

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE ON REGULATIONS

April 16, 1999 Hearing Room 350

2:00 p.m. Tapes 39 - 40

MEMBERS PRESENT: Rep. Bill Witt, Chair

Rep. Al King

Rep. Anita Rasmussen

Rep. Mark Simmons

STAFF PRESENT: Jason Cody, Administrator

Nancy Geisler, Administrative Support

MEASURE/ISSUES HEARD: HB 3001 Work Session

HB 2739 Public Hearing

HB 2740 Public Hearing and Work Session

HB 2735 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 39, A		
004	Chair Witt	Opens the meeting at 2:02 p.m. and opens work session on HB 3001.
<u>HB 3001 n WORK SESSION</u>		
007	Jason Cody	Administrator. Explains the n1 proposed amendments to HB 3001.

017	Chair Witt	States the ñ3 amendments to HB 3001 are the ones the committee will be considering today.
020	Monty King	Lobbyist, Oregon Independent Auto Dealers Association. Notes the ñ3 amendments (EXHIBIT A) change the instruction time from six hours during a licensing period and insert five hours per year in a licensing period.
025	Chair Witt	Inquires if this is because there will be a three-year renewal license.
026	M. King	Responds that is correct.
030	Chair Witt	Clarifies that for every three-year period, the instruction time would be 15 hours.
032	M. King	Replies yes. Explains the amendments brought in by the Auto Insurance Auctions.
034	Rep. Witt	MOTION: Moves to ADOPT HB 3001-3 amendments dated 4/16/99.
		VOTE: 5-0
036	Chair Witt	Hearing no objection, declares the motion CARRIED.
038	Rep. Hill	MOTION: Moves HB 3001 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
040	Chair Witt	The motion CARRIES. REP. KING will lead discussion in the full committee.
044	Rep. King	Acknowledges that Monty King is his brother.
050	Chair Witt	Closes work session on HB 3001 and opens public hearing on HB 2739.
<u>HB 2739 - PUBLIC HEARING</u>		

054	Chair Witt	Reports the changes the committee has made to HB 2739, which incorporate most of HB 2734.
060	Darrell Fuller	<p>Lobbyist, Oregon Automobile Dealers Association. Testifies in support of HB 2739 (EXHIBIT B). Explains the 5 amendments (EXHIBIT C) to HB 2739. Explains the changes which the 5 amendments will make to Oregon Law:</p> <ul style="list-style-type: none"> • Changes dealership license cycle from one year to three years. • Removes the requirement that the dealer license have a signature from a local government official in order to have the license renewed, if the dealer is at the same location. • Changes the bond required to be a motor vehicle dealer from \$15,000 to \$20,000, and then from \$20,000 to \$25,000. <p>Notes they support the bill as amended.</p>
080	Chair Witt	Asks if there were some amendments from the Oregon Department of Transportation (ODOT).
082	Fuller	Replies both ODOT and the Department of Justice (DOJ) had several technical amendments which have been incorporated into the 5 amendments. Explains these technical amendments.
100	Rep. King	Declares a potential conflict of interest in that Monty King is his brother.
106	M. King	Explains amendments marked HB 2734-3 (EXHIBIT D). Notes that HB 2734 will be HB 2739, so these amendments apply to HB 2739.
120	Chair Witt	Asks if the 3 amendments to HB 2734 are incorporated into the 5 amendments to HB 2739.
122	Cody	Responds he does not know.
126	M. King	Answers he does not believe these amendments will be in HB 2739.
128	Rep. King	Asks if the problem is that someone could come back into Oregon under reciprocity.
131	M. King	Answers there is presently no reciprocity between the states.
160	Chair Witt	Asks if Fuller and M. King have looked at the 5 amendments.
161	Fuller	Answers he is reviewing them right now.
166	Chair Witt	Reiterates to the committee that HB 2734 has been incorporated into HB 2739.

