

SENATE COMMITTEE ON BUSINESS AND LABOR

March 10, 2003
1:00 PM

Hearing Room C
Tapes 27-30

MEMBERS PRESENT: **Sen. David Nelson, Chair**
 Sen. Vicki Walker, Vice-Chair
 Sen. Roger Beyer
 Sen. Rick Metsger

STAFF PRESENT: **Dennis Dotson, Committee Administrator**
 Romy Dye, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2429 – Public Hearing**
 SB 243 – Public Hearing and Work Session
 SB 248 – Public Hearing and Work Session
 SB 252 – Public Hearing
 SB 40 – Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 27, A		
005	Chair Nelson	Calls committee to order at 1:09 PM. Opens a public hearing on HB 2429.
<u>HB 2429 – PUBLIC HEARING</u>		
010	Dennis Dotson	Committee Administrator. Provides overview of HB 2429.
035	Mike Schaufler	Oregon State Representative. Testifies in support of HB 2429. Discusses reasons people hide vehicle sales.
044	Sen. Walker	Asks what Representative Schaufler's cost for renewing his contractor's license was.
047	Schaufler	Responds approximately \$1,400 for liability, bond and license.
055	Billy Dalto	Oregon State Representative. Testifies in favor of HB 2429 that would afford consumers additional protection. States familiar with problems consumers face due to selling cars in the past.
060	Cheryl Pellegrini	Oregon Department of Justice, Financial Fraud Consumer Protection Department. Testifies on HB 2429 in a neutral position. Discusses Unlawful Trade Practices Act. Feels HB 2429 is a good idea.
080	Chair Nelson	Asks what the range of penalties in Unlawful Trade Practices Act.
084	Pellegrini	Responds first have to determine it is a pattern of practice so more than one vehicle being sold. Discusses further if pattern of practice the court is asked for civil penalties up to \$25,000 per violation
095	Chair Nelson	Asks if \$25,000 is per day.
097	Pellegrini	Responds it is per car sold.
100	Sen. Metsger	Asks under the law when it is required to have a dealer's license.
106	Pellegrini	Responds Department of Motor Vehicles (DMV) sets out requirements for being a vehicle dealer. States statutes would be looked at to determine whether or not person engaging in activity should have a vehicle license.
118	Sen. Metsger	Asks whether the DMV would be as involved with the passage of HB 2429.
142	Pellegrini	Responds HB 2429 and DMV authority would co-exist.
150	Dalto	Describes what constitutes a dealer. States you are a dealer and should be licensed if selling a couple vehicles a month or six vehicles a year.
161	Sen. Walker	Clarifies what defines a dealer in Statute 822.015.
176	Monty King	Oregon Independent Auto Dealers Association (OIADA). Testifies in support of HB 2429. Describes Statute 822.015.

217	Darrell Fuller	States main issue is unlicensed dealers and licensed dealers should have same problems with attorneys when do same things to consumers. Submits written testimony (EXHIBIT A) . Oregon Auto Dealers Association (OADA). Testifies in support of HB 2429. States individuals should act within scope of licensing requirements in state of Oregon and the state should have resources to punish those who violate.
259	Deb Elkins	Director, Northwest Automotive Trades Association (NATA). Testifies in opposition of HB 2429. Expresses concerns with others questioning how her own employees acquire and dispose of cars. States if her employees need dealers license it could violate Unlawful Trade Practices Act. Suggests taking more time to resolve this problem.
294	Bob Anderson	Owner, AJ's Auto Repair. Testifies in opposition of HB 2429. Discusses needing an avenue to get rid of dumping ground cars without required a license when no profit involved.
332	Al Elkins	Oregon Tow Truck Association. Testifies in opposition of HB 2429. Agrees with previous testimony.
356	Sen. Metsger	Asks whether concerns are valid and need additional work.
375	Cheryl Pellegrini	Responds concerns are being looked upon by others.
386	Chair Nelson	Closes the public hearing on HB 2429 and opens a public hearing on SB 243.

