

JUDICIARY COMMITTEE

January 14, 1977

The regularly scheduled meeting of the House Judiciary Committee was called to order at 8:00 A. M. on January 14, 1977, room 436 of the Capitol Building, Helena, Montana. Chairman John Scully presided.

Scheduled for hearing were House Bills #91, 92, 80 and 81.

HEARING OPENED ON HOUSE BILL #91.

PROPONENT AND CHIEF SPONSOR, REPRESENTATIVE ROBBINS, District #46. He said this bill merely allowed for the creation of a lien on a tenants personal property for rent or for damages. He explained the bill mentioned 24 hour notice to be given by the landlord.

PROPONENT ZACK STEPHENS, I support House Bill #91. I own an apartment house and sometimes I need to enter the premises and they don't want to let me in. At times entry is necessary.

OPPONENT COLIN BANGS, President, Landlord Association. Our reason for supporting this bill is very simple. We spend a long time with tenant problems. We agreed to work on a basic bill and I feel it is covered better in House Bill #80.

OPPONENT KLAUS SITTE, Staff Attorney, Montana Legal Services. I represent the tenants. In reviewing this bill, I think it is unconstitutional because of the way it will be applied. I can see an abuse over this bill.

REPRESENTATIVE ROBBINS closed. I don't think there is any other law that gives the landlord any protection. I ask you to support this bill.

REPRESENTATIVE RAMIREZ, can you tell me how the basic bills compare? Representative Robbins said House Bill #91 would be stronger for landlords.

Mr. Sitte: invasion of privacy and perhaps a lack of due process. There are more protections in House Bill #80.

Hearing closed on House Bill #91.

HEARING OPENED ON HOUSE BILL #92.

PROPONENT AND CHIEF SPONSOR, REPRESENTATIVE ROBBINS. This bill will create a summary procedure under which a landlord may terminate a rental agreement and evict a tenant.

PROPONENT ZACK STEPHENS. He said he owns small rental units, and has had a breach of contract several times. I have had cases where it took some months before I could have them removed with legal assistance even though they violated from the 1st day.

PROPONENT WALTER JACKOVICH: The only provision that might be bad is in section 10. No landlord wants to get rid of a good tenant.

OPPONENT MAY NAN ELLINGSON, MONTANA STUDENT LOBBY: I feel that House Bill 80 provides a better rental agreement. She mentioned the wrongful retainer statute. This deprives the tenant of a trial by jury. I think you should take a careful look at this bill.

OPPONENT COLLIN BANGS, MONTANA REALTORS: In working with House Bill 80, it is a reasonable compromise between landlord and tenant.

OPPONENT KITTY BEAUMONT, MONTANA LOW-INCOME: I oppose both House Bills 91 and 92. How will you put a lien on the poor people that don't have anything? House Bill 80 is a better bill and we all worked hard to get it. I want this bill to be killed.

REPRESENTATIVE ROBBINS: I agree with that. We are not concerned about the good tenants. We are concerned about the bad ones that don't pay their rent, drink up the paycheck and destroy the property. That is the type of person we are concerned with.

MR. SITTE: I think the unlawful retainer provisions should be reworked. I would not agree that it be changed, this comment following general discussion about the provisions just reworked.

CHAIRMAN SCULLY: He asked Mr. Christian if House Bill 80 fails, are you still in opposition to House Bills 91 and 92?

The answer was no.

MR. BANGS: The provision of notice is the only one offering a problem.

OPPONENT CLIFF CHRISTIAN, MONTANA REALTORS: I oppose the bill.

OPPONENT KLAUS SITTE, gave examples of possible results of this bill, especially section 5, posting provision.

THE HEARING CLOSED ON HOUSE BILL #92.

THE HEARING OPENED ON HOUSE BILL #80.

REPRESENTATIVE PALMER, DISTRICT #96, SPONSOR: I introduced a bill last session and it passed out and when it got to the Senate the bill was defeated by one vote. We have to update the law relating to landlord and tenant. This will clarify and update and make it more clear. We worked a year and a half on this bill.

We have a balanced act based on good faith on both sides. Under section 10 the obligation of good faith assumes an honest intent. Under section 22, a tenant must pay his rent, and not destroy the property. Under section 26, this is so that a court could not assume exclusive remedy. He discussed the landlord remedy and the tenant remedy. Section 41 prevents the landlord from retaliating.

