

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 10, 1993, at
8:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: Rep. Carley Tuss

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 197, 349 AND 361
Executive Action: SB 349, 197 AND 361

HEARING ON SB 197

Opening Statement by Sponsor:

SEN. GREG JERGESON, Senate District 8, Chinook, said SEN.
HALLIGAN presented a smoke detector bill in 1987 which failed,

but did pass in the 1989 session. Since the passage of that bill the state fire marshall has compiled data on the number of deaths and the records indicate the deaths haven't changed much since before it's passage. SB 197 will enforce criminal penalties on landlords for failing to follow the existing statute which requires a landlord to provide a working smoke detector at the time a tenant moves into the rental property. He said SB 197 will provide for the landlord to make sure a smoke detector is in place, and a written statement from the tenant stating a smoke detector is in place and in working condition, then it becomes the responsibility of the tenant to maintain that smoke detector. There is an alternative for the landlord to give written notice to the tenant to purchase a smoke detector up to \$25 and to install and maintain it. If that is done, then the punitive damages that are in the bill will not be applied to the landlord in an event of a fire. This will place the responsibility on both the landlord and the tenant for a smoke detector to be in place. The purpose is not to punish the landlords, but a means of finding a way to make sure the smoke detectors are in place to save lives.

Proponents' Testimony:

Greg Young, Montana Low Income Coalition, said SB 197 is very necessary to save lives. The landlords should also see this as a way of saving their property. He urged the committee to concur on SB 197.

Opponents' Testimony:

Greg Van Horssen, representing Income Property Managers and Owners Association, and the Montana Landlords Association, said the two organizations are dedicated to providing affordable and safe housing for the consumers. He listed several concerns the organizations have with SB 197: 1) verifying the working order of the smoke detector. The current law and the suggested changes to the law will require a landlord to install and verify the working order of the smoke detector. SB 197 requires the tenant to verify the working order of the smoke detectors. He said most people think by pushing the red button on the smoke detector and the alarm goes off that it is in working condition, when it is only verifying if the battery works or not. 2) It will create duties for the landlord to install and verify, and it will create duties for the tenant to verify, but the penalties are only applied to the landlord. This is a significant punishment which could place the landlord in jail up to one year. He said if it is important to create this type of incentive to save lives, why is the penalty applied only to the landlord when 99.9 percent of the time spent in a rental unit is by the tenant? He said if SB 197 is an incentive against faulty smoke detectors, then the potential penalties should go both ways.

Tom Hopgood, Montana Association of Realtors, said he went through the code books to analyze the statute from a legal

standpoint, and what kind of problems could develop if a landlord or tenant had to be prosecuted under this statute. He said the concept lies with the cause of injury. The statute says if a landlord fails to inform the tenant of the law, and as a result of the failure a person suffers serious injury or dies, the landlord is guilty of a criminal offense. He said this would be difficult to prove in determining the cause of the fire. He said this is an imposition of an absolute liability, which means liability without criminal intent. Mr. Hopgood read 45-2-104, MCA, which states a person may be guilty of an offense without having one of the mental states described only if the event is punishable by a fine not exceeding \$500. The statute defining the events clearly indicates a legislative purpose to impose absolute liability for the conduct. He felt SB 197 will be making criminals out of the citizens of Montana. He suggested the committee delete the final subsection of the bill which creates a criminal penalty.

John Cadby, landlord, said he is a responsible landlord with working smoke detectors. He is opposed to the penalty because of all the landlords that may not know about this law. If there is a fire and injury or death is caused by it, the landlord will go to jail for a year.

Questions From Committee Members and Responses:

REP. LARSON asked Bruce Suenram, Chief of the Fire Prevention Bureau, and State Fire Marshall, about the smoke detector bill which was passed last session. Mr. Suenram said SB 197 amends that bill. REP. LARSON asked what that bill did? Mr. Suenram said it required rental properties to have working smoke detectors with no penalties. REP. LARSON asked if this bill is only adding penalties? Mr. Suenram said SB 197 places into law a stronger penalty section adding substantial penalties. REP. LARSON asked how many deaths occurred last year in residential properties compared to commercial? Mr. Suenram said the data compiled show 13 deaths in residential, and a total of 20 lives lost in various other fires, i.e., car wrecks, businesses and commercial, etc.

