

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

May 20, 1997 Hearing Room 357

3:15 P.M. Tapes 93 - 94

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice-Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 3187 - Work Session

SB 827A - Public Hearing and Work Session

SB 188A - Public Hearing and Work Session

SB 303A - 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 93, A		
003	Chair Sunseri	Calls the meeting to order at 3:20 p.m.
<u>HB 3187 - WORK</u>		

SESSION		
004	Chair Sunseri	Opens a work session on HB 3187.
005	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary HB 3187. Refers to Davis v. Campbell, 925 P.2d 1248.
023	Chair Sunseri	Do you see a relationship between this case and HB 3187?
024	Taylor	No.
025	Emily Cedarleaf	Multi-Family Housing Council of Oregon Davis v. Campbell case held landlords to strict liability for violation of habitability but also of the rental agreement. Our concern is over the direction taken by the court on the rental agreements. If any implication in a landlords rental agreement or screening criteria that the landlord was screening for purposes of increasing the safety or awareness factor on the premise, there is going to be a problem for landlords. However, between the changes in SB 675 and with the appeal, we may get the issue revisited.
035	Rep. Eighmey	The implied terms of the rental agreements may include the provisions that you must have access to this information and provide to prospective or existing tenants of the predatory sex offenders being on the premises. In the Davis v. Campbell the court held the landlord liable to the standards of knowledge not only to the content of the law but also the implied conditions of the lease. Implied conditions are statutory. Gives example. If HB 3187 is passed, would it in fact have a implied condition of the lease term? Gives example.
052	Cedarleaf	Responds by stating the intent behind HB 3187. >concern about notification to others before the landlord, gives example.
068	Rep. Eighmey	Does HB 3187 make an obligation to the landlord to inform all parties, even though other agencies are notifying parties, upon knowledge of a sexual offender on the premise?
078	Cedarleaf	Responds to Rep. Eighmey's question about the possible obligation to landlords to inform upon knowledge of a sex offender on the premise by stating responses received from various attorneys. Refers to SB 1078 and provides intentions of the measure with regards to Oregon State Police (OSP) releasing information.

090	Chair Sunseri	Are there any suits pending?
092	Cedarleaf	Responds by stating known cases.
096	Rep. Courtney	What form of notice are landlords looking to?
099	Cedarleaf	It is a question of a landlord having access to the information regarding sex offenders. Refers to SB 1078, the notice section doesn't specifically state to notify the landlord. It is within the administrative management plan that notification is to be given. Marion County is not good at giving the notification to landlords. If a prudent landlord is going to screen, access is necessary.
109	Faith Fagel	Oregon Youth Authority Testifies in opposition to HB 3187. Is there any liability if the landlord screens out a sexual offender? >gives procedures from how registration occurs >management of registration and notification process by OSP and Department of Corrections Concern with giving notification on all sex offenders (adult and juvenile) versus designating a smaller group of sex offenders those deemed as "predatory" sex offenders.
153	Rep. Courtney	Do you, Ms. Fagel, see a system where a landlord can receive specific notification from agencies involved under current operations?
162	Fagel	I believe, a system of notification already exists in the Department of Correction's computer system. Gives example.
173	Barbara McGuire	Department of Corrections with Sex Offender Supervision Network >information can be provided from each Parole Officer >refers to Attorney General's opinion as to what can be given to public
183	Chair Sunseri	If I receive a rental application from an apartment, I can contact and receive information about a registered sex offender?
184	McGuire	Yes.
185	Chair Sunseri	What impact is there to the department, if over 1,000 phone calls requesting sex offender information?
186	McGuire	I would not anticipate volumes of calls. It is better than the alternative.
191	Chair Sunseri	What is better than the alternative?