PROPONENT CLIFF CHRISTIAN, MONTANA REALTORS: We had a unanimous decision at our convention in Missoula to support House Bill 80. I would like to see legislative intent put into it, so that the intent of the drafters is into the bill so if it goes to court. I hope you will give it serious consideration.

PROPONENT, BETTY HOSTAD, LEAGUE OF WOMEN VOTERS: We are in complete support of this bill. (statement attached).

PROPONENT, MIKE PICHETTE, EXECUTIVE SECRETARY OF THE DEMOCRATIC PARTY: The Democratic Party supports this bill. We are very pleased with this bill. On page 7 of the Democratic Platform we affirm our stand.

PROPONENT, MAE NAN ELLINGSON, MONTANA STUDENT LOBBY: I represent 24,000 students from all 6 university units. We did a study in which we took a random sample and had them assign a priority. This is a compromise bill, but it fully addresses the problem. (statement attached).

REPRESENTATIVE PALMER, SPONSOR: In the repealer section, the 42-202 of the repealer, we don't want it repealed. This is the repair and deduct clause. This is the clause the students need. He mentioned the clause to terminate rent or collect damages, section 26.

PROPONENT, TERI BALDWIN, A STUDENT AT MONTANA STATE UNIVERSITY: Sections 20 and 22 are strong and I support House Bill 80.

PROPONENT, UNIVERSITY OF MONTANA STUDENT BODY PRESIDENT: We had many student and landlord debates. I think House Bill 80 addresses the problem. In House Bill 91 I am concerned about the way the notice is posted. The student might be on a break and he might miss the deadline.

PROPONENT, ELDON PIPER, THE MONTANA LANDLORDS: I support House Bill 80. We have been working for over a year to put this bill before the groups.

PROPONENT, PAT WATKINS, MONTANA STATE LOW INCOME: We support House Bill 80.

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PROPONENT, KITTY BOMAR, REPRESENTING HERSELF: I support House Bill 80. It is fair to both sides.

PROPONENT, COLLIN BANGS, THE MONTANA REALTORS: We agreed that 42-202 not be stricken. I support the bill as it is.

REPRESENTATIVE ROBBIN, DISTRICT #46: I don't know that I am an opponent or a proponent. I would leave the committee to decide on the merits of the three bills.

PROPONENT, KLAUS SITTE, MLSA: This bill represents a year and 1/2 of work. It really appeals to Montana law and to Montana people. It is an attempt to try to be simple. In HB 80 there is no written-in sympathy for the tenant who doesn't pay the rent. I recommend a "do pass".

THERE WERE NO OPPONENTS.

REPRESENTATIVE PALMER: In closing, we agreed to agree. It is a balanced bill. It does clarify and it allows average citizens a redress. I might mention you could repeal in the repealer section but include it in the body of the bill. Either include it there or strike it to clarify.

REPRESENTATIVE TEAGUE: Is there a provision to take care of the tenant.

REPRESENTATIVE PALMER: In the title and in the repealer section, so there is direct reference.

MR. PIFER: Until a bill is put into actual use, we don't know what it will do.

There developed a general comaraderie about the meaning of estoppel, between Representative Dussault and Mr. Sitte.
(general laughter)

MR. SITTE: Estoppel means you are basically being stopped from doing something.

There followed discussion about 42-203 and if it should be repealed. 42-203 applies to real property, other than lodging and dwelling houses.

REPRESENTATIVE ROTH: Do you feel the problems in House Bill 91 and 92 are sufficiently addressed in House Bill 80?

MR. SITTE: Yes, I do.

THE HEARING CLOSED ON HOUSE BILL #80.

THE HEARING OPENED ON HOUSE BILL #81.

CHAIRMAN SCULLY turned the meeting over to vice-chairman Teague.

