

# HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

January 31, 2001  
3:30 p.m.

Hearing Room 50  
Tapes 15-17

**MEMBERS PRESENT:** Rep. Rep. Bill Witt, Chair  
Rep. Alan Bates  
Rep. Alan Brown  
Rep. Janet Carlson  
Rep. Richard Devlin  
Rep. Bill Garrard  
Rep. Elizabeth Johnson  
Rep. Tim Knopp  
Rep. Jerry Krummel  
Rep. Laurie Monnes-Anderson  
Rep. Vicki Walker

**MEMBER EXCUSED:**

**STAFF PRESENT:** Daniel Clem, Administrator  
Renee' Lunsford, Administrative Support

**MEASURE/ISSUES HEARD:** Introduction of LC Draft 1916  
Public Hearing on HB 2209, 2211, 2433  
Public Hearing and Work Session on HB 2534

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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.

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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>TAPE 15, A</b>		
001	Chair Witt	Opens the meeting at 3:45 p.m.
<b><u>LC Draft 1916</u></b>		
010	Chair Witt	Moves that LC Draft 1916 be introduced as a committee bill. Asks if there is any discussion on the draft.
005	Rep. Devlin	States he would like to reserve the right to favor or oppose portions of this bill.
010	Chair Witt	Reiterates that by supporting the motion or introducing this as a committee bill, that committee members are in no way affirming the contents of the bill.
<b>017</b>		<b>VOTE: 8-0</b> <b>EXCUSED: 3 - Tim Knopp, Jerry Krummel, Vicki Walker</b> <b>Chair Witt</b> <b>Hearing no objection, declares the motion CARRIED.</b> <b>CHAIR WITT will lead discussion on the floor.</b>

## **HB 2534 Public Hearing and Work Session**

030 Chair Witt Refers members to HB2534. States HB 2534 deals with some arcane, complex, Measure 50 property tax cleanup provisions. Says this is typically a bill that would be handled in the Revenue Committee. Therefore, he doesn't think it is appropriate or ideal that we deal with this bill. He proposes that HB2534 be referred

to the School Funding and Tax Fairness Committee, which is a revenue committee.

044 Chair Witt

**MOTION: Moves HB 2534 to the floor with a DO PASS recommendation and BE REFERRED to the committee on School Funding and Tax Fairness.**

042

**VOTE: 10-0**

Chair

**EXCUSED: 1 - Tim Knopp**

**Hearing no objection, declares the motion CARRIED.**

**CHAIR WITT will lead discussion on the floor.**

**HB 2433 Public Hearing**

060 Chair Witt

Opened Public Hearing on HB 2433.

063 Dan Clem

Committee Administrator, House Smart Growth and Commerce. Reads preliminary staff summary of HB 2433.

080 Monty King

Executive Director, Oregon Independent Auto Dealers Association. Gives verbal and written testimony in favor of HB2433 (**EXHIBIT C**).

149 John Dorn

Owner, Dorn Brothers Truck Sales. Testifies in favor of HB 2433. Submits written testimony.

165 Don Lulay

Lulay's Car Connection. Testified in favor of HB 2433. Submitted written testimony (**EXHIBIT A**).

206 Rep. Walker

States she doesn't believe the bill was designed to penalize the family owner trying to sell their car on a school parking lot. Asks for confirmation.

219 King

Responds affirmatively. Explains how violators are tracked.

230 Rep. Walker

Says line 12 of HB 2433 refers committee to Oregon Statutes ORS822.005 Sub. 1, which states the above mentioned party is acting as a vehicle dealer without a certificate but does not apply to persons covered under 822.015. 822.015 exempts owner of a vehicle for personal, household, family, farm-type use, etc.

245 Rep. Johnson

States her concern is with enforceability. Asks how expensive it would be to pursue the claims. Will this ultimately end up with a collection of spot laws.

259 King

Responds that a larger fine might be more of a deterrent than some earlier measures exacted. It also makes a political statement saying, "This is serious stuff."

283 Rep. Johnson

Asks King why the Department of Revenue did not turn aging accounts over to a collection agency as was mandated by law.

285 King

Responds it was his understanding that they weren't big enough to go after.

297 Rep. Krummel

Asks if the curb sellers represent themselves as dealers or private parties.

319 Lulay

Answers they represent themselves as both.

347 Rep. Krummel

Asks why not change the language that is already in place to be very directive.

356 King

Responds that it is time-consuming to pursue this route.

383 Rep. Krummel

Asks if the program should be able to pay for itself.

401 King

Answers it is his understanding that all expenses should be recouped in dealer fines.

420 Rep. Garrard

Asks if the unlicensed dealers stay in the same location for a particular time or if they move locations.

437 Lulay

Responds they move locations after they've been questioned. They may come back a week or month later.

485 Rep. Garrard

Asks if local government could be enlisted to help with the problem.

442	King	Responds that local government says they have enough to do without being “dealer police.”
455	Rep. Devlin	Asks if there are many situations where they cannot collect.
465	King	Responds affirmatively. Adds we need a nationwide data bank or we’re not going to get rid of these people.
<b>Tape 16, A</b>		
047	Rep. Devlin	Asks, if it would be possible for these dealers to apply for a license and to keep their practice without having a physical lot.
060	King	Responds that it is possible today, for a vehicle dealer to not have an actual lot. Gives examples of how this could work. Adds, we are one of the few states that does allow this.
074	Rep. Devlin	Asks if Mr. King could briefly outline what requirements an auto dealer has to meet by law.
079	King	Outlines auto dealer requirements by law.
094	Rep. Bates	Asks if they have considered a penalty of forfeiture of vehicles rather than fines.
108	King	Replies they would be glad to support a measure like that.
117	Rep. Carlson	Says she appreciates Rep. Walker looking up the statute and would like a photocopy of requirements for future issues.
124	Chair Witt	States that often one statute will refer to another statute so it is often prudent to research prior to Committee Meeting.
140	Rep. Carlson	Refers to Rep. Johnson’s comment about the bill that passed last session. She believes that private rather than public agencies would be collecting and they may not think \$2,500 is too small.  Asked if this wasn’t already a statute, and were they trying to clarify what “violation” means for purposes of enforceability with this issue.
148	King	Responds affirmatively. Says they should be fined per vehicle.
154	Rep. Carlson	Asks who would be turning in illegal dealers.
173	King	Responds that private parties contact him and DMV with complaints. He occasionally checks on them himself.
189	Rep. Carlson	Is there some reason why these people are called curbers?
191	King	They park their cars on high-traffic area curbs.
195	Rep. Brown	States that he commiserates with the legitimate dealers. And adds, these people not only steal from their customers but he feels fairly certain that they may not be reporting their earnings, so they are also stealing from our state income tax system.
200	Chair Witt	Asks if King is comfortable with the language, “They may levy a fine of \$5,000 per vehicle.”
215	King	Responded that is correct.
220	Chair Witt	Asked if it was King’s belief that these illegal dealers may be undermining legitimate industry.
225	King	Stated that is absolutely correct.
229	Chair Witt	Stated the \$5,000 fine might sound onerous, but in reality an illegal dealer might sell 100 cars before being caught.
234	King	Responds this was true.
244	Chair Witt	Closed the public hearing on HB2433. Stated that this bill will be open for Work Session on Monday, February 5, 2001.
<b><u>HB 2209 Public Hearing</u></b>		
250	Chair Chair Witt	Opens Public Hearing on HB 2209.
260	Clem	Reads preliminary staff summary of HB 2209.
300	Pete Shepherd	Deputy Attorney General, Department of Justice. Testifies in favor of HB 2209. Submits written testimony ( <b>EXHIBIT B</b> ).

States that the problem that the bill addresses has not gone away. Gives some statistics that support this.

- Since January 1, 1999, 2001, 22 dealers went out of business, but did not declare bankruptcy.
- An estimated 220 consumers won't recover their losses.
- Losses range from \$500 to \$20,000.
- Bond is currently set at \$20,000 per dealer. Will go to \$25,000
- Consumers recovery is 11 cents on-the-dollar on their loss.

Outlines the:

- Basic concept
- Cost or how it will be funded
- How the claim procedure will work (benefit flows to consumers)
- Models where similar laws are already in place
- What is does not do

451 Pete Shepherd

Addresses three concerns:

- Does this bill line the pockets of plaintiff's attorneys?
- Does it in some way reduce the market for the sale of bonds?
- By providing an added level of protection beyond the bond, does it encourage licensed dealers to engage in conduct that they might otherwise not engage in?

**Tape 15, B**

030 Rep. Walker  
065 Shepherd

Asks what happened to the bill in the 1999 session. Replies it was passed by a subsequent committee, then referred to the Ways and Means Committee. It was not approved by the Ways and Means Committee.

States the bill is different this session, in that it does not contain any direct assessment against consumers.

083 Rep. Walker

Gives estimate of when bill might begin to provide relief. Asked if when the fund exceeded \$700,000 would they reimburse the dealers.

085 Shepherd

Responds that the interest on the fund will be used to reimburse dealer-paid fees.

104 Rep. Walker

Notes that fee for the first certificate is \$650. But dealer is exempt if they have a \$250,000 bond. Asks what is the fee for a \$250,000 bond.

115 Shepherd

States that representatives from the bonding institution would be better able to answer the question.

125	Rep. Walker	Comments that Shepherd stated 22 dealers that went out of business did not declare bankruptcy. Says that in the future, she suspects more of them will declare bankruptcy and Shepherd will not be able to collect.
134	Shepherd	Responds, he's not certain they would be barred in the bankruptcy court because these claims are, in part, for fraud. Some of them may be exempt from the bankruptcy bar.
139	Rep. Krummel	Asks why Section 12 has a four-year sunset clause.
152	Shepherd	Explains why the sunset clause was included.
184	Rep. Krummel	Stated Shepherd mentioned a mobile home dealer that absconded with \$500,000, was he reported? Can you let us know how the case was resolved.
178	Shepherd	Responds, the dealer was the Tom Abraham Factory Homes. There was 106 victims. The loss that we calculated was \$500,255.
192	Rep. Krummel	Asks how Shepherd found out about this and how the case was resolved.
204	Shepherd	Responds that he can't answer that question, but will find out.
211	Rep. Krummel	States this bill is aimed at the auto industry. But states proponents of the bill are also trying to fix the fraud that is occurring in the mobile home industry.
215	Shepherd	Responds motor vehicle dealers, licensed in the State of Oregon, which includes manufactured home dealers, should be responsible in the same way.
230	Rep. Carlson	Asks how the advisory board was created.
247	Shepherd	Explains the structure of the advisory board was that was formed.
262	Rep. Carlson	Asks Shepherd if he anticipates that the recovery funds will pay for the cost of the program?
265	Shepherd	States he expects the program will be entirely self-funded.
273	Rep. Garrard	Asks why they would not include dealers engaged in the sale of vehicles used for farm use.
279	Shepherd	Responds they don't have records of a farm equipment dealer closing its doors and generating complaints.
293	Rep. Bates	Asks why if it will take three years to get the recovery fund to operating levels wasn't a lower all-dealer encompassing, fee set. Have there been any fraudulent transactions involving dealers who have been in business for four-to-five years.
304	Shepherd	Explains why they chose the funding method. Responds yes, some of the 22 incidents involved dealers who been in business longer than four years.
325	Rep. Devlin	Asks Shepherd when drafting the law to what degree did they work with auto and mobile home dealers.
331	Shepherd	Explains the bill was a product of the Department of Justice in conjunction with an 18-month working group that included representatives from both industries.
340	Rep. Devlin	Asks if the group reached any resolution of issues during that 18-month process.
347	Shepherd	Answers affirmatively. Stated he did not want the committee to get the impression that this was a consensus.
355	Chair Witt	Asks Shepherd to give some history of the law in Virginia, i.e., what were initial problems, did claims increase significantly, how is the program working today.
366	Shepherd	Explains what happened when the law was first enacted in Virginia, the problems encountered, how they resolved the

408	Chair Witt	problems, the lessons learned and resultant consensus. States in Virginia they changed the procedures so that only consumers could collect on the funds not the financial institutions. Asks Shepherd if he envisions that the bonding requirement (up to \$25,000) will remain as it is today. Does he see a need to have a statutory requirement in the bill.
424	Shepherd	Responds there will be no change in the bonding requirement Explains how the claims process works. States they would not be opposed to statutory requirements.
440	Chair Witt	References a judgement against Carr Chevrolet that was in excess of over \$1 million dollars and asks if the fund would be useful for this kind of claim.
450	Shepherd	Answers that punitive damages are not payable from the fund.
476	Chair Witt	Asks how quickly do you think the fund would be up to \$750,000.
480	Shepherd	States he estimates it would take three-to-four years.
<b>Tape 15, B</b>		
023	Shepherd	Gives examples of situations where consumers could be damaged in auto transactions.
035	Chair Witt	Asks if this would apply to repairs prepaid.
040	Shepherd	Responds it would if fraud or misrepresentation was involved.
045	Chair Witt	Gives a scenario as a possible example.
058	Rep. Monnes-Anderson	Asks about the Virginia model and if they included repairs.
065	Shepherd	Responded he didn't know.
070	Rep. Krummel	Points out some wording in the bill (page 4, line 23) that they may want to change.
077	Rep. Walker	Asks how long the Virginia law has been in place.
080	Shepherd	States that he does not have that information available at this time.
090	Monnes-Anderson	States she perused the Virginia law and it states that the recovery fund is to be used for the purchase, therefore it probably does not include repairs.
104	John Powell	Representative of Contractors Bonding and Insurance Company. Testified in opposition to HB 2209.  States the reasons why he is against the bill. <ul style="list-style-type: none"> <li>• Because lenders, other businesses, other dealers take up a majority of the claims on the bond, the bond is subject to all claims prohibiting to the fund.</li> <li>• The cost of the bond is consumed by non-purchasers.</li> </ul>
148	Chair Witt	Asks if financial institutions can bring action against the bond for recovery.
150	Powell	Responds affirmatively. Gives example of how this might happen.
166	Rep. Walker	Questions whether there is any funding available for the consumer after the financial institutions recover their debt.
173	Powell	Explains how to use the existing bond mechanism to provide a larger fund for consumers.
188	Rep. Walker	Asks how to structure the bond to cover both parties.
190	Powell	Suggests wording that states this is a consumer bond. Gives example.
214	Rep. Walker	Asks what the cost is for a bond of \$25,000 and \$50,000. What

217	Powell	happens if you have more than one claim for \$30,000. Quotes current bond prices. Gives explanation of how the claim process would work.
245	Powell	Continues testimony by describing what happened to the bill last session. Gives history on a similar bill in Virginia.  States Virginia bill differs and tells how and why.  Gives reasons why the recovery fund in Virginia is solvent.  Addresses concerns regarding: <ul style="list-style-type: none"> <li>• attorney caps</li> <li>• regulators</li> <li>• fraud</li> <li>• manufactured home dealers</li> <li>• repair shops</li> </ul> States options. <ul style="list-style-type: none"> <li>• Increase bond</li> <li>• reduce access.</li> </ul>
342	Rep. Knopp	Refers to past experience with bonding in committee. Asks at what level the financial picture of the bond requester is relative.
358	Powell	Explains the bond has more value than its penal sum. Gives reasons why bonds are required and how the cost of the bond is established.
395	Rep. Krummel	Asks if the clause referring to attorney fees is an “all-or-nothing” clause.
400	Powell	States he would assume so.
<b>Tape 17, A</b> 020	Rep. Devlin	Asks Powell if he thinks a fund level of \$750,000 would be adequate for these types of claims.
040	Powell	States he doesn’t think anyone could answer that question and explains why. Gives examples of states where this type of funding was not successful.
080	Chair Witt	Gives an accurate example of the claim process. Asks for information about increasing the bond amount without raising the cost. Says, Mr. Shepherd will tell you that no matter what you set the bonding level at, you’ll still have claims that will go unpaid.
106	Powell	Responds that Shepherd, by his own testimony, admitted that even with the recovery fund, not everyone will be protected for all things.
117	Rep. Walker	Asks what the financial institution’s reaction would be.
124	Powell	Says financial institutions have other mechanisms to recover funds that consumers don’t have.
127	Rep. Walker	Asks if there have been efforts to increase the bond in past

		legislative sessions.
132	Powell	Responds by giving statistics for past bond level.
140	Rep. Walker	Asked for statistics regarding claims that were made against bonds where there were insufficient funds available.
140	Powell	States he can get that information for his company, but doesn't know if there is a uniform record for all bonds on all dealers.
154	Rep. Bates	Asks what stops a dealership from paying from not paying a bond, committing fraudulent acts and then going out of business.
163	Powell	Responds, the bonding company notifies the licensing authorities, if that's allowed to occur after a bond has been cancelled, then you have a regulatory problem.
170	Brian Hall	CNN Security. Testifies against HB 2209. Talks about issues addressed last session. States the benefits of private surety bonding.
203	Chair Witt	Questions if businesses have other avenues of recovery, is this an inappropriate form of recovery. Should the process be restricted to consumers.
231	Powell	Responds he would restrict the recovery to consumers.
		Adds that if someone were operating outside the law the recovery fund would not be in effect. States that the recovery fund excludes payment on behalf of anyone who is not a licensed dealer
250	Chair Witt	Encourages Powell and Hall to bring additional information regarding what would happen if the bond was increased and who could recover off of a bond that was totally restricted to consumers.
		Adds he will get additional information, have an additional hearing and allow speakers to return.
259	Chair Witt	Closed Public Hearing on HB2209.
260	Chair Witt	Outlines upcoming meeting schedule.
		<ul style="list-style-type: none"> <li>• Friday, February 2, 2001: no meeting</li> <li>• Monday, February 5, 2001: work session on HB 2433, HB 2075, informational session on SB 1149.</li> </ul>
259	Chair Witt	Meeting adjourned at 5:55 p.m.

Submitted By,

Reviewed By,

Renee' Lunsford,  
Administrative Support

Daniel Clem,  
Administrator

**EXHIBIT SUMMARY**

**A.**