

SENATE COMMITTEE ON BUSINESS, HOUSING AND CONSUMER AFFAIRS

May 3, 1993 Hearing Room 343 3:00 p.m. Tapes 63 - 65

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bill Kennemer, Vice-Chair
Sen. Brady Adams Sen. Ron Cease Sen. Karsten Rasmussen

MEMBER EXCUSED:

VISITING MEMBER: Rep. Kevin Mannix, District 32 Sen. Jeanette Hamby,
District 25

STAFF PRESENT: Cherie Copeland, Committee Administrator Richard
Day-Reynolds, Committee Assistant

MEASURES CONSIDERED: Public Hearing and Possible Work Session:
SB 914 - Requires retailers to post notice if
consumers are being observed for purpose of

collecting information on consumer behavior. SB 926 - Directs
establishment of advanced digital communications network. SB
1095 - Requires sellers of certain real property to
submit to buyer property disclosure

statement or disclaimer of warranty for "as

is" purchases. SB 1097 - Requires real estate licensee
to provide disclosure form to buyer and seller at

specified times during real estate

transaction. HB 2367A Requires vehicle manufacturer who
repurchases vehicle to disclose repurchase to dealer.

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These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in
quotation marks report a speaker's exact words. For complete contents
of the proceedings, please refer to the tapes. [--- Unable To Translate
Graphic ---]

TAPE 63, SIDE A

016 CHAIR DWYER: Calls the meeting to order at 3:08 p.m.

020 CHAIR DWYER: I'm going to take the agenda out of order.

(Tape 63, Side A) SB 1095 - REQUIRES SELLERS OF CERTAIN REAL
PROPERTY TO SUBMIT TO BUYER PROPERTY DISCLOSURE STATEMENT OR
DISCLAIMER OF WARRANTY FOR "AS IS" PURCHASES - PUBLIC HEARING Witnesses:
Genoa Ingram, Oregon Realtors Association Dave Koch, Oregon Realtors

Association Ray Shaw, Oregon Realtors Association

028 GENOA INGRAM, OREGON REALTORS ASSOCIATION: The Association has attempted to keep the process open. Introduces (EXHIBIT A).
Introduces

RAY SHAW and DAVE KOCH, OREGON REALTORS ASSOCIATION.

076 KOCH: Testifies in support of the bill. This is a consumer protection bill. The bulk of the bill is disclosure. It will benefit everyone

involved.

124 SHAW: The association started the process in 1989. There has been a lot of input and there are some exemptions included. There is an

emerging trend nationally of disclosure.

155 CHAIR DWYER: What effect would be had on the financing if there is no disclosure by the seller?

160 SHAW: It could have an effect if the seller doesn't answer or answers untruthfully.

163 CHAIR DWYER: This would have a serious impact on the ability to get a loan.

170 SEN. ADAMS: Declares a potential conflict of interest. I don't think it will have any impact.

177 CHAIR DWYER: What about under the terms of the appraisal bill that we passed earlier?

181 SEN. ADAMS: I would hope a bank would practice due-diligence in this area.

CHAIR DWYER: Would this raise the rent, though, if I refused to sign?

SEN. ADAMS: I don't think so.

187 INGRAM: The bill is intended to address only on-site situations. We just want a record of what was disclosed.

209 CHAIR DWYER: In most cases the county does an appraisal report with most of this information in it. Does the seller know all this?
Why

should it take the place of the appraisal report?

223 INGRAM: The seller may not always know. An appraisal is not always required for all transactions.

236 CHAIR DWYER: In current law isn't this is already being done?

243 KOCH: No. Explains current process.

258 CHAIR DWYER: Look at Section 7. The seller has no liability. Why

do we have that in here?

265 SHAW: There is some contention on this issue on the part of the lawyers. There are suggested amendments that deal with this liability.

County assessors may do some evaluating, they may not be very complete or available to sellers.

294 SEN. KENNEMER: Refers to questions on the form that he has some concerns with.

323 INGRAM: You would disclose those things that you would want to know about if you were to purchase the property.

330 SEN. KENNEMER: Gives an example.

335 SHAW: This a balancing act so that everyone involved can make an intelligent decision.

358 INGRAM: If you wouldn't disclose it verbally now you wouldn't disclose it in writing. This bill just creates a paper trail.

366 SEN. ADAMS: Asks about the "as is" clause.

379 SHAW: We haven't thought about it.

409 WALTER BROWN, OREGON CONSUMER LEAGUE: Introduces PATRICIA FERRELL-FRENCH, OREGON CONSUMER LEAGUE: The consumer community in the

state was not consulted in the drafting of this bill. Bill appears to be modeled after Wisconsin law. There are differences in the Oregon and Wisconsin law. In this bill there is no delineation. The disclosure should be signed by the realtor as well. There are a number of areas not covered in this bill. Gives examples from (EXHIBIT C-G). Asks the chair to table the bills and to create an interim committee on this issue.

TAPE 64, SIDE A

099 FERRELL-FRENCH: Testifies in opposition to the bill. Reads from written testimony (EXHIBIT B). There should be more scrutiny and

amendments need to include the input from a larger variety of interests.