REPRESENTATIVE SCULLY, CHIEF SPONSOR OF THE BILL, DISTRICT #76: This bill is not doing what it looks like it is doing. He explained the youth court act and how it provides for youth, boys in Miles City and girls here in Helena. He explained how a youth is released to the parent until his scheduled appearance to be in court. If you only need supervision you are kept in your own hometown. The reason this bill is necessary is because there is no longer any use for this section. He gave an example of the youth court act, "all juveniles are treated in the Youth Court act with the one exception-the one of being treated as an adult". Some of the worst criminals in the United States are juveniles. It is uncommonly hard to convict a juvenile in adult court. He explained his feeling about closing Twin Bridges and felt the legislature acted too hastily.

REPRESENTATIVE DUSSAULT commented that we are repealing a section of criminal code because it is now handled under the Youth Court Act.

There was general agreement that this is what the bill did. There being no further discussion,

THE HEARING CLOSED ON HOUSE BILL #81.

THE COMMITTEE THEN WENT INTO EXECUTIVE SESSION:

John Scully, Chairman

Mary Ellen Connelly, Secretary

JANUARY 14, 1977

The League of Women Voters supports House Bill 80. The League of Women Voters supports this bill under its National Human Resource position of action to achieve equal rights for all in the housing area. This Bill clearly and fairly defines both the rights and the responsibilities of landlord and tenant. The Bill provides a means of publicising the changes and the League of Women Voters supports equal access to the law.

The League of Women Voters has always supported changes that make the law more easily understood and for this reason also we can support the Bill. As the code it is repealing is dated 1947, we are hopeful this needed legislation will pass in this session.

Thank you
LEAGUE OF WOMEN VOTERS OF MONTANA
Bette Hosted 458-9588

MONTANA STUDENT LOBBY TESTIMONY ON HB 80, 91, 92
DELIVERED BY MAE NAN ELLINGSON, MSL LOBBYIST
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 14, 1977

Montana
Student
Lobby

MAE NAN ELLINGSON, LOBBYIST
CARRIE MAHN, ASSISTANT
KIE HANSON, ASSISTANT

BOX 4217
HELENA, MT 59601

Mr. Chairman, members of the Judiciary Committee. I am Mae Nan Ellingson and I appear this morning to testify for the HB 80 on behalf of the Montana Student Lobby, a coalition representing the 24,000 students of the University of Montana, Montana State University, Western Montana College, Eastern Montana College, Northern Montana College and Montana Tech.

Since this is our first time to appear before this committee, I would like to take a minute to explain how the Student Lobby decides to take a position on legislation. A scientifically selected random sample of students at each institution is polled as to whether they would support a particular bill and if so, what priority they would attach to it.

Ninety-six per cent (96%) of the students polled indicated they were in favor of legislation that would clarify the rights and responsibilities of landlords and tenants and they gave it a high priority for this legislative session.

This is not surprising since students represent the largest class of tenants in the state. With the increasing inability of our institutions to provide adequate dormitories and student housing, students are left to compete in the marketplace for what in most university and college communities is scarce and inadequate housing.

Montana Student Lobby

MAE NIAN ELLINGSON, LOBBYIST
CARRIE HAHN, ASSISTANT
JACKIE HANSON, ASSISTANT

BOX 4217
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Because students are generally without large sums of money and do not have much choice over where they will live, they have never been in an equal bargaining position with landlords. Consequently, students have been subjected to living in unhealthy, unsafe, slum-like conditions while paying exorbitant rent.

Tenants themselves have not been free from fault. There have been untold instances of landlords being left with defaced, destroyed property, uncollected rent and severe headaches.

If the offending tenant happened to be a student the landlord categorizes all students as poor tenants, refuses to rent to them and housing becomes more difficult for the student to find; the vicious cycle renews itself.

Out of this unsatisfactory situation and the realization that we cannot change human nature comes an obvious need for legislation that addresses the problems inherent in the landlord-tenant relationship. HB 80 attempts to do this and the Montana Student Lobby supports the intent of the bill.

This bill is worthy of your support because 1) it clearly outlines the rights of landlords and tenants and their responsibilities to one another; 2) it provides adequate remedies and procedures that an aggrieved landlord or tenant can employ when the other party fails to fulfill his obligations; 3) it provides a departure from the common law in that the covenant to pay rent is dependent on the covenant of the landlord to fulfill his obligations; 4) it is written in language that is understandable to the lay people.