SB 243 – PUBLIC HEARING

400	James Hamrick	Assistant Director for Heritage Conservation, Oregon Parks and Recreation Department. Testifies in support of SB 243. Describes SB 243 with amendments. Submits written testimony (EXHIBIT B) .
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TAPE 28, A

020	Sen. Metsger	Asks whether SB 243 is in conflict with another bill.
024	Hamrick	Responds SB 243 will be conformed to the other bill.
027	Charlotte Benz	President, Heritage Cemetery Group. Testifies in favor of SB 243 with amendments.
044	Phil Donovan	Heritage Cemetery Group. States under this legislation if a cemetery provides notice to the commission, it is incumbent upon the commission to act promptly in its review and its comments so as to not hang up operating cemeteries out there.
053	Chair Nelson	Closes the public hearing on SB 243 and opens a work session on SB 243. (EXHIBIT N)

SB 243 – WORK SESSION

055	Sen. Walker	MOTION: Moves to ADOPT SB 243-1 amendments dated 03/04/03.
057	Chair Nelson	VOTE: 4-0
060	Sen. Walker	Hearing no objection, declares the motion CARRIED.
065	Chair Nelson	MOTION: Moves SB 243 to the floor with a DO PASS AS AMENDED recommendation.
069	Chair Nelson	VOTE: 4-0
		Hearing no objection, declares the motion CARRIED.
		SEN. WALKER will lead discussion on the floor.
		Closes the work session on SB 243 and opens a public hearing on SB 248.

SB 248 – PUBLIC HEARING

072	Dotson	Provides overview of SB 248.
075	Thomas Mattis	Deputy Administrator, Division of Finance and Corporate Securities, Department of Consumer and Business Services (DCBS). Testifies in support of SB 248. Discusses SB 248. Submits written testimony (EXHIBIT C) .
105	Sen. Walker	Asks whether pawnbrokers can be licensed to get into the practice of payday lending or car title lending.
107	Mattis	Responds pawnbrokers have to follow same requirements as everyone else.
110	Sen. Walker	Asks whether pawnbrokers can do it upon application.
112	Mattis	Responds positively.

114	Sen. Walker	Asks what the current fees are for pawnbrokers.
116	Mattis	Responds the current fee is \$350.
124	Chair Nelson	Closes the public hearing on SB 248 and opens a work session on SB 248.
<u>SB 248 – WORK SESSION</u>		
127	Sen. Walker	MOTION: Moves SB 248 to the floor with a DO PASS recommendation.
132	Chair Nelson	VOTE: 4-0 Hearing no objection, declares the motion CARRIED. SEN. WALKER will lead discussion on the floor.
136	Chair Nelson	Closes the work session on SB 248 and opens a public hearing on SB 252.
<u>SB 252 – PUBLIC HEARING</u>		
138	Dotson	Provides overview of SB 252.
144	Carl Lundberg	Deputy Insurance Administrator, Department of Consumer and Business Services. Testifies in support of SB 252 and amendments.
157	Sen. Metsger	Asks whether credit scoring will be affected.
162	Lundberg	Responds no effect on credit scoring.
177	Sen. Metsger	Clarifies question that this does not enhance insurance company's ability to utilize additional information they do not currently have rights to without the provision of the insured.
180	Lundberg	Responds that is correct.
186	Chair Nelson	Closes the public hearing on SB 252 and opens a public hearing on SB 40.
<u>SB 40 – PUBLIC HEARING</u>		
190	Dotson	Provides overview of SB 40.
195	Karey Schoenfeld	Tax Section, Oregon State Bar. Testifies in favor of SB 40. Discusses definition of independent contractor. Submits written testimony (EXHIBIT D).
307	Jeff Abbott	Attorney, Tax Section, Oregon State Bar. Testifies in support of SB 40. Agrees with previous testimony. Discusses various discussions of SB 40 with different departments. Submits written testimony and material (EXHIBITS E, F).
398	Sen. Walker	Asks about meeting with Department of Revenue and Employment Department and whether collectively they mentioned if it isn't broken why fix it.
410	Abbott	Responds it was a teleconference so do not know who responsible but have had comments since then.
413	Schoenfeld	Adds conference call was primarily employment and they have most significant issues that need resolving.
420	Sen. Walker	Agrees. Comments it is a problem and the system is broken.
TAPE 27, B		
010	Marc Sellers	Tax Section, Oregon State Bar. Testifies in favor of SB 40. Provides examples of disputes. Comments bringing Oregon's laws into conformity with federal criteria will provide a great service to Oregon's business community.
068	Sen. Walker	Asks about handling a minimum of six disputes per year with Employment Department on issues such as this.
073	Sellers	Responds they do not get very far. Comments most businesses engage in cost benefit analyses at the outset.
084	Sen. Walker	Responds in agreement with own personal experience hiring a sub-contractor.
094	Sellers	Comments not evidence that increased financial burden upon the state with increased expense of administration.
104	Chair Nelson	States there are concern with fiscal analysis.
112	Abbott	Adds comment regarding fiscal statement.
121	Sellers	Comments trying to affect conformity with federal law. Feels issue of penalty being exacted by the federal government for compliance with federal law should be scrutinized by the committee.
142	Roger Martin	Lobbyist. Testifies in favor of SB 40. Provides personal example with how hard it is to become independent contractor in Oregon.