192	McGuire	I would be concerned with potential fishing expeditions which have the potential to harm more than do good to people.
194	Chair Sunseri	States concern over liability or responsibility of landlords, and then loss of several tenants, for not having the information to make a choice to continue renting or not with regards to learning a sex offender on the premise.
201	McGuire	>spin off benefit of notification, gives example >needs focus on the high risk sex offenders >at this point in time of the 3,000 sex offenders under supervision only 300 are found to be predatory
219	Chair Sunseri	"What if we kick this bill back to predatory?"
221	McGuire	That would be helpful.
222	Rep. Courtney	Shares comments over action taken in 1993 session with regards to sex offender registrations. Shares concerns about current measure, if open notification to all sex offenders. Are there not restrictions on the term "predatory?" The law does not require that if an offender is deemed "predatory," that notification is given out to the neighborhood.
239	McGuire	Correct. The fact of possibly giving notification is in fact a supervision tool to assist in keeping that individual on the "straight and narrow."
243	Chair Sunseri	If the landlord has knowledge of a "predatory" offender and the landlord does not make the information public. Will this jeopardize any legislation before us?
250	Rep. Courtney	The landlord's knowledge about a sex offender is public. Gives example. It is a form of notification, when the landlord has knowledge. I have concern this will effect the law before the federal court.
259	Rep. Uherbelau	I agree that Davis v. Campbell deals only with habitability statutes. The legislature shouldn't make a decision based on this case because it is not related. Shares comments over renting to prior sex offenders from the landlord's perspective versus the individuals need for a stable place to live.
297	Rep. Eighmey	Refers to Davis v. Campbell on page 3. Shares concern about the potential workload to the Department of Corrections and OSP when asked to review all prospective renters' names as to whether a sex offender or not to landlords. Adds comments about action taken in the 1993 legislative session regarding the restrictions placed on the releasing of sexual predatory offender information.
343	McGuire	I am concerned about the volume of inquiries to the agencies to determine if a prospective tenant is a sex offender or not. Gives

		example.
350	Fagel	The notification process has a high workload to manage the ramifications to the community. Gives example.
388	Chair Sunseri	Shares comments over property owners losing tenants should a sex offender reside on the premise that was unknown.
397	Rep. Uherbelau	How will another tenant learn there is a sex offender on the premise, and how will you lose renters?
406	Cedarleaf	Refers to correspondence presented by herself to the subcommittee on May 15, 1997 exhibit A. >how do landlords anticipate versus reacting to the concerns of the other tenants regarding sex offenders on premise >identifies daily volume of current public records check of prospective renters
456	Cedarleaf	Continues comments. >tenants asking why didn't the landlord know first sex offender on premise
467	Rep. Courtney	Shares comments of economic concerns of a sex offender on premise.
Tape 94, A		
030	Rep. Courtney	Continues comments. Shares comments with regards to the 1993 legislative session regarding the drafting of the original statute and current action being taken in the federal court regarding the statute.
066	Rep. Uherbelau	Shares comments on how the law enforcement handled the particular instance as stated in the correspondence presented by Ms. Cedarleaf on May 15, 1997 to the subcommittee.
		If law enforcement is going to give general notice, first notice should be given to landlords.
079	Cedarleaf	If HB 3187 has done nothing but raise the awareness to the Department of Correction about the landlords concerns, then I will have felt closer to achieving the needs of the landlords for the communities. Gives example.
093	Rep. Courtney	In Marion County, I will work with the Parole and Probation Department personnel to assist the needs of the landlords and check on how this statute is being implemented.
104	Cedarleaf	Provides her experiences in other counties about training in the area of sex offender issues for landlords.
113	Taylor	Ms. Cedarleaf, you have stated that within your rental agreements there is a provision to notate if you are a registered sex offender or a predatory sex offender, and if that person fails to notify you to this fact, you will

