

SENATE COMMITTEE ON
JUDICIARY

June 21, 1993 Hearing Room C
1:00 p.m. Tapes 198-197
MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber
STAFF PRESENT: Karen Quigley, Committee Counsel
 Kirk Bailey, Committee Assistant
ISSUES DISCUSSED: HB 3167 - Public Hearing & Work Session
 HB 2968 - Public Hearing & Work Session
 HB 3011 - Public Hearing
 SB 453 - Public Hearing
 HB 2915 - Public Hearing & Work Session
 HB 2244 - Public Hearing

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TAPE 198, SIDE A

003 CHAIR SPRINGER calls the meeting to order at 1:10 p.m. and opens a public hearing on HB 3167.

PUBLIC HEARING - HB 3167 A-Eng. Requires certain disclosures in "rent-to-own" agreements involving property used for personal, family or household purposes.

WITNESSES: Gary Oxley, Oregon Association of Rent-To-Own Dealers Ronald DeMoss, Oregon Association of Rent-To-Own Dealers Timothy Wood, Department of Justice

009 GARY OXLEY, Public Affairs Council, representing the Oregon Association
of Rent-To
 Own Dealers, introduces Ronald D. Moss
014 RONALD DeMOSS, staff attorney for Rent-A-Center, and representing the
Oregon
 Association of Rent-To-Own Dealers, submits and reads a prepared statement
in support of
 HB 3167 (EXHIBIT A)
109 TIMOTHY WOOD, Assistant Attorney General, Oregon Department of Justice,
submits
 written testimony and supporting materials and testifies in support of the
HB 3167 (EXHIBIT
 B). A

137 CHAIR SPRINGER: What is the fiscal impact?
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MR. WOOD: We estimated approximately \$40,000 per year. Legislative Fiscal estimates the General Fund impact to be about \$27,500.

160 SEN. RASMUSSEN: Tell me what, if any, laws are applicable to this transaction in Oregon?

161 MR. WOOD: The Unlawful Trade Practices could be applied under certain
circumstances.

 There is some question about whether truth in lending law applies.

183 SEN. RASMUSSEN: Does this bill have language that goes some distance
toward the truth

lending law? in lending kind of disclosures without subjecting it to the truth in
186 MR. WOOD: Yes and no. One of the keys from our point of view was to say
that the consumer should know what that product will cost when he/she goes into the
rent-to-own business. The bill requires that the price tag be on the TV. The bill goes
the next step and says there must be disclosed to the consumer how much totally he/she will
pay for the transaction. The "no" means we do not characterize that difference between
the \$300 and the \$1,500 as interest. That is just the cost of buying on time in this case
and therefore they need not comply with the TIL statement.
Discussion continues on consumer protection.

(Tape 198, Side A) WORK SESSION - HB 3167 A-Eng

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252 MOTION: SEN. RASMUSSEN moves that HB 3167 A-Engrossed, be sent to the
Floor with a DO PASS recommendation.
254 VOTE: In a roll call vote, all members present vote AYE. SENS. WEBBER
and SMITH are EXCUSED.
259 CHAIR SPRINGER declares the motion PASSED. SEN. RASMUSSEN will lead
discussion on the Floor.

(Tape 198, Side A) PUBLIC HEARING & WORK SESSION - HB 2968 Modifies
landlord and tenant law concerning responsibility for maintenance of smoke
detectors, week to week tenancies, 24 hour eviction, applicant screening
fees, garbage receptacles and minors contracting for necessities of
residential dwelling units.

WITNESSES: John Vanlandingham, Legal Aid, Eugene Emily Cedarleaf,
Multi-Family Housing Council Peter Grundfossen, Association of Oregon
Housing Authorities Kevin Hanway, Metro Multifamily Housing Association
David Fdanque, ACLU

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279 JOHN VANLANDINGHAM, an attorney, Legal Aid, reviews the composition of
the group that developed HB 2968 and offers their group's assistance to the committee
in reviewing the bill.
310 EMILY CEDARLEAF, Multi-Family Housing Council: Testifies in support of
the bill. It is a compromise bill; it contains protections for the landlords and
tenants.
321 KEVIN HANWAY, Metro Multi-Family Housing Association: Testifies in
support of the bill. There were a concerns with a couple of items in the explanation
(EXHIBIT C) but those have been cleared up.
327 PETER GRUNDFOSSEN, Association of Oregon Housing Authorities: Testifies
in support of HB 2968.
343 SEN. SHOEMAKER: Please review important parts of the bill.
347 MR. VANLANDINGHAM: Reviews the section-by-section analysis (EXHIBIT C).