120 SEN. ADAMS: Item 14. Why require seller to obtain survey?

129 FERRELL-FRENCH: The Oregon Real Estate Manual recommends a survey to define the boundaries of the property.

146 BROWN: Most places have surveys on file already.

172 SEN. ADAMS: What does "Or should have known" mean?

182 FERRELL-FRENCH: It's a common law standard for reasonable person standard. 196 BROWN: In law, it's the difference between constructive vs. actual knowledge.

210 FERRELL-FRENCH: This bill takes away the common law negligent standard of common knowledge for realtors.

219 BROWN: We are willing to work in interim on this bill.

220 CHAIR DWYER: Hands the gavel to Sen. Kennemer.

226 CHAIR KENNEMER: There will be a work group convened in the near future to work this out.

230 BROWN: Compares 1095 and 1097. No definitions.

(Tape 64, Side A) SB 926 - DIRECTS ESTABLISHMENT OF ADVANCED DIGITAL COMMUNICATIONS NETWORK - PUBLIC HEARING Witnesses: Sen. Jeanette Hamby, District 25 Benjamin Peek, Advanced Digital Communications Consortium

250 SENATOR JEANETTE HAMBY, DISTRICT 25: Testifies in support of the bill. Reads from written testimony (EXHIBIT H).

289 CHAIR KENNEMER: Sen. Johnson was here earlier and is in support.

292 BENJAMIN PEEK, ADVANCED DIGITAL COMMUNICATIONS CONSORTIUM: Testifies in support of the bill. Reads from prepared testimony (EXHIBIT I).

TAPE 63, SIDE B

050 CHAIR KENNEMER: How much money are you earmarking from lottery funds for this project?

054 SEN. HAMBY: We have a minimal amount, but the key piece of this bill is to get everyone around the table on this issue.

060 SEN. ADAMS: Why have rural areas been dropped off the amendments?

072 SEN. HAMBY: It was an oversight.

076 SEN. ADAMS: So you would have no problems at re-targeting rural areas?

084 PEEK: We need to bring rural Oregon into access.

100 SEN. HAMBY: SB 755 speaks to rural Oregon.

(Tape 63, Side B) HB 2367-A - REQUIRES VEHICLE MANUFACTURER WHO REPURCHASES VEHICLE TO DISCLOSE REPURCHASE TO DEALER - PUBLIC HEARING Witnesses: Rep. Kevin Mannix, District 32 Jon Stubenvoll, Oregon State Public Interest Research

Group

113 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testifies in support of the bill. This is an extension of the "Lemon Law."

133 JON STUBENVOLL, OREGON STATE PUBLIC INTEREST RESEARCH GROUP: This is a good bill.

HB 2367-A - REQUIRES VEHICLE MANUFACTURER WHO REPURCHASES VEHICLE TO DISCLOSE REPURCHASE TO DEALER - WORK SESSION

145 MOTION: SEN. CEASE moves HB 2367-A to the floor with a Do Pass recommendation.

VOTE: The motion carries 3-0, Sen. Dwyer, Sen. Rasmussen excused. Sen. Cease will carry.

SB 1095 - REQUIRES SELLERS OF CERTAIN RESIDENTIAL REAL PROPERTY TO SUBMIT TO BUYER PROPERTY DISCLOSURE STATEMENT OR DISCLAIMER OF WARRANTY FOR "AS IS" PURCHASES - PUBLIC HEARING Witnesses: Morella Larsen, Real Estate Agency Steve Hawes, Real Estate Agency Larry Monk, Citizen

171 MORELLA LARSEN, REAL ESTATE AGENCY: Testifies in support of the bill. Reads from written testimony (EXHIBIT K).

179 STEVE HAWES, REAL ESTATE AGENCY: This bill also requires a 3-day recession statement. This bill also has a 7-day recession. This could

be a problem. The buyer could waive the right to rescind to tie up the property. Uses (EXHIBIT K) to outline concerns and suggestions for bill.

249 CHAIR KENNEMER: We need a clear delineation of who has authority here.

302 LARRY MONK, CITIZEN: Testifies in support of the bill. Reads from written testimony (EXHIBIT L).

356 RICHARD LILLE, CITIZEN: Even when we follow the rules we can get stuck. Gives a list of concerns. Professionals need to be more liable for

their actions.

415 WALTER GOWELL, OREGON STATE BAR: The Oregon Association of Realtors have been inclusive in their working group. The Bar sees this as a

consumer information bill. We endorse the amendments to the bill.

TAPE 54, SIDE B

050 SEN. KENNEMER: Is the questionnaire fair? 054 GOWELL: I feel the questionnaire is fair.

069 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Supports the bill. Let's not put off this decision.

079 CHAIR KENNEMER: Hands the gavel to Sen. Dwyer.

090 CHAIR DWYER: Would not answering this have any impact on

receiving a loan?

