

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 12, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 357; HB 382; 3/5/97
Executive Action: HB 357; HB 382

HEARING ON HB 357

Sponsor: REP. JACK WELLS, HD 27, BOZEMAN

Proponents: Greg Van Horssen, MT Housing Providers
Daniel N. McLean, Attorney
Rhonda Carpenter, MT Housing Providers
John Shantz, MT Assoc. of Realtors

Opponents: Derek Birnie, MT People's Action

Opening Statement by Sponsor:

REP. JACK WELLS, HD 27, BOZEMAN. HB 357 is to clarify rights for
landlords and tenants in lease agreements. We do emphasis rights

for both landlords and tenants. What are the purpose of lease agreements? Landlords are in business to rent property, but lease agreements are established to protect the rights of both the landlord and tenant. These lease agreements establish ground rules by which the two parties must operate.

One of the most ominous features of renting property is the fear of eviction that hangs over the tenants' head. Eviction has grown to be a threat that is not as big a threat as it sometimes appears. Violations of the lease agreement lead to evictions. As a landlord, of which I am one, they are in the business to rent their property and keep it rented and evictions are their last resort. That is the reason for this bill. HB 357 states that acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Current law states that if a person is violating the lease agreement and the landlord accepts rent from them, knowing that the lease is being violated, the landlord essentially waives his right to evict the tenant at a later date for that violation. For example, if a landlord goes to a rental apartment and something is wrong that does not meet the lease agreement and the landlord tells the tenant that he is violating the agreement, and the tenant replies that he would like to fix it and asks for a week to take care of the problem, the landlord cannot say fine or give him extra time. Under HB 357 he can accept the rent. Then the landlord can give him the extra time to clear up the problem. Under current law, if the landlord accepts the rent, knowing the violation is occurring, he essentially is saying that the tenant no longer has to clear up that violation. You can continue to violate the lease because by accepting the rent, I waive my right to evict you for that breach of contract. My bill will change the current law and say the only thing the landlord waives is the ability to evict the person for nonpayment of rent. For example, I have a tenant in an apartment and they are not paying their rent. I go over and say you are not paying your rent and am going to give you a 30-day notice to evict and they say, oh, here is my rent money. If I take the rent money I have now said, ok, you have paid your rent and I cannot evict you for nonpayment of rent. But I have not waived my right to anything else that might be in violation of the lease. The proponents will speak about how this came about and about some court cases.

This bill permits the landlord to be reasonable, to be understanding, to be lenient and to be forgiving. Landlords want to do that. As a landlord, I can personally tell you that I want to have a good relationship with the tenants and they appreciate that. And the reason I want that is because I want tenants to take good care of the property. be responsible, considerate of their neighbors and we don't want these people moving in and out. Every time a tenant is changed, it costs money, time, etc. Under the current law, I cannot allow extra time for a violation to be corrected or I will lose money. Therefore, I have to be very

strict and demand immediate correction or issue an eviction notice. This bill gives me the opportunity to work with the tenant.

Proponents' Testimony:

Greg Van Horssen, MT Housing Providers. The MT Housing Providers strongly support HB 357 because my organization believes this bill clarifies the rights of both landlords and tenants in respect to breaches of the agreement. I would like to give you the reason why this bill is here before you today. The statutory provision 70-24-423 that is being amended with this bill has been on the books since at least 1977 and has not been a problem until June 1995. The Montana Supreme Court construed that bill in a very difficult fashion. The language was construed with the Courts opinion in Kreeger vs. Francis, a landlord-tenant matter, that had the following facts. Landlord entered into a rental agreement with tenants and part of that agreement stated that the tenants needed renters' insurance and to show proof of renters' insurance. The tenants agreed to do so. After some time had passed, rent was tendered to the landlord. After more time had passed, the landlord asked for proof of renters' insurance. The tenants replied that they didn't have it yet but were working on it. The landlord said they needed to get it because it was a protection for them and partially for the landlord and it was part of the lease agreement. He took the rent and allowed them more time to get the insurance. A few weeks later he asked about the renters' insurance. They still did not have it. He took rent again and at that time he told the tenants that if they did not have renters' insurance by the next time rent was due, he would terminate the rental agreement. When that time arrived, they did not have the insurance. The landlord terminated the rental agreement and gave them an eviction notice. This then went through the Justice Court, then the District Court and then on to the Supreme Court. The District Court, by the way, said no, when the landlord accepted rent, he waived a breach only if the breach was for nonpayment of rent. He didn't waive any other breach. He didn't waive the renters' insurance breach. This was then appealed to the Supreme Court. The Supreme Court took a look at the language of 70-24-423 which said and still does say: "acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed." Supreme Court read that language and said, well that is what the law says and using their language said that the Supreme Court cannot insert limiting language in a statute where none exists. That construction of a statute has an impractical effect as follows. A landlord under this construction is prohibited from taking rent when he knows there is a breach of the lease agreement. The affect of that is that the landlord has a right via the rental agreement for cash flow on a monthly basis. But under this decision, that cash flow must be put on hold until he can