433 CHAIR SPRINGER: A constituent called with questions about Section 26
which may entrap
the tenant and the application screening fees which have no cap.
442 MS. CEDARLEAF: The cap means the landlord cannot charge more than the
average actual
cost of screening. The actual costs are spelled out. A dollar amount is not
included because
it would need to be changed.

TAPE 197, SIDE A

022 MR. VANLANDINGHAM: A statewide cap would work for Portland but punish
those
outside the city.

032 CHAIR SPRINGER requests the witnesses to continue their review,
especially relating to
garbage service?

035 MS. CEDARLEAF: Reviews Portland situation. Legislative intent by this
testimony is that
we agree that in the City of Portland a landlord is responsible for the
receptacle, the service,
and the payment of service. That is only in the confines of the City of
Portland.

050 CHAIR SPRINGER: Have you worked out the recycling receptacle issue?

050 MS. CEDARLEAF: Yes, I have spent two years educating landlords.

058 MR. VANLANDINGHAM continues review of high points of the bill (EXHIBIT
C).

253 CHAIR SPRINGER: Are there any new penalties?

251 MS. CEDARLEAF: The only new penalty would be for a violation of the
applicant
screening process.

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260 CHAIR SPRINGER: Should we adopt this commentary by reference?

261 MR. VANLANDINGHAM: It would help in the future. It is helpful to have
something
both sides can use with judges.

272 DAVID FIDANQUE, ACLU of Oregon: Want to make sure record is clear. ACLU
has
two concerns relating to the 24 hour notice of termination of a rental
agreement: (1) ability
of landlords to evict the victims in a domestic violence situation, and (2)
how this will
interface with state and local forfeiture ordinances and nuisance
ordinances.

371 MS. CEDARLEAF explains current practices of evictions in domestic
violence cases and
violations of nuisance ordinances.

412 SEN. SHOEMAKER: Some of the language in subsection 6 of Section 12 (on
outrageous
conduct) is puzzling.

429 MS. CEDARLEAF: In the City of Portland, Gresham and Salem, we have a ten
day
requirement that the landlord must take action within 10 days to get them
out. If we give a
24-hour notice and go to court and lose on the basis it was not outrageous,
it would be
grounds to terminate a regular rental agreement on a tor-cause basis on a
lease or on a no
cause basis on a non-lease. We could take the next steps and give the other
notice and

probably win.

442 SEN. SHOEMAKER: What if you tail totally on facts?

444 MS. CEDARLEAF: I think then the city is going to have to prove negligence.

Discussion continues on termination of rental agreements.

TAPE 198, SIDE B

029 SEN. SHOEMAKER: I suppose we have a legislative record here that it is not intended by this that the landlord should have to continue to evict the tenant if the outrageous conduct hearing determines it wasn't the tenant who was outrageous, but there is no legal basis for termination.

035 MR. VANLANDINGHAM: I talked to David Fidanque after his testimony. As I understand the issue he is raising is state statute refers to nuisance abatement. The language we wrote here protects the landlord for violation of state or local ordinance that punishes with a fine for forfeiture, but not abatement. His concern is we are missing the connection with the state statute by not referring to abatement. We could cure that by adding on page 9, line 9, after the word "fine" the word "abatement"

054 MOTION: CHAIR SPRING moves that the conceptual amendment to HB 2968 A-Engrossed on page 11, in line 9, after "fee" insert "abatement" BE ADOPTED.

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VOTE: CHAIR SPRINGER, hearing no objection to the motion, declares the amendment ADOPTED. SEN. WEBBER is EXCUSED.

056 MOTION SEN. HAMBY moves that HB 2968 A-Eng., as amended, be sent to the floor with a DO PASS recommendation.

058 CHAIR SPRINGER: We will assume in the motion that the commentary as provided will be part of the record and helpful to those who interpret these sections of the statute.

061 VOTE: In a roll call vote all members present vote AYE. SEN. WEBBER is EXCUSED

064 CHAIR SPRINGER declares the motion PASSED. SEN. RASMUSSEN will lead discussion on the Floor.

(Tape 198, Side B) PUBLIC HEARING - HB 3011 Incorporates Indian Child Welfare Act into revised Juvenile Code.

WITNESSES: Tim Simmens, Klamath Tribes
Bill Carey, Children's Services Division, DHR

080 MS. QUIGLEY: Reviews the bill and amendments in relation to SB 1051 in House Judiciary.

067 TIM SIMMENS, Staff Attorney, Native American Program, Oregon Legal Services, representing the Klamath Tribes: Testifies in support of the bill. Comments on SB 1051.
HB 3011 has fewer amendments than SB 1051 because we want to take out

anything that could possibly raise questions. We have a concern with SB 1051 because it is caught up in one of the subcommittees. It is scheduled for a work session, but the other amendments attached to SB 1051-are causing the problem. We don't know how that is going to work out and we are not having much of a say in that. If HB 2004, which proposes dismantling CSD, passes, the Klamath Tribe has a great concern. Any child welfare act needs to be codified if it is going down to the county level. The Klamath Tribe strongly encourages that some amendments get codified in Oregon. We would lean toward SB 1051 if they can get through, but our concern is it being caught up on other amendments.