		terminate the agreement?
118	Cedarleaf	On our rental applications there is a provision requesting information as to whether you have ever been convicted of a felony. Should the landlord learn after the fact, that the tenant lied about this fact, termination is done for falsifying the application. Our applications do not ask directly if the prospective renter is a registered sex offender. It has been under discussion. Gives example.
126	Taylor	"Has it ever been challenged in court or upheld in court?"
128	Cedarleaf	It has been upheld in the district court when the tenant has raised the issue about a landlord requesting information about whether a prospective renter was a felon or not. Felons are not a protected class under the Fair Housing Act in Oregon.
130	Rep. Uherbelau	If leasing on a month to month basis, if a tenant lies on their application, can the landlord terminate the tenant shorter than 30 days?
137	Cedarleaf	There is nothing shorter than the 24 hour notice for outrageous conduct. There are 72 hour notices for non-payment of rent or a 10 day notice for having a pet. Any other violation of the landlord/tenant conditions requires a 30 day notice to the offending tenant. Gives example.
143	Rep. Uherbelau	Have landlords considered changing the statute to have a false statement on the rental application fall under the "outrageous conduct" and be allowed the 24 hour notice provision?
150	Cedarleaf	Provides the actions taken since 1981 by the Multi-Family Housing Council of Oregon.
157	Chair Sunseri	Closes the work session on HB 3187.
<u>SB 827A - PUBLIC HEARING AND WORK SESSION</u>		
163	Chair Sunseri	Opens a public hearing and a work session on SB 827A.
164	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on SB 827A.
170	Jack Munro	Oregon Land Title Association Testifies in support of SB 827A. >SB 827A address the technical issue of escrow records storage >escrow agents need alternative storage options within the statute >both sides are in agreement to this measure

190	Rep. Uherbelau	Where else is storage considered for these escrow records?
191	Munro	Gives example of possible locations and associated costs.
201	Chair Sunseri	Gives example of records storage from a Realtor's perspective.
218	Rep. Beyer	MOTION: Moves SB 827A to the full committee with a DO PASS AS AMENDED recommendation.
221	Rep. Eighmey	Shares comments on how the law firms handle the storage concerns.
227	Munro	Responds by stating that an escrow agent has a licensed office as opposed to a law office who can set up business anywhere.
235		VOTE: 6-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Sunseri	The motion CARRIES. REP. UHERBELAU will lead discussion on the floor.
239	Chair Sunseri	Closes the public hearing and work session on SB 827A.
<u>SB 188A - PUBLIC HEARING AND WORK SESSION</u>		
242	Chair Sunseri	Opens a public hearing and a work session on SB 188A.
245	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on SB 188A. Refers to -A2 amendments dated 04/14/97 (EXHIBIT A).
269	Art Kapteyn	Legislative Liaison for Department of Human Resources - Child Support Program (DHR) Testifies in support of SB 188A and presents written testimony (EXHIBIT B).
319	Kapteyn	Continues testimony.
369	Kapteyn	Continues testimony.
419	Kapteyn	Continues testimony.
Tape 93, B		
030	Kapteyn	Continues testimony. Refers to the -A2 amendments dated 04/14/97 (EXHIBIT A).

070	Rep. Eighmey	I have concerns regarding how DHR determines a temporary change of custody by a statement of the parties?
083	Kapteyn	Refers to <u>Section 6</u> subsection (a) of the original printed measure in response.
103	Rep. Eighmey	Shares comments with regards to <u>Section 6</u> subsection (a) from the obligee's standpoint.
110	Maureen McKnight	Oregon Legal Services Explains intent of page 3, line 2 of the printed measure. The intent was to give notice to the obligee which will give the obligee the opportunity to object prior to the suspension occurring.
126	Kapteyn	Rep. Eighmey, what if DHR on page 2, line 41 add "to be" after "enforcement is" would that address your concerns?
131	Rep. Eighmey	Discusses conceptual amendments on page 2, line 41. Why not enter into a pre-collection agreement or have an agreement as part of the divorce decree stating what DHR is asking for in SB 188A? It will not violate the federal act, if DHR has a pre-collection agreement or a decree that permits DHR to return overpayment of child support to the obligor. Gives example.
169	Kapteyn	DHR would need to determine, if in fact a pre-collection agreement would violate federal regulations. Any enforcement agreement or services agreement with an obligee is a violation of federal regulation.
177	McKnight	Conditioning the receipt of child support services on certain circumstances raised compliance issues with the federal regulations. In discussions with the state on the overpayment issue, I believe that the concerns of the obligee are met by the discretion of the state to fashion a repayment agreement, whether voluntary assignment or another payment agreement which takes into account the obligee's financial circumstances instead of a flat rate paid regardless of income.
188	Rep. Eighmey	Where are the funds to return overpayments of child support to the obligor? Part of the biannual allocation? Is there a dollar amount available as to how much received is overpayments?
195	Kapteyn	Responds by stating that the amount shouldn't be significant. Any increase in funds will be where DHR is at fault. DHR doesn't want the obligor to have to file a tort claim to receive the over payment.
205	Rep. Eighmey	Do you have a guess as to the amount of funds involved?
206	Kapteyn	No.
208	Rep. Eighmey	MOTION: Moves to AMEND SB 188A on page 02, in line 041, after "is," insert "to be ," and after "obligee," insert "shall be notified and".
219		VOTE: 5-0-1