Montana Student Lobby

NAN ELLINGSON, LOBBYIST
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In spite of these obvious improvements over the existing law, there should be no mistake on the part of the committee that this is a perfect bill. This is a compromise bill -- a compromise bill that strengthens the hand of the landlord beyond what is provided in the Uniform Residential Landlord and Tenant Act. This strengthening of the landlord's position has naturally been at the expense of extended tenants' rights.

Because the existing situation is so unacceptable the Student Lobby is willing to sacrifice certain rights and compromise in order to get this bill passed. Admittedly, the bill is one with which neither the tenant nor the landlord can be completely satisfied.

There is one compromise we do not wish to make, however.

When the Student Lobby began supporting this bill it was our understanding that the repair and deduct provision of Section 42-202, R.C.M. 1947 would remain in effect. The printed copy of HB 80 that you have received repeals this section, mistakenly we are told. For the following reasons the retention of that section is crucial for our continued support.

The ability to repair a faulty heating system or replace a broken window and deduct the cost of that repair from one's rent is a far more important remedy to the tenant than any of those provided in HB 80. In communities where there is a shortage of rental units what the tenant needs is a place to live -- the repair and deduct clause affords him this.

The right to terminate a rental agreement where the landlord fails to fix the heating system is a vacuous remedy when it is difficult, if not impossible to find another place to live.

Assuming that it was the intent of the drafters of this bill to retain 42-202. I would suggest a style and drafting change in Section 26 to reflect the availability of that remedy. I would like to see the first sentence read "Except as provided in this chapter and Section 42-202, R.C.M. 1947..." so that a court could not construe section 26 and the other parts of this bill to be the exclusive remedies available to the tenant.

Because HB 80 is intended to be a complete listing of landlord-tenant rights and obligations, the Montana Student Lobby opposed the enactment of HB 91 and HB 92. The concerns addressed by these two bills are adequately addressed by HB 80 or other existing Montana laws.

HB 92 provides a summary procedure by which a landlord can evict a tenant for non-payment of rent. Montana has an unlawful detainer statute found at 93-9703 which provides a summary procedure by which a landlord can evict a tenant. This statute is not repealed by HB 80. A crucial difference between the unlawful detainer statute and HB 92 is that the latter deprives the tenant of a trial by jury. Section 33 of HB 80 also allows a landlord to get injunctive relief when a tenant fails to pay rent or comply with his obligations.

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HB 91 in our opinion appears to be an unconstitutional attempt to re-enact distraint for rent which was abolished by our Supreme Court in 1871. This bill does not provide the necessary due process required by the United States Supreme Court for the taking of private property.

In conclusion, the Montana Student Lobby thanks this committee for the opportunity to present testimony and urges your approval of HB 80.

Thank you.

Mae Nan Ellingson

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House Bill 80

Section 7, Page 2, line 21 Strike "whereas" Insert: "whereas"

Amend Section 26, Page 17, line 7

following: "may"

Insert: "(a)"

Page 17, line 14

Strike: "(a)"

Insert: "(i)"

Page 17, line 19

Strike: "(b)"

Insert: "(ii)"

Page 17, line 25

Strike: "(c)"

Insert: "(iii)"

Page 18, following line 2

Insert: "(b)" make repairs himself that do not cost more than one month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

STATEMENT OF EFFECT OF H.B. 92

This statement was prepared by John Bobinski, staff attorney for the Legislative Council, at the request of Representative Robbins.

Under present Montana law, if a landlord desires to evict a tenant because of nonpayment of rent or breach of the rental agreement, he must sue the tenant for unlawful detainer under Title 93, chapter 97, R.C.M. 1947. Section 93-9703 provides that a tenant is guilty of unlawful detainer: (1) when he continues in possession of the premises after the expiration of the lease without the landlord's permission; (2) when he continues in possession of the premises after default in rent payments and after 3 day's notice in writing demanding him to pay the rent currently due or vacate the premises has been served on him; or (3) when he continues in possession of the premises after breaching the rental agreement and after 3 day's notice in writing demanding him to remedy the breach or vacate the premises has been served on him (if the breach can no longer be remedied, the 3 day's notice need not be served). An action for unlawful detainer, under section 93-9705, may be commenced either in district court or in justice's court. Whether commenced in district court or justice's court, the summons must be personally served on the defendant tenant. If suit is commenced in district court, the tenant has 20 days from the date of service of the summons in which to appear and answer. If commenced in justice's court, the tenant has 6 days from the date of service to appear and answer. In either case, if the tenant denies the allegations in the landlord's complaint, he has the right to trial by jury on the issues, and the judge will set a date for trial.