		Describes some changes made by the ñ5 amendments.
180	Cody	Explains further implications of the ñ5 amendments.
196	Rep. Hill	Comments that HB 2739 increases the licensing period for dealers from one year to three years. Adds that the bond will be increased, and a bond or letter of credit is required for consumer protection.
206	Fuller	Answers that is correct. Notes the other significant change under HB 2739 is that the car dealer will only need to get a local government signature that they are properly zoned if they are a new dealership or if the existing dealership has moved.
215	Chair Witt	Adds the fees were tripled for the dealer certificate because of going from a one-year licensing period to a three-year period.
218	Fuller	Agrees with this. Adds that the ñ5 amendments also allow the Department of Motor Vehicles (DMV) to stagger the licensing process over three years to ensure a steady workload.
222	Rep. Hill	Asks if the zoning is an archaic structure.
229	Fuller	Replies the zoning is archaic in that states already have regulatory authority over businesses in their jurisdictions. Reports the idea is that a business should be run in a business area.
251	M. King	Explains this provision was put in so that local jurisdictions would know where the dealerships are, but it did not work.
261	Peter Shepherd	Assistant Attorney General, Department of Justice. Testifies in support of HB 2739 and the amendments. Adds this is a consumer-friendly bill.
273	Chair Witt	Inquires if Shepherd has looked at the proposed ñ3 amendments to HB 2734.
277	Shepherd	Answers he has not.
279	Chair Witt	Explains that, if the language in the ñ3 amendments is adopted, it will go into HB 2739.
281	Shepherd	Acknowledges he is familiar with the issue and has no objection to the ñ3 amendments to HB 2734 being added into HB 2739.
283	Rep. Hill	Inquires if Fuller has seen the ñ3 amendments.

285	Fuller	Notes he just saw the -3 amendments today. Adds he is not opposed to the amendments.
294	Chair Witt	Closes public hearing on HB 2739 and opens work session on HB 2739.
<u>HB 2739 ñ WORK SESSION</u>		
298	Chair Witt	Informs the committee they must determine how to appropriately adopt the ñ3 amendments to HB 2734 into HB 2739.
302	Rep. Hill	Suggests they adopt the ñ5 amendments to HB 2739 and then conceptually adopt the ñ3 amendments.
304	Chair Hill	Notes this is a good suggestion.
310	Rep. Hill	MOTION: Moves to ADOPT HB 2739-5 amendments dated 4/16/99.
312	Rasmussen	Notes Rep. King must declare that Monty King is his brother before each vote on issues that M. King is advocating.
314	Rep. King	States Monty King is his brother, and there could be a potential conflict of interest.
		VOTE: 5-0
320	Chair Witt	Hearing no objection, declares the motion CARRIED.
324	Rep. Hill	MOTION: Moves to FURTHER AMEND HB 2739 by inserting HB 2734-3 amendments dated 4/6/99.
328	Rep. King	Declares a potential conflict of interest.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
334	Chair Witt	The motion CARRIES.

336	Rep. King	Declares a potential conflict of interest.
338	Rep. Hill	MOTION: Moves HB 2739 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
370	Chair Witt	The motion CARRIES. REP. WITT will lead discussion in the full committee.
380	Chair Witt	Closes work session on HB 2739 and opens public hearing on HB 2740.
<u>HB 2740 ñ PUBLIC HEARING</u>		
394	Fuller	Testifies in support of HB 2740 and presents the ñ1 amendments (EXHIBIT E).
412	Cody	Explains the ñ1 amendments to HB 2740.
427	Chair Witt	Clarifies more changes made by the ñ1 amendments.
TAPE 40, A		
014	Fuller	States there are two substantive issues in the ñ1 amendments: <ul style="list-style-type: none"> • Priority of insurance on a rented vehicle. • Transfer of primary insurance policy to loaner vehicle while the primary vehicle is in the shop for repairs.
020	Rep. Hill	Asks whose insurance covers a rented vehicle when the renter is driving.
024	Fuller	Responds if someone rents a vehicle and purchases insurance at the rental agency, that insurance covers the entire vehicle. Adds if no insurance is purchased and the driverís personal auto insurance has rental car coverage, the personal insurance is primarily responsible up to the limits of the policy. Explains beyond the limits of the policy, the rental agencyís insurance provides additional coverage.
040	Rep. Hill	Asks if there will be a corresponding cost for car rentals.