		EXCUSED: 1 - Rep. Courtney
	Chair	Hearing no objection, declares the motion CARRIED.
224	Taylor	Legislative Council suggests the -A2 amendments be inserted into ORS as a new section after line 13 on page 3 of the printed measure.
230	Rep. Eighmey	MOTION: Moves to AMEND SB 188A on page 03, in line 13, insert "the -A2 amendments as <u>Section 4</u>.
233		VOTE: 5-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
253	Rep. Eighmey	MOTION: Moves SB 188A to the full committee with a DO PASS AS AMENDED recommendation.
256		VOTE: 5-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	The motion CARRIES. EIGHMEY will lead discussion on the floor.
258	Chair Sunseri	Closes the public hearing and work session on SB 188A.
262	Chair Sunseri	Recesses the subcommittee for five minutes.
<u>SB 303A - PUBLIC HEARING</u>		
263	Chair Sunseri	Opens a public hearing on SB 303A.
265	Sen. Joan Dukes	District #1 Testifies in support of SB 303A and presents an affidavit and adoption disclosure statement (EXHIBIT D).
315	Sen. Dukes	Continues testimony.
328	Rep. Uherbelau	Refers to EXHIBIT D . I read the affidavit as a cost of bearing the child not selling. Would SB 303A preclude this situation?
343	Sen. Dukes	Refers to EXHIBIT D . There are items within the affidavit that would seem to go beyond the cost of bearing this child.
		Shares concerns regarding the measure. Gives example. >makes the adoption process include a list of acceptable costs

371	Rep. Uherbelau	>could work against carrying the pregnancy to term Are you familiar with a measure passed out of the House with a similar intent to SB 303A?
421	Sen. Dukes	Are you referring to HB 2557? Each measure was presented to each side to await reaction and outcome. Both measures are identical except for the section that makes a violation of SB 303A a matter of child abuse. This feature will allow a case into the court system.
458	William E. Taylor	Counsel Reads from ORS 109.311 which is referenced in <u>Section 2</u> subsection (2)(a). I believe the adoption disclosure statement EXHIBIT D would be legal under SB 303A.
Tape 94, B		
030	Chair Sunseri	This would then allow for prospective adoptive parents to be able to pay reasonable expenses for bearing a child.
035	Sen. Dukes	The intent behind SB 303A was not to get to those fees deemed reasonable to bearing a child for adoption. Gives example. Our intent was to prohibit a person from offering a child in exchange for remuneration that has nothing to do with the cost of having that child. That is illegal. That becomes child abuse.
043	Chair Sunseri	Closes the public hearing on SB 303A. Adjourns the meeting at 4:50 p.m.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 188A, -A2 amendments dated 04/14/97, Staff, 1 page.

B - SB 188A, written testimony, Art Kapteyn, 5 pages.

C - SB 188A, written testimony, Maureen McKnight, 2 pages.

D - SB 303A, affidavit and adoption disclosure statement, Sen. Joan Dukes, 5 pages.