REP. BRANDEWIE asked Bruce Suenram to address who is responsible to maintain a smoke detector in working order, and what is a valid test that a private citizen could use? Mr. Suenram said his people have a canister of smoke they spray on a detector which causes it to go off. He suggested a landlord use a candle and blow it out under the smoke detector. REP. BRANDEWIE asked if something should be placed in the bill on how frequently the smoke detector should be tested and who should be testing it? Mr. Suenram said they recommend the battery be changed every year and tested several times a year.

REP. BACHINI asked Bruce Suenram if they pick smoke detectors randomly to test for working order? Mr. Suenram said they do not. He said they rely on certified national testing labs for

approval. REP. BACHINI wanted to know when smoke detectors have been certified by the manufacturer, is it possible to have smoke detectors that do not operate? Mr. Suenram said it is a possibility.

REP. BRANDEWIE asked SEN. JERGESON if this bill were to be passed with all the penalties involved, would it make for serious record-keeping requirement on the property owners, i.e., signed statements from the tenant? SEN. JERGESON said when a landlord rents property to a tenant, a statement is signed that a smoke detector is in place and working, or a signed statement from the tenant to purchase one up to \$25 and install it is required. This is placed in a file until that tenant leaves and then they would do it again for the next tenant. He didn't think this would be a burden on the landlord. REP. BRANDEWIE asked SEN. JERGESON how he intends to notify all the landlords in the state that this law is in existence. SEN. JERGESON said it may be a problem, but it is that way with all the volumes of the codes annotated.

REP. ELLIS asked Greg Van Horssen about the present law with no amendments, if there is a fire and a results in a tenants loss of life, isn't the landlord in violation anyway? Mr. Van Horssen said yes. REP. ELLIS asked even after losing the property to a fire doesn't the landlord face punitive damages to the tenant? Mr. Van Horssen said that is correct. REP. ELLIS asked if the criminal laws in SB 197 which places a \$50,000 fine and a year in jail wouldn't be as big of a consideration? Mr. Van Horssen said that is correct and the incentive to place a working smoke detector is already in place.

Closing by Sponsor:

SEN. JERGESON closed stating he is acceptable to making adjustments to the bill. The purpose of this bill is not to make criminals out of the landlords, but save lives.

HEARING ON SB 349

Opening Statement by Sponsor:

SEN. B.F. CHRIS CHRISTIAENS, Senate District 18, Great Falls, said SB 349 is an act establishing a 10-day period in which a tenant is required to answer a landlord's complaint and summons in a landlord's action for unlawful detainer. He said SB 349 is meant to address the problem that has come about from the landlord/tenant law changing the rules procedures which are applicable to the city and justice courts. The bill addresses the amount of time allowed to answer a complaint in an unlawful detainer action. He said prior to 1990, an unlawful detainer action brought to justice court had to be answered in 10-days. This 10-day answer period worked to expedite the judicial proceedings necessary to remove tenants who were guilty of unlawful detainer. But in 1990, the civil rules made it

applicable to all proceedings in city and justice court to be answered in 20-days. The 1990 change doubled the time necessary to remove a tenant from the given property.

Proponents' Testimony:

Greg Van Horssen, Income Property Managers and Owners Association and the Montana Landlords Association, said the organizations strongly support SB 349. This bill addresses the changes of the unlawful detainer issue, and other rental arrangements. He said SB 349 will reduce the cost of business, and the savings will be passed on to the consumers. He asked for a do pass recommendation.

Tom Hopgood, Montana Association of Realtors, said they also support SB 349.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. CHRISTIAENS said SB 349 is very important for the protection of landlords. It also protects the property to make sure it comes back in good condition. He said currently, money is lost every day, and this bill will expedite the process.

EXECUTIVE ACTION ON SB 349

Motion: REP. ELLIS MOVED SB 349 BE CONCURRED IN.

Motion/Vote: REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Vote: SB 349 BE CONCURRED IN. Motion carried 18 - 0.