187	Bob Shiprack	Feels need to look for opportunities to encourage more businesses in Oregon when economy struggling. Representing Employment Advisory Counsel. Testifies in opposition of SB 40. Says law in existence in the past but was not effective. Provides personal examples from over the years relating to employers and employees.
277	Sen. Beyer	Comments under the current law two state agencies have administered law differently.
282	Shiprack	Responds it should not have happened.
290	Bob Raynor	Western Specialty Products. Testifies in favor of SB 40. Comments would like support so more hiring can happen in the state.
304	Sen. Walker	Asks what kind of business.
307	Raynor	Responds advertising.
310	Sen. Walker	Asks if people hired outside of the state to do the work inside the state because there are independent contractors elsewhere and not here.
312	Raynor	Responds correct. Comments it is more efficient to do it that way and it is impossible and unfair to be an independent contractor under the formula in existence.
328	Sen. Walker	Asks what kind of things independent contractors do for you that makes you want to use them instead of employees.
331	Raynor	Responds the entire process is cost efficient.
335	Sen. Walker	Asks how many independent contractors are used.
337	Raynor	Responds from thirty-five to one hundred.
340	Lisa Trussell	Associated Oregon Industries. Testifies in opposition of SB 40. States there are still problems with Oregon law but trading it and going where we were before 1989 may create new set of problems.
369	Sen. Beyer	Asks about attempt to modify Oregon standards.
383	Trussell	Comments open to looking at ways for improvement. States willing to look at changes but concerned changes so far are too broad.
TAPE 28, B		
005	Jonathan Howell	Certified Public Accountant. Testifies in support of SB 40. Comments on conformity between Oregon and federal law. Provides example on independent contractors within construction industry. Submits written material (EXHIBIT G).
050	Patrick Green	Oregon AFL-CIO. Testifies in opposition of SB 40. Feels SB 40 changes the standard and turns off current standard which has presumption a worker is a worker unless proven otherwise. Expresses concern with language in various sections of SB 40. Provides personal example.
111	Sen. Walker	Asks about workers who know they have a job as an independent contractor and not an employee.
113	Green	Responds discrepancy is whether a person knows they are an independent contractor or not with certain rights.
124	Sen. Walker	Comments people are clear on whether they are independent contractors or not.
137	Tom Holt	Executive Director, Oregon State Pharmacists Association. Testifies in favor of SB 40. Comments on difficulty of working as a consultant or relief pharmacy due to current law. Expresses concern with conflict in Employment Department.
199	Fred Van Natta	Oregon Building Industry Association. Testifies in opposition of SB 40. Discusses history of conflicts with Employment Department and unions. Provides examples within construction industry.
356	Sen. Beyer	Asks whether person in example could meet test of today's law.
360	Van Natta	Responds yes.
362	Sen. Beyer	Comments argues against that.
364	Van Natta	Comments absolutely under criteria written there should be no question.
365	Sen. Beyer	Asks how he would qualify for issue of scope and control if he is told by general contractor where he can dig, when he can dig,

370 Van Natta and how he is to dig. States he cannot meet the test.
 Responds to look down at list and look at where registered with
 Construction Contractor's Board.

377 Sen Beyer Responds have to meet all eight components. Asks if willing to
 work at this to modify it to meet all eight components.