terminate the rental agreement and get that person out of there. Because as soon as he accepts rent under this construction, he waives the breach. There was a dissenting opinion in this case from Justice Trieweiler. He said he disagrees with the decision. He said: "I would affirm the District Courts' conclusion that: acceptance of the payment of rent is a waiver of a claimed breach of a rental agreement only if that claimed breach is the nonpayment of rent." That is the practical construction of the statute. But because the Supreme Court has said we can't add language where none exists, **REP. WELLS** saw fit to come before the committee and seek this amendment. We think this is a good amendment because we feel that it benefits both the landlord and the tenant. It lets the landlord continue to accept rent while working with the tenant to fix a breach. The tenant receives the flexibility of the landlord and receives the extra time to fix the breach without an eviction notice been given immediately. We ask the committee a do concur recommendation. Thank you.

Dan McLean, Attorney, Bozeman. I would like to urge you that this is a common sense solution to the problem after the Supreme Court made their decision. Sometimes we forget that certain language is very confusing and the language has to be precise. It doesn't make sense to accept rent and have that as a waiver of breach of contract. Tenants do things sometimes that are a conflict of the lease agreement for which you would have to give notice, but in the meantime if the tenant doesn't have to pay rent that just doesn't make sense. This would only reward tenants who are not responsible. I urge you to amend this statute. Thank you.

Rhonda Carpenter, Executive Director, MT Housing Providers. Most of my testimony has been covered by the gentlemen before me. I would like to stress that a violation of a lease can take a lot of forms. A rental agreement usually outlines who is responsible for the lawn care, how many people can live in the building, how the unit will be maintained, how long parties can last, if broken vehicles can be parked at the unit, etc. This is a contract and this is how we can live peacefully with one another and work together as a landlord and tenant. If I go to pick up the rent and the lawn is 4 or 5 inches long, I can't pick up rent until I make them mow the lawn. Because if I do that, they never again have to mow the lawn. I have some good tenants who have lived in our rental unit. Their grandchildren were over and a big window got broken. These people have been excellent renters. I did not want to be in a position of not being able to collect the rent if they had not fixed the window that day. I actually went against the law, accepted their rent and gave them time to fix the window, which they subsequently did. But they could have said, well we just aren't going to fix the window, it is your responsibility now. We need the flexibility to accept rent without waiving rights to violations of lease agreements other than nonpayment of rent. We ask your concurrence on this bill. Thank you.

John Schanz, MT Association of Realtors. I am in agreement with all the previous testimony. Thank you.

{Tape: 1; Side: A; Approx. Time Count: 9:24 AM; Comments: N/A.}

Opponents' Testimony:

Derek Birnie, MT People's Action. We stand in front of the committee opposing this bill for a number of reasons. The main reason is the tenants' weak stand in front of the law. Currently, the eviction process for most tenants is that the landlord gives a 30 day notice for any reason or for no reason. This is not true in the case of mobile home courts where there is a good cause eviction law. It is not true in the case of a long term lease. That is where this bill lies. Many tenants enter into an agreement with a landlord where the agreement is called a lease. Fifty-one percent of the people of this state earning \$15,000 a year or less. Under HUD standards for affordable housing, that means they have to find housing that costs \$345 per month. This is very difficult. Tenants find themselves on the short end of the stick. MT Dept. of Commerce has reported Montana as having the lowest vacancy rate in the nation. Eviction is not the last resort in mobile home courts where vacancy rates sometimes are as low as zero. The law currently reads that acceptance by a landlord as full payment of rent due with knowledge of a tenant in default constitutes the waiver of the landlord's right to terminate the lease unless otherwise agreed. It is our contention that the law is not flawed as it stands now. That agreement can be made at the time that the rent is tendered that the landlord does not waive his right on that breach. The original intent of the law was to protect tenants from the constant threat of eviction based on past circumstances. Because the District Court interpreted the intention of that law, they inserted the language only if that claimed breach is nonpayment of rent. This became an issue and went to the Montana Supreme Court. They upheld the law as it was written. We feel sympathy for the plaintiffs in that case, but we believe that undermining the original intention of the law is unnecessary. We urge you to not pass this bill out of the committee.

{Tape: 1; Side: A; Approx. Time Count: 9:30 AM; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked how this law would make it easier for a landlord to evict. Mr. Birnie said that there are two circumstances they are concerned about. When living in a mobile home court, if you violate a rule, that is grounds for a conviction. What we are concerned about is that the landlord evicts a person 10 months later for that past breach when he is offered a reward by a dealer to make a space for a new mobile home. We feel they will not be evicted for a breach at the time, but at a much later date when it is good for the landlord. SEN. EMERSON asked that it is better then to evict that tenant at the

time of the violation? **Mr. Birnie** stated that what he had emphasized in his testimony is that