REP. ELLIS MOVED SB 349 BE PLACED ON THE CONSENT CALENDAR. The question was called. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON SB 197

Motion: REP. ELLIS MOVED SB 197 BE NOT CONCURRED IN.

Motion/Vote: REP. BRANDEWIE MADE A SUBSTITUTE MOTION THAT SB 197 BE TABLED. The question was called. Voice vote was taken.

Motion carried 13 - 5 with REPS. PAVLOVICH, DOWELL, DAILY, BACHINI AND CHAIRMAN BENEDICT voting no.

Vote: SB 197 BE TABLED. Motion carried 13 - 5.

HEARING ON SB 361

Opening Statement by Sponsor:

SEN. TOM TOWE, Senate District 46, Billings, said SB 361 will provide a civil remedy for a person who charges excess interest or an excess charged by a pawnbroker or junk dealer, and will provide for the recovery of reasonable attorney fees, and double the amount of the excess charged. SEN. TOWE said a constituent called and asked if there wasn't some way to control pawnbrokers. SEN. TOWE checked the laws and discovered there is a law that limits pawnbrokers to 3 percent a month, or 36 percent annually. His constituent said the law is not enforced and the attorneys don't want to be bothered. Under the usury law, there is a civil penalty which is double the amount of the interest to be charged if the rate is too high. He said all the pawnbrokers called him and said they cannot live with the 3 percent, and are not complying with it at this time. The pawnbrokers said they are into purchasing and purchase options. They also have agreements with most of the county attorneys so they will not be prosecuted. He asked the pawnbrokers to tell him what they thought would be a fair price to be set into law, and make it apply. The pawnbrokers said they could live with 25 percent a month for the amount of the loan, i.e., a person who pawns something for 30 days at 25 percent, can come back and pawn it for another 30 days for another 25 percent. SEN. TOWE said SB 361 strikes the 3 percent a month. There will be a fee to include all costs or fees charged, including, but not limited to; interest, commission, discount, storage, care of the property, and a purchase option. The civil penalty which is the same as the usury law remains in the bill. Charging more than the amount will cause a forfeiture or double the amount the pawnbrokers attempted to charge. If the charge was already paid, the consumer can sue to get it back at double the amount, plus reasonable attorney's fees. He said this seems to be a consensus bill at this time. The pawnbrokers are in agreement and support SB 361, and will put in place a regulatory system that has not previously existed.

Proponents' Testimony:

Mike Smith, President of the Pawn Brokers Association, said SB 361 is a plan that will work for everyone. The ceiling on the rates seems excessive, but they don't really charge that much. SB 361 sets guidelines on the pawnbrokers that do. He is also representing the thousands of people in Montana that do not have bank accounts and have no other recourse. The pawnbroker members assist law enforcement agencies in recovering many dollars of

stolen merchandise. He said they have helped solve a number of cases that result in many convictions each year. The pawn-brokers make small loans, i.e., when a social security check is late, or an employee loses a job, or any other financial crisis exists which makes the difference of having gasoline money to look for a job, or get back and forth to work until payday.

Mike Sprague, President of Ponderosa Pawn Brokers, said the pawn-brokers have worked for many years under a law that was written in 1943. He said there aren't any promissory notes made but collateral loans. It basically means, whatever a person has for equity, the pawnbrokers will pay you approximately 50 percent of its value. The average loan amount is \$50, and the average time for the loan is 90-days.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. ELLIS asked Mike Smith what the average dollar amount estimate for a loan is? Mr. Smith said the average amount is \$51.

REP. ELLIS asked SEN. TOWE what the cost will be to the county attorney to prosecute the usury law? SEN. TOWE said there will be no cost. The person who is bringing the charge against the pawnbroker will go to the attorney and they file the lawsuit to get their money back plus a \$90 filing fee, and reasonable attorney fees which could amount to \$300 to \$400.

REP. SIMON asked SEN. TOWE about the applicability clause. He said if this bill allows a person to bring an action to court within two years, and the bill becomes effective upon passage and approval, someone could say they bought something 1½ years ago, and bring action based on what happened at that time? SEN. TOWE said the law generally states that it is not retroactive, and unless it is procedural and substantive, it cannot be applied. SB 361 will apply only after the effective date. He suggested the committee place language in the bill to say that upon passage and approval, this will only apply to all loans made after the effective date of this act.