118 BILL CAREY, Administrator, Children's Services Division: Testifies in support of codifying the Indian Child Welfare Act somewhere in Oregon juvenile statutes.

140 CHAIR SPRINGER: There is no policy disagreement on this, but we can give the House another week on SB 1051 and if necessary put this back on the agenda for further review.

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(Tape 198, Side B)
PUBLIC HEARING - SB 453
Exempts minors from prohibition against possession of tobacco if tobacco is possessed in conjunction with law enforcement operation.

WITNESSES: Brian DeLashmutt, Oregon Health Groups on Smoke or Health (OHGOSH) Brenda Niblock, American Lung Association of Oregon Brenda Niblock, American Lung Association Jeff Kushner, Office of Alcohol and Drug Abuse Programs, DHR Margaret Mitchell, Chair OHGOSH Ron Hall, Health Division, DHR

147 MS. QUIGLEY: Reviews the bill and amendments proposed by Mr. Kushner of the Office of Alcohol and Drug Abuse Programs (EXHIBIT E).

165 BRIAN DELASHMUTT, Oregon Health Groups on Smoke or Health (OHGOSH): Testifies in support of the bill and has no problem with the proposed amendments. A concern has been that if Oregon does not do something about minors in possession of tobacco the state faces the distinct possibility of losing some federal grant money for alcohol and drugs.

192 BRENDA NIBLOCK, Oregon Lung Association of Oregon: Submits and reviews written testimony in support of the bill (EXHIBIT 1;).

234 CHAIR SPRINGER: It is not clear what limits, if any, exist on the administrative inspections to enforce other provisions of the law. Legislative Counsel has suggested we may

is going to be done
want to put in some language that defines what "inspection" means if this
without a warrant.

252 JEFF KUSHNER, Office of Alcohol and Drug Programs: We have not looked at
those

placed it in issues. We have taken language from Public Law 102-321 (EXHIBIT G) and
this bill. If additional or different language we can go back to the
Attorney General's office

and get some wording or maybe Legislative Counsel.
267 CHAIR SPRINGER: Maybe we need to create the record here as to what the
proponents

envison in terms of inspection.
268 MR. KUSHNER: One of the problems is the federal government, which
promulgates the regulations for public laws. Regarding PL 102.321, they have published
regulations for every section of the law with the exception of the Synar Amendment. We expect
them out in the next three to four weeks. The federal agency has indicated that passing the
proposed language along with some effort to enforce it will put us in compliance

with whatever regulations they encl up promulgating.

303 MR. DELASHMUTT: We have no problem with clarifying what "inspections"
would mean.

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327 SEN. SHOEMAKER: What are the various ORS sections in the hand-engrossed
bill
constitution (EXHIBIT H). We might consider adding on line 6, "within a federal or state
limitation" to conduct random unannounced inspections

338 CHAIR SPRINGER: I don't know if that envisions they will get warrants or
not.

Discussions continues on how to amend SB 453.

387 SEN. SHOEMAKER: Will there be a fiscal impact?
387 MR. KUSHNER: Yes, it is approximately \$159,000 per biennium.
395 SEN. SHOEMAKER: Will you feel comfortable going to Ways and Means?
396 MR. DELASHMUTT: If it goes to Ways and Means, they will weigh \$159,000
against the possible loss of \$3.5 million--it will have to go Ways and Means or

Appropriations.

405 MARGARET MITCHELL, Chair, OHGOSH: Endorses testimony of other witnesses
and asks the committee to look at the requirements of the Synar Amendments and
to consider the considerable loss of dollars if this bill is not enacted.

423 RON HALL, Environmental Services Manager, Health Division: The Health
Division is supportive of this amendment and is willing to do this program.

430 CHAIR SPRINGER: I don't want to hold this up but perhaps we haven't
sufficiently

defined or limited what we mean by "unannounced inspections."
451 MR. HALL: We are still waiting for the federal guidelines, but I don't
think you have to worry about the Health Division in terms of the constitution protections. I
think the basic thrust of the program will simply be to engage some youngsters to go into
facilities to find out if they are capable of buying tobacco products when they are not
legally entitled to do so.
We have no intention of going into any back rooms or overnight surveillance
or anything like that. This will all be done during working hours with kids within confines
of curfew, etc.

TAPE 197, SIDE B

032 SEN. SHOEMAKER: How widely known is the amendment?

036 MR. KUSHNER: I am not aware of that.

037 SEN. SHOEMAKER: Others need to review this before the committee takes
action.

047 CHAIR SPRINGER: We will hold the bill for further review.

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(Tape 197, Side B)

WORK SESSION - HB 2915

Allows certain motor vehicle liability insurance policy disputes, at
discretion of insured, to be decided by arbitration or in small claims department of justice or district
court.

WITNESSES: Charles Williamson, Oregon Trail Lawyers Association

058 MS. QUIGLEY reviews HB 2915.

064 CHARLIE WILLIAMSON, Oregon Trail Lawyers Association: I asked the
committee to delay this bill until someone from the insurance industry could be here to
talk about whether or not they would object to the prevailing party clause.

069 SEN. SHOEMAKER: In looking at my notes, I said amend it to provide
"attorney fees to the plaintiff."

071 MR. WILLIAMSON: The insurance lobby don't like expanding
plaintiff/attorney fees. It is a matter of principle and they are not happy they reached an agreement with
us. I think we

would have trouble getting it passed in the House if it were adopted.
081 MOTION: SEN. WEBBER moves that HB 2915 be sent to the Floor with a DO
PASS recommendation.

087 VOTE: In a roll call vote, all members are present and vote AYE.

089 CHAIR SPRINGER declares the motion PASSED. SEN. WEBBER will lead
discussion on the Floor.

(Tape 197, Side B)

PUBLIC HEARING - HB 2244 A-Eng.

Authorizes use of uniform citation for forest fire protection statute and rule violation.

WITNESSES: Fred Robinson, Oregon Department of Forestry

095 MS. QUIGLEY: Reviews the bill and advises the committee that two technical amendments need to be made to the bill. In Section 9 it should read "Section 4" rather than "Section 5".

That is part of an enrolled bill that is being repealed. Also, one ORS cite needs to be added and the Board of Forestry will speak to that.

103 FRED ROBINSON, Assistant State Forester, Oregon Department of Forestry: Submits

and reviews written testimony and amendments in support of the bill (EXHIBIT I).

159 CHAIR SPRINGER: We already have laws that relate to criminal mischief. Could a person

be subject to criminal liability for criminal mischief if they intentionally or recklessly caused damage to someone else's property? It seems the penalties under the criminal mischief law are substantially greater. It is not consistent with our other criminal sanctions.

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178 MR. ROBINSON: I don't recall that question being raised on the House side. Most of the issues we deal with revolve around the collection of fire costs. It is not our intent to try to deal with serious problems through enactment of this citation process. We deal with those either through the arson laws or through the fire cost collection laws.

203 CHAIR SPRINGER: Apparently you are also providing on page 3, lines 28-30 that multiple violations that shall be considered a single infraction. What if two or three persons' property

were damaged in excess of \$10,000 or whose life is threatened?

214 MR. ROBINSON: This entire section is different than what was proposed in the House.

Section 2, line 28, was intended to address the concern that an individual could have several technical violations. An example could relate to individual violations of a burn barrel permit.

That is not the intent, we don't do that now and it would not be our intent to do that with the uniform citation process. That is the background from the House that lead to this amendment.

239 SEN. SHOEMAKER: What about a person who is an arsonist and his actions never threaten life or cause extensive property damage? Is the worst that could happen be a series of Class A infractions?

247 MR. ROBINSON: No, all arson cases are handled under the arson statutes.

256 SEN. SHOEMAKER: In Section 7, the bill seems to cover arson.

272 CHAIR SPRINGER: Section 6 seems the best authority for investigation proceedings... upon a request from the State Forester to the Attorney General" which is

extraordinary because it is usually the district attorney that enforces criminal laws.

280 MR. ROBINSON: I can't give a good answer for that.

306 CHAIR SPRINGER: We will reschedule the bill and have the Department of Forestry back to answer the questions.

333 CHAIR SPRINGER declares the meeting adjourned at 2:55 pm.

Transcribed & submitted by,

Reviewed by,

Annetta Mullins
Committee Assistant

Bill Taylor
Legal Counsel

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EXHIBIT LOG:

A - HB 3167, prepared statement, Ron DeMoss, 4 pp
B - HB 3167, prepared statement and supporting information, Timothy Wood, 13 pp -
C - HB 2968, section-by-section analysis, Kevin Hanway, 12 pp
D - NOT USED
E - SB 453, SB 453-1 amendments, staff, 1 p ~
F - SB 453, prepared statement, Brenda Niblock, 3 pp
G - SB 453, portion of PL 102-321, unknown, 1 p -
H - SB 453, hand-engrossed SB 453, unknown, 1 p
I - HB 2244, prepared statement, Fred Robinson, 2 pp

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