380 Van Natta Responds will not continue to go through the list. Concerned
 with avoiding years of litigation with twenty questions and
 keeping three state agencies in Oregon from coming with
 different conclusions.

413 Sen. Beyer Clarifies not opposed to modifying statute but feel going back to
 federal standard is not way to go about it.

416 Van Natta Responds correct.

429 Jessica Harris Associated General Contractors. Testifies in opposition of SB
 40. States main concern is changing law back to federal would
 create consequences for the industry and need more time to
 address concerns.

TAPE 29, A

005 Don Schelhenberg Oregon Farm Bureau. Submits written testimony **(EXHIBIT H)**.

007 Sen. Beyer Asks if not opposed to modifying SB 40.

012 Harris Responds yes.

015 Schelhenberg Responds yes; elaborates there may be changes that need to be
 made but most of what is in current law is in there because of
 agriculture.

029 Sen. Beyer Expresses interest in modifying Oregon law.

039 James Holman President, Pacific Courier Services. Testifies in favor of SB 40.
 Provides background of personal business. Feels need consistent
 standard. Comments federal standard is much better than state
 and consistency will make it better to make business decisions to
 grow. States language currently says eight components are
 guidelines but Employment Department takes those and moves
 into strict standards creating problems..

113 Ed Glad Representative of Pacific Northwest Regional Counsel of
 Carpenters. Testifies in opposition of SB 40. Comments on
 increase of temporary labor in construction industry. Feels
 should not lighten standards and a line needs to be drawn
 between what employee and employer is. Believes federal
 standards challenged by the fact that a lot of people claiming
 themselves or forced to claim as independent contractors in
 order to avoid paying taxes and workers' compensation
 requirements.

157 Sen. Metsger Agrees. Provides personal example with injured window washer
 at own home.

176 Glad Provides an example.

217 Renee Bryant Tax Manager, Unemployment Insurance Program, Employment
 Department. Testifies in opposition of SB 40 Submits written
 material **(EXHIBIT I)**.

247 Chair Nelson Asks about conformance with the IRS guidelines.

249 Bryant Clarifies the issue and provides detailed description. Mentions it
 is the Federal Department of Labor guidelines and the Federal
 Unemployment tax act.

263 Sen. Metsger Asks how the unemployment tax is out of compliance.

273 Bryant Discusses conformity issues and attempts to explain the
 compliance issues.

TAPE 30, B

041 Chair Nelson Comments there is dissatisfaction regarding several of these
 issues, and there is a possibility the bill may need to be
 modified.

049 Sen. Metsger Comments minor changes may be able to resolve the issue.

The following prepared testimony is submitted for the record without public testimony for SB 40:

Mike Salsgiver Submits written testimony for SB 40 **(EXHIBIT J)**

Dan Purkey Submits written testimony for SB 40 **(EXHIBIT K)**

Lynn Lundquist Submits written testimony for SB 40 **(EXHIBIT L)**

Debra Buchanan Submits written testimony for SB 40 **(EXHIBIT M)**

EXHIBIT SUMMARY

- A – HB 2429, written testimony, Monty King, 1 p**
- B – SB 243, written testimony, James Hamrick, 2 pp**
- C – SB 248, written testimony, Thomas Mattis, 2 pp**
- D – SB 40, written testimony, Karey Schoenfeld, 4 pp**
- E – SB 40, written testimony, Jeff Abbott, 4 pp**
- F – SB 40, written emails, Jeff Abbott, 28 pp**
- G – SB 40, written testimony, Jonathan Howell, 3 pp**
- H – SB 40, written testimony, Don Schellenberg, 1 p**
- I – SB 40, written summary, Renee Bryant, 3 pp**
- J – SB 40, additional testimony for the record, Mike Salsgiver, 1 p**
- K – SB 40, additional testimony for the record, Dan Purkey, 2 pp**
- L – SB 40, additional testimony for the record, Lynn Lundquist, 1 p**
- M – SB 40, additional testimony for the record, Debra Buchanan, 1 p**

The following exhibit is listed out of order in the body of the tape log:

- N – SB 243 -1 amendments, dated 03/04/03, staff, 1 p**