Under H.B. 92, a landlord simply applies to a local justice of the peace for an order commanding the tenant to appear before the justice at a date and time specified in the order to show cause why the rental agreement should not be terminated and he not be immediately evicted. The show cause hearing shall be set no earlier than 7 days or later than 15 days from the date the landlord makes application for the order. Although H.B. 92 requires the show cause order to be personally served on the tenant whenever possible, it also allows for service of a duplicate order by conspicuously posting it near the main entrance of the leasehold premises. If the justice orders eviction at the show cause hearing, the order shall be immediately carried out and the landlord may obtain help from the sheriff in evicting the tenant. If the justice does not order eviction, the landlord may not apply for another show cause order and must proceed by way of unlawful detainer if he still desires to evict the tenant.

H.B. 92 will speed up the eviction procedure in two main ways. First, it allows for service of the order by conspicuously posting a duplicate copy of the order at the main entrance to the leasehold premises. Thus, a landlord may simply post a duplicate copy of the order while the sheriff is simultaneously attempting to personally serve the order on the tenant. This shortens the proceeding by taking out the time lag involved in personally serving a summons and complaint on a defendant tenant. Second, H.B. 92 shortens the proceeding by

having the justice determine whether eviction will be allowed or not at the defendant tenant's initial appearance before the justice. This shortens the eviction procedure because no date for trial need be set to try factual issues.

Is H.B. 92 constitutional? Because no damages may be assessed at the show cause hearing, the proceeding is basically an in rem proceeding. Thus, where a good faith effort to personally serve the tenant has been made, service by conspicuously posting a duplicate copy of the order at the main entrance to the leasehold premises is constitutionally sufficient. Since a preeviction hearing is provided a tenant, the summary eviction procedure is also not violative of the Montana or U.S. constitution. Taken as a whole, H.B. 92 is constitutional.

STATEMENT OF EFFECT OF H.B. 91

This statement was prepared by John Bobinski, staff attorney for the Legislative Council, at the request of Representative Robbins.

Under present Montana law, a person who rents apartments to tenants does not have a lien on a tenant's personal property for unpaid rent or for damages to the apartment caused by the tenant. H.B. 91 will provide for such a lien, to be known as a "landlord's lien". The landlord's lien will attach upon the tenant's default in rent payments or upon the landlord's discovery of damage to the leasehold premises caused by the tenant. Once the lien has attached, the landlord must perfect it by filing a lien statement within 90 days or he will lose his lien. An action to foreclose must be brought in the same manner that is provided for the foreclosure of other liens and must be commenced within 6 months of the perfection date. Thus, the longest possible period the lien could be operative would be 9 months. A landlord's lien would also be subject to the laws governing priority of liens and could not be satisfied before a lien having a higher priority status.

In order to identify the personal property of a tenant that will be subject to the lien, a landlord has a right to enter the leasehold premises and make such an identification. Entry may be gained only after 24-hour's notice of the landlord's intent to enter for this purpose has been given (unless the tenant is in the process of moving out). In no case may a landlord breach the peace in gaining entry. If the tenant resists, the landlord must apply for a court order commanding the tenant to provide entry.

The landlord may subject to the lien only those items of the tenant's personal property that are reasonably calculated to secure his liability for unpaid rent and damage to the leasehold premises. Thus, the landlord must act in good faith. A landlord will not be able to subject a tenant's car to a landlord's lien. This is because section 53-110, R.C.M. 1947, provides the only method of perfecting a lien against a motor vehicle.

H.B. 91 is constitutional under both the Montana and U.S. Constitution. This is because it does not allow for summary seizure of a tenant's personal property. Nor does it allow a landlord to breach the peace in gaining entry to the leasehold premises for the purpose of identifying the tenant's property that will be subject to the lien. Instead, it provides for a court order where entry is refused by the tenant and provides all the procedural safeguards of a civil action to foreclose.