096 BRAUNER: We will not use this form. This is an information form that is not likely to find its way into a loan file.

(Tape 54, Side B) SB 1097 - REQUIRES REAL ESTATE LICENSEE TO PROVIDE DISCLOSURE FORM TO BUYER AND SELLER AT SPECIFIED TIMES DURING REAL ESTATE TRANSACTION - PUBLIC HEARING Witnesses: Genoa Ingram, Oregon Realtors Association David Koch, Oregon Realtors Association Ray Shaw, Oregon Realtors Association Scott Taylor, Oregon Realtors Association Morella Larsen, Real Estate Agency

131 GENOA INGRAM, OREGON REALTORS ASSOCIATION: Testifies in support of the bill. Reads from written testimony (EXHIBIT M).

158 DAVID KOCH, OREGON REALTORS ASSOCIATION: The market is changing. Buyers want representation. This is a national trend. Introduces

amendments in (EXHIBIT M).

202 SEN. KENNEMER: You have submitted this to Legislative Counsel?

203 INGRAM: Yes.

204 CHAIR DWYER: The basic change in this is dual agency?

207 RAY SHAW, OREGON REALTORS ASSOCIATION: Dual agency is one of the substantial modifications. It may not reflect market practice so we use the term in-company sale in the amendments.

232 CHAIR DWYER: What is in-agency?

240 SHAW: It's where the buyer and seller use the same company independently.

251 CHAIR DWYER: Won't the agent do whatever brings them the most money?

SHAW: The agent has a fiduciary duty to the seller and buyer.

CHAIR DWYER: How do you reconcile when it's the same agent?

264 SHAW: If there is disclosure then the sale can be made.

CHAIR DWYER: You know what the bottom line is. How do we get around the realtors undue influence?

SHAW: You may not be able to get to that point.

CHAIR DWYER: Is there something that limits when you can and can't enter into this agreement?

SHAW: There is, if the buyer spills their guts then the agreement can't be entered into legally.

307 INGRAM: Introduces SCOTT TAYLOR, OREGON REALTORS ASSOCIATION.

317 KOCH: SB 1097 is going to be valuable for consumers and agents. As a broker, I would be comfortable with the forms and procedures.

358 TAYLOR: Medford is the first to adopt the new rules on Multiple Listing Service (MLS). 70% of buyers and sellers believe that the agent working with the buyer actually represents the buyer. In our law agents

represent sellers. My practice represents both. My office uses this format as office policy.

TAPE 65, SIDE A

020 SEN. KENNEMER: How long have you done this?

022 TAYLOR: Since the first of the year.

031 MORELLA LARSEN, REAL ESTATE AGENCY: This bill does not provide a level playing field. Refers to (EXHIBIT K).

059 STEVE HAWES, REAL ESTATE AGENCY: Addresses the proposed amendments. Addresses concerns.

107 CHAIR DWYER: We'll convene a work group.

109 LARSEN: We just want the responsibilities to be clear.

120 JOHN COLMAN-PINNING, CITIZEN: There's significant problems with the bill. Introduces (EXHIBIT N).

137 CHAIR DWYER: You should be speaking to the amendments. Why don't you participate in the work group?

149 SEN. KENNEMER: As a courtesy, we have adopted the sponsors amendments and discussion of the original bill is mute.

160 COLMAN-PINNING: Mister Hawes has made good points. 174 CHAIR DWYER: You need to review the amendments.

178 SEN. KENNEMER: I'll be convening a work group, and you can address your concerns there.

187 CHAIR DWYER: We'll be happy to have a citizen in the work group.

190 WALTER GOWELL, OREGON STATE BAR: We've been in contact with the Oregon Realtors Association. We strongly support the adoption of agency

disclosure. This bill would let the buyer and seller know who is working for them respectively. We've reviewed a revised draft, but we are not familiar enough to take a stand on the amended version. This bill should not reduce or modify common law.

265 WALTER BROWN, OREGON CONSUMER LEAGUE: Don't have much to add. The bill does not comply to a set of standards that we would like to see. We

would like to participate in the work group.

304 PATRICIA FERREL-FRENCH, OREGON CONSUMER LEAGUE: We would like to be in the work group.

320 CHAIR DWYER: Adjourns the meeting at 5:20 p.m.

Submitted by:

Reviewed by:

Willie Tiffany
Administrator

Richard Day-Reynolds Assistant

EXHIBIT LOG:

A - Testimony on SB 1095 - Genoa Ingram - 2 pages B - Testimony on SB 1095 - Patricia Ferrell-French - 7 pages C - Testimony on SB 1095 - Walter Brown - 2 pages D - Testimony on SB 1095 - Walter Brown - 4 pages E - Testimony on SB 1095 - Walter Brown - 2 pages F - Testimony on SB 1095 - Walter Brown - 4 pages G - Amendments to SB 1095 - Walter Brown - 6 pages H - Testimony on SB 926 - Sen. Hamby - 7 pages I - Testimony on SB 926 - Ben Peek - 10 pages J - Testimony on HB 2367 - Jon Stubenvoll - 3 pages K - Testimony on SB 1095 - Morella Larsen - 4 pages L - Testimony on SB 1095 - Larry Monk - 5 pages M - Testimony on SB 1097 - Genoa Ingram - 10 pages N - Testimony on SB 1097 - John Colman-Pinning - 3 pages O - Witness Registration - Staff - 5 pages