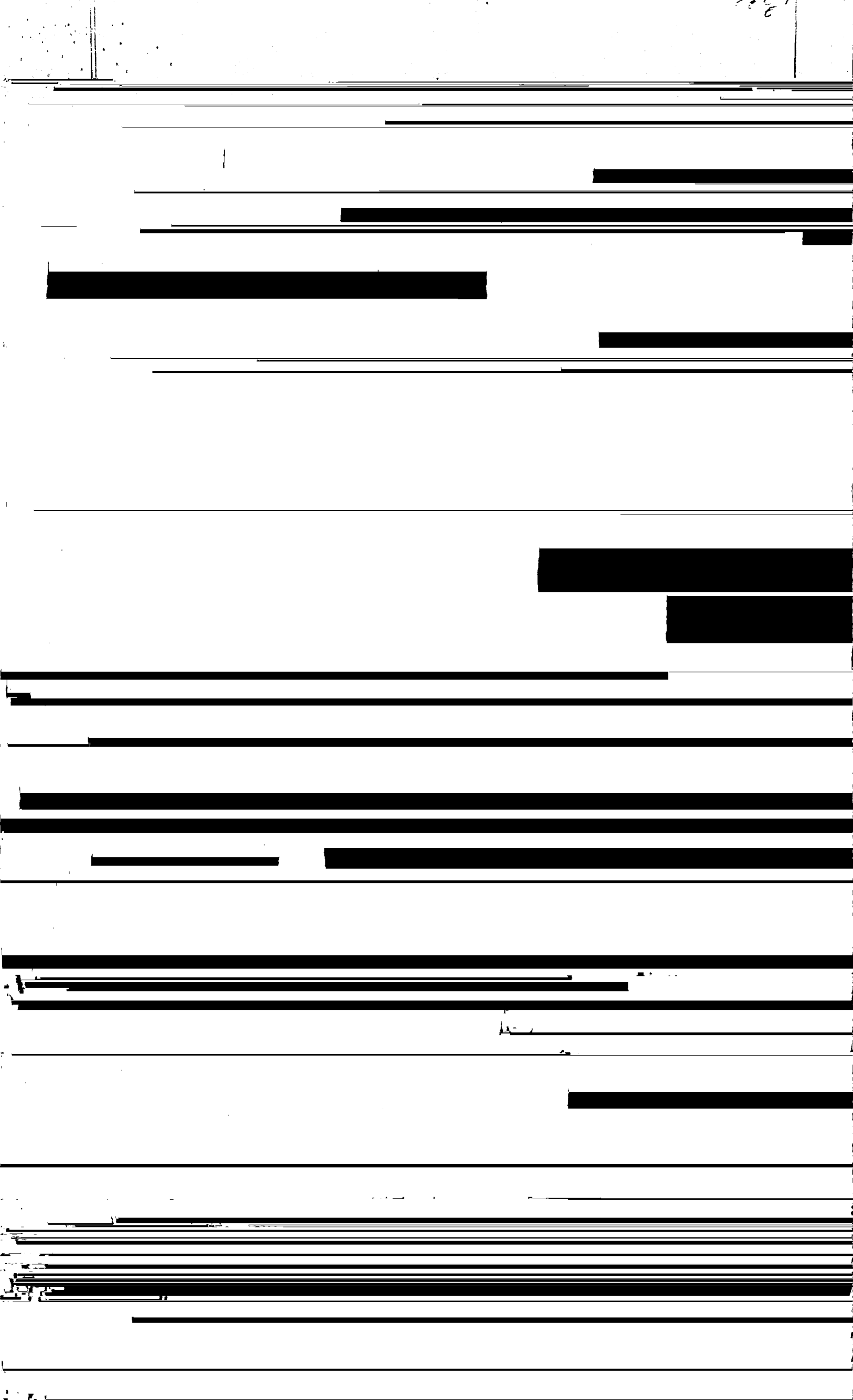
1 has failed to comply with such requirement, the Court shall enter  
2 an appropriate order to enforce such Board order. The Court may

S.B. No. 75

1 county where the transaction occurred or any substantial portion

S.B. No. 75

1 issuing the infunction shall retain jurisdiction, and the cause



S.B. No. 75

1 section was brought by an individual plaintiff in bad faith or

[REDACTED]

[REDACTED]

S.B. No. 75

1           "(1) the prosecution of separate actions by or against  
2 individual members of the class would create a risk of:

3           "(A) inconsistent or varying adjudications with  
4 respect to individual members of the class which would establish  
5 incompatible standards of conduct for the party opposing the  
6 class; or

7           "(B) adjudication with respect to individual

65-6  
S.B. No. 75

1 of the class;

82-8  
S.B. No. 75

1 "(3) any member who does not request exclusion, if





S.B. No. 75

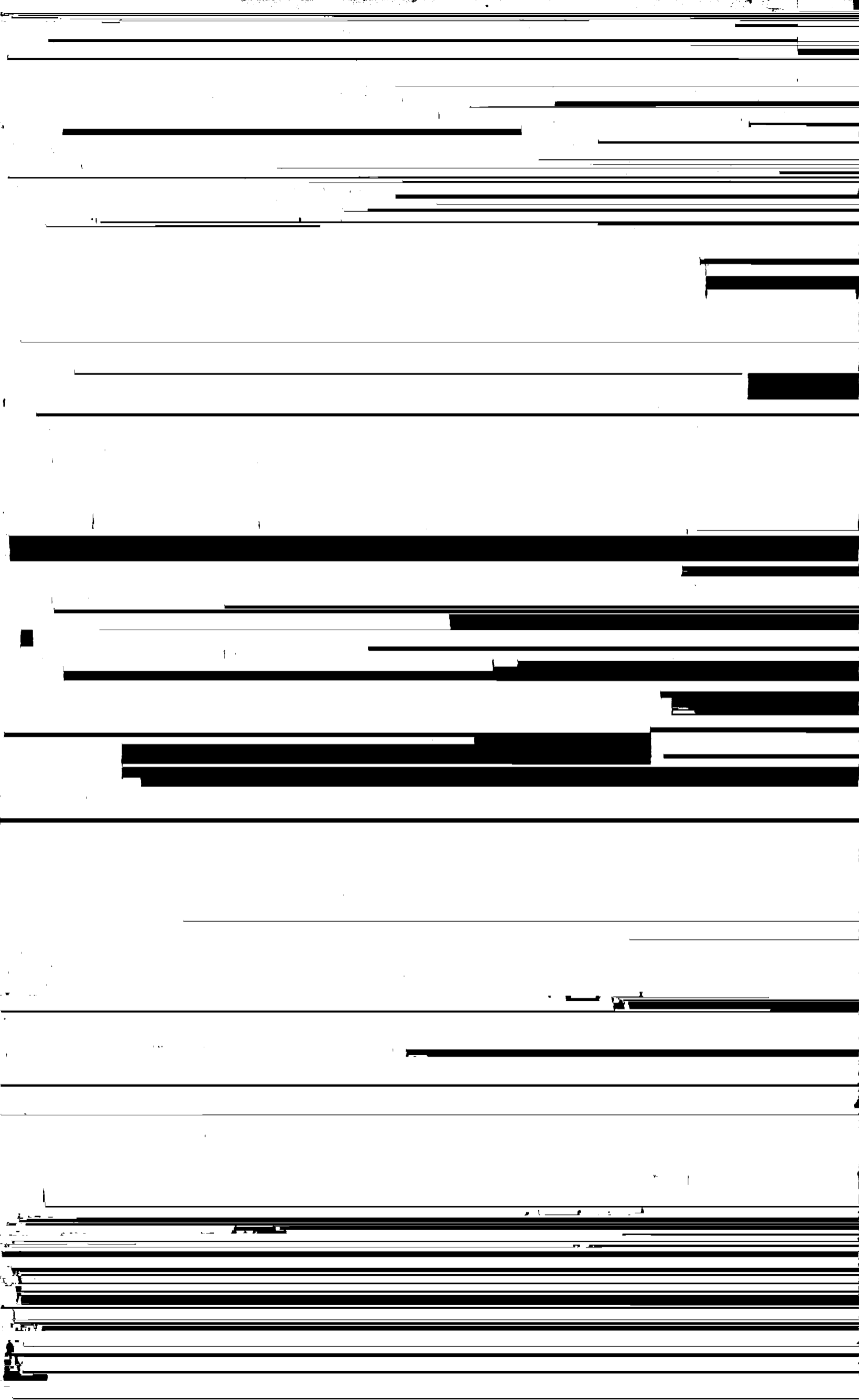
- 1 or if said offer is accepted by the consumer, will be given within
- 2 a stated reasonable time: and

S.B. No. 75

1 or any act declared to be unlawful in Section 17.46 of the Business

S.B. No. 75

1 voluntary compliance under Subsection (b) of this section are



FORM A

COMMITTEE REPORT

Date 5/2/73

HONORABLE PRICE DANIEL, JR.

BILL ANALYSIS

S.B. No. 75

Section 17.50, Relief for Consumers. This particular Section points out the method

and manner of redress to a consumer who has been damaged by one of the practices

damages plus court costs and attorneys fees and any other relief which the court

S.B. No. 75

to the extent of the unsatisfied consumer claim. If they were a part

S. B. No. 75

Sec. 2. (b) Amends Section 7, Article 21.21, as follows:

S. B. No. 75

20. May 70 Revised Civil Statutes of Texas

Section 4. Severability Clause.

Section 5. Emergency Clause.

No. 75

By *Maver*

APR 13 1973

\* Regular order of business  
suspended 19111111