REP. MILLS asked SEN. TOWE with the dollar amount so small, could a person go to a small claims court and forget the attorney? SEN. TOWE said yes.

Closing by Sponsor:

SEN. TOWE closed

EXECUTIVE ACTION ON SB 361

Motion: REP. BRANDEWIE MOVED SB 361 BE CONCURRED IN.

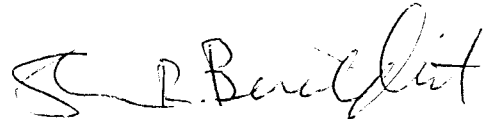
Discussion: REP. SIMON moved to adopt an amendment for the applicability section. REP. ELLIS called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. BRANDEWIE MOVED SB 361 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried unanimously.

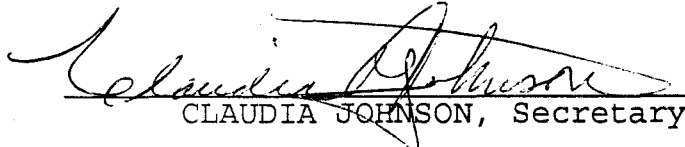
Vote: SB 361 BE CONCURRED IN AS AMENDED. Motion carried 18 - 0.

ADJOURNMENT

Adjournment: 9:20 A.M.



STEVE BENEDICT, Chairman



CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE 3-10-93

| NAME | PRESENT | ABSENT | EXCUSED |
|----------------------------------|---------|--------|---------|
| REP. ALVIN ELLIS | ✓ | | |
| REP. DICK KNOX | ✓ | | |
| REP. NORM MILLS | ✓ | | |
| REP. JOE BARNETT | ✓ | | |
| REP. RAY BRANDEWIE | ✓ | | |
| REP. JACK HERRON | ✓ | | |
| REP. TIM DOWELL | ✓ | | |
| REP. CARLEY TUSS | | | ✓ |
| REP. STELLA JEAN HANSEN | ✓ | | |
| REP. BOB PAVLOVICH | ✓ | | |
| REP. VICKI COCCHIARELLA | ✓ | | |
| REP. FRITZ DAILY | ✓ | | |
| REP. BOB BACHINI | ✓ | | |
| REP. DON LARSON | ✓ | | |
| REP. BRUCE SIMON | ✓ | | |
| REP. DOUG WAGNER | ✓ | | |
| REP. SONNY HANSON, VICE CHAIRMAN | ✓ | | |
| REP. STEVE BENEDICT, CHAIRMAN | ✓ | | |
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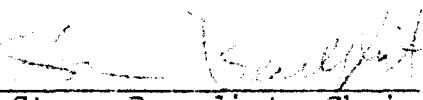
HOUSE STANDING COMMITTEE REPORT

March 10, 1993

Page 1 of 1

We, the committee on Business and Economic
report that Senate Bill 349 (third reading copy -
occurred in and be placed on consent calendar .

Signed: _____

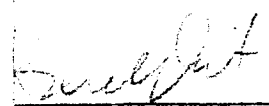

Steve Benedict, Chair

March 10, 1993

Page 1 of 1

Economic

reading copy -


Benedict, Chair

by: Rep. Simon

[This act] is
tive date of

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business Etc. COMMITTEE 1. BILL NO. SB 361
DATE March 10, 1993 SPONSOR(S) Lowe
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|----------------|---------|--------|
| Mike Sprague | Ponderosa Pawn | X | |
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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ COMMITTEE BILL NO. SB 197
DATE March 10, 1993 SPONSOR(S) J. Ferguson
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|--------------------|---------|--------|
| Greg Van Horssen | IPMA / MLA | | ✓ |
| Tom Hopgood | Mt. Assoc Realtors | | ✓ |
| Craig Young | MLIC | ✓ | |
| John Cady | Private Landlord | | ✓ |
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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. SD 349
DATE March 10, 1993 SPONSOR(S) C. Christensen
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|---------------------|---------|--------|
| Greg Van Horssen | IPMA/MLA | ✓ | |
| Tom Hogwood | Mc. Assoc. Realtors | ✓ | |
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