

## Spacemen Abduct Regulators!

April 1, 2015 | [Thomas B. Hudson](#)

Two aliens brought their spaceship down slowly above the California highway, matching their speed to the cars below. Opening the ship's cargo bay, they positioned themselves over a car traveling below. Activating their magnetic loader, they sucked the car and its two passengers into the cargo bay.

Their mission was a simple one. They had come to Earth for the purpose of capturing a couple of the humans who inhabited this strange planet in order to determine how humans think and how they transmit thoughts from one to another. They quickly put the two humans into a sleep state and did brain scans, reading and recording the contents of their minds. When the aliens were finished, they returned the humans - completely unaware of what had been done to them - to the highway below and sped back to their mother ship.

A month later, the aliens repeated the mission, but this time over a highway in Oregon. And on this second mission, the objective was to see if they could transfer the contents of the two California humans' brains to two humans captured in Oregon. That test, too, turned out to be successful.

Little did they know that the two Californians they had captured were wild-eyed consumer advocates and activists who spent all their time and energy trying to advance as many radical laws and regulations as possible to curb a wide array of evils that only they could identify.

And the Oregonians? They turned out to be two Oregon state employees, working for the Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities.

Now, I can't say for sure that that's what happened, but it is the only plausible explanation for the appearance of David Tatman, the administrator of DCBS, and his sidekick, Rick Blackwell, identified as a senior analyst, before the Oregon Senate Committee on Business and Transportation to testify on Senate Bill 276, a DCBS bill. Testifying in support of the bill, the first thing Tatman said was that buy-here, pay-here dealers are "unregulated."

That's when I knew the aliens had struck. Surely a state official coming to testify before a Senate committee would know that all dealers, including BHPH dealers, are under the jurisdiction of the federal Consumer Financial Protection Bureau. And he would know that they also are subject to the federal Truth in Lending Act and Regulation Z, the federal Equal Credit Opportunity Act and Regulation B, the federal Fair Credit Reporting Act, the federal Gramm-Leach-Bliley privacy law and Federal Trade Commission privacy regulations, the Magnuson-Moss Warranty Act, the USA Patriot Act, rules of the Office of Financial Assets Control, several FTC Trade Regulation Rules, the FTC's advertising rules, the Servicemembers Civil Relief Act, and several other federal laws. Wouldn't he?

OK, all of those are federal laws. Maybe he thinks that for some reason they don't apply in Oregon. But isn't it true that BHPH dealers are subject to the Oregon Motor Vehicle Retail Installment Sales Act, Articles 2 and 9 of the Oregon Uniform Commercial Code, Oregon's Unfair and Deceptive Acts and Practices law, the state's advertising laws, and several other state consumer protection statutes?

Unregulated? Only to a radical consumer advocate.

And that was just the start. SB 276 started life as mostly a regulatory housekeeping bill, imposing licensing, examination, and other burdens on BHPH dealers. But the DCBS has proposed several amendments to the bill that were lifted directly from the playbook of the consumer advocates. Among other things, the amendments would

- treat a contract as a BHPH transaction if the dealer holds onto the finance contract for 14 days, instead of 45 days;
- require the interest rate on a loan to decrease with higher down payments;
- impose an "ability to repay" requirement under rules to be promulgated by the DCBS director;
- require that the price of the car be disclosed before any credit checks occur;
- remove disclosure language that directs the buyer back to the dealer to resolve problems;
- prohibit repossession of a vehicle for 30 days after the consumer fails to make a scheduled payment; and
- prohibit the installation of devices that remotely monitor or disable a vehicle's vital systems.

If these two regulators are proposing such a draconian level of regulation, their action certainly was prompted by an extensive study of the business practices of BHPH dealers that produced hard data about BHPH business practices, right? The DCBS surely determined what dealers had adopted as "best practices" in their businesses - things like rates and prices charged, how many months of repayment were required by a typical BHPH retail installment contract, whether credit was being extended to people who were unable to pay, and whether dealers were engaging in other sharp practices, right?

Wrong on both counts. If the DCBS had any actual data about the BHPH business, it was not evident from the testimony of Tatman and Blackwell. It was also evident from their persistent use of the term "loan," instead of "retail installment sale," that they did not understand the legal basis of the credit sales of vehicles.

After Tatman and Blackwell finished testifying, three other witnesses appeared before the committee. Two plaintiffs' lawyers testified, painting BHPH dealers as "payday lenders who use cars as bait," in an effort to link BHPH with payday lending. They then offered as data the sort of anecdotal stories that consumer advocates always put forth - including a baseball bat-wielding BHPH dealer repossessing a car from a woman who was trying to make her delinquent payment. As always with witnesses who are plaintiffs' lawyers, they did not indicate whether their horror stories were typical of the BHPH business or were outlier examples of the sorts of business people who will cheerfully violate any and all consumer protection laws. Nor did they bother to mention that most, if not all, of the dealer actions they were complaining about violated some existing law.

I've had a couple of words with the aliens. I've suggested that the next time they go looking for brains to read, they scour our planet for the sorts of regulators who actually go the distance to learn about the businesses they regulate and their respective best practices before they propose new laws and regulations.

The aliens said they'd try, but were not optimistic. They contend that such regulators are an endangered species.

You might think, "I don't operate in Oregon, so why do I care about this?" The answer, dear friend, is that this sort of misinformed, uninformed legislative proposal could crop up anywhere - your state included.

If your state auto dealer trade association isn't regularly educating your state regulators and legislators about your business, they should begin to do so.

Hudson Cook, LLP, provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP, does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP, website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

**SUBSCRIBE TO INSIGHTS**



Celebrating its 25th anniversary in 2022, Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

[www.hudsoncook.com](http://www.hudsoncook.com)

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice  
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