042	Fuller	Answers the rental agency insures the entire vehicle at all times, so costs may not be affected.
049	Chair Witt	Notes he received a letter stating that the Oregon State Bar's Procedure and Practice Committee opposes HB 2739, at least as initially written. Asks Fuller if he knows anything about this.
052	Fuller	Comments he does not know about this.
054	Chair Witt	Reports the Bar is not at the meeting to give testimony.
055	Fuller	States he would like a copy of the letter in order to address the issues.
060	Chair Witt	Closes public hearing on HB 2740 and opens work session on HB 2740.
<u>HB 2740 n WORK SESSION</u>		
066	Rasmussen	Inquires about the Bar letter.
069	Chair Witt	States he is prepared to move HB 2740 as amended. Adds the Bar can testify in the full committee regarding opposition to HB 2740.
073	Fuller	Reports he has read the letter from the Bar, and the amendments do address the issue of the immunity provided being too broad.
084	Chair Witt	Notes that HB 2740 comes from people in automobile sales and repair businesses who feel they should be liable for any damages occurring while the loaner vehicle is being driven.
091	Rasmussen	Clarifies she is willing to let HB 2740 move forward, but with the condition that if the Bar makes a persuasive argument, she may reconsider.
098	Chair Witt	Agrees they will have the opportunity in full committee.
100	Rep. Simmons	MOTION: Moves to ADOPT HB 2740-1 amendments dated 4/7/99.
		VOTE: 5-0
108	Chair Witt	Hearing no objection, declares the motion CARRIED.

110	Rep. Simmons	MOTION: Moves HB 2740 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
114	Chair Witt	The motion CARRIES. REP. WITT will lead discussion in the full committee.
117	Chair Witt	Closes work session on HB 2740 and opens public hearing on HB 2735.
<u>HB 2735 ñ PUBLIC HEARING</u>		
138	Cody	Explains HB 2735 and ñ2 amendments (EXHIBIT F) .
142	Fuller	Presents written testimony in support of HB 2735 and the ñ1 amendments (EXHIBIT G) . Reports the automobile manufacturers and dealers are trying to come to agreement on the amendments to HB 2735.
157	Chair Witt	Asks Fuller to explain primary reasons behind the proposed changes in the law relating to manufacturer/dealer relations for the auto dealer.
161	Fuller	Answers there is a changing marketplace, and the dealers see HB 2735 as protection from actions by the manufacturer which may have harmful consequences to a dealer. Cites an example of this.
194	Rep. King	Asks if HB 2735 would prevent ... (inaudible tape).
202	Fuller	Replies it is possible that, if a dealership cannot sell a business, the manufacturer will be prohibited from rescuing that dealership under HB 2735. Adds that a manufacturer would not want to own an unprofitable dealership.
220	Shepherd	Explains he supervises antitrust work. Notes the Department supports many provisions of the ñ2 amendments, but not others. Updates written testimony.
265	Shepherd	Presents testimony concerning HB 2735 (EXHIBIT H) . Defines elements in HB 2735-2 which undermine competition. Points out sections of the ñ2 amendments which the DOJ has concerns about.

303	Rep. King	Asks why HB 2735-2 might foster fewer potential buyers.
305	Shepherd	Notes that manufacturers who enter into competition are relatively well off in terms of capital resources compared to some other potential buyers of franchisers. Adds manufacturers can pay a high price to gain entry into a retail market. States the ñ2 amendments prohibit manufacturers from being bidders, and this is contrary to an open market.
326	Rep. King	Responds that the top bidder is still the top bidder.
328	Shepherd	Answers that the price for goods or services is established by what people are willing to pay. Explains HB 2735-2 would cause fewer bidders to be available.
338	Rep. King	Answers he would prefer to have a well-capitalized buyer who will pay top dollar if he were selling something.
341	Shepherd	Replies the DOJ would like this also, but HB 2735-2 might prevent that.
342	Rep. King	Inquires if a dealer is already in the market, could they discourage competition in subsequent sales.
344	Chair Witt	Asks if Shepherd is referring to the fact that, by excluding the manufacturer from buying, the price at which the dealership might be sold is artificially depressed.
362	Shepherd	Answers that is correct.
365	Chair Witt	Asks if lines 23 to 27 on page 5 of the ñ2 amendments protect the interest of the manufacturer and the consumer to make sure that repairs done under warranty are being done by an authorized franchised dealer.
372	Shepherd	Answers the notion of restricting the warranty work to qualified people is not objectionable. Refers to line 27, which imposes a geographic restriction on the referrals and contracts a manufacturer may enter into to perform warranty work.
394	Chair Witt	Clarifies that the primary objection of the DOJ is the last seven or eight words in line 27.
TAPE 39, B		
003	Shepherd	Answers they are concerned about any restriction on the ability of a franchisor to contract with any qualified person to provide warranty service.
006	Chair Witt	Inquires if Shepherd's concern is creating areas where only a few people are allowed to provide warranty service but, outside that area, allowing someone

		who is not a franchised dealer to provide service.
010	Shepherd	Responds yes. Refers to lines 28 to 31 on page 5. Notes concerns regarding the relevant market area.
025	Rep. King	States Shepherd's concerns about manufacturers do not take into account the potential high prices that consolidators pay.
031	Shepherd	Replies there is a trend toward consolidation in the automobile industry. Adds that HB 2735-2 does not address any in-state non-franchisor who gains the same kind of market control which results from the activities of manufacturers.
040	Chair Witt	Asks if language in the ñ2 amendments violates antitrust statutes.
044	Shepherd	Answers that the federal antitrust statutes do not prohibit the Oregon Legislature from adopting these measures, and would not prohibit private parties from adhering to the requirements of Oregon law. States he does not feel that HB 2735 is unlawful, but it is a policy question.
055	Shepherd	Refers to page 9, lines 11 to 12. Explains this defines when damage occurring prior to the time a dealer receives a car from a manufacturer must be disclosed. Notes the technical problem is that the ñ2 amendments do not provide a substitute rule for determining whether one has exceeded the 3% threshold.
078	Chair Witt	Inquires if Shepherd wants a specific way of valuing labor and parts.
079	Shepherd	Answers they need to provide guidance on how to measure the threshold.
081	Chair Witt	Notes Fuller is willing to provide language to make that clear.
087	Paul Hurd	Associate General Counsel, Freightliner Corporation. Points out that HB 2735 would negatively affect his company. States he would like to exempt heavy truck manufacturers from HB 2735. Elaborates on provisions of HB 2735 which concern him.
131	Chair Witt	Asks if it is typical in the truck manufacturing business that dealers sell only one manufacturer's product.
134	Hurd	Replies this is happening more now than in the past.
145	Chair Witt	Inquires if Hurd has any objection to HB 2735 if heavy truck manufacturers are exempted.
147	Hurd	Answers yes.

149	Chair Witt	Encourages Hurd to work with Fuller to create specific language concerning this issue.
155	Rasmussen	Suggests they look at recreational vehicles (RVs) also.
157	Fuller	Explains that RVs will exclude themselves from HB 2735 and create a new franchise act more specific to the RV industry.
169	Rasmussen	Asks about mobile homes.
171	Fuller	Replies manufactured homes are not considered motor vehicles, just vehicles. Adds that HB 2735 is specific to motor vehicle dealers, which exempts manufactured housing.
173	Rasmussen	Inquires if HB 2735 covers mainly automobiles and motorcycles.
174	Fuller	Replies yes. Mentions that several of their members deal with heavy trucks, and they want to ensure that franchised dealers of heavy trucks in Oregon are protected.
192	Chair Witt	States he hopes to have HB 2735 back by Monday, April 26. Closes the public hearing on HB 2735 and adjourns the meeting at 3:10 p.m.

Submitted By, Reviewed By,

Nancy Geisler, Jason Cody,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3001, proposed ñ3 amendments, Monty King, 1 p

B ñ HB 2739, written testimony, Darrell Fuller, 1 p

C ñ HB 2739, proposed ñ5 amendments, staff, 14 pp

D ñ HB 2734, proposed ñ3 amendments to HB 2739, Monty King, 1 p

E ñ HB 2740, proposed ñ1 amendments, Darrell Fuller, 4 pp

F ñ HB 2735, proposed ñ2 amendments, staff, 15 pp

G ñ HB 2735, written testimony, Darrell Fuller, 4 pp

H ñ HB 2735, written testimony, Peter Shepherd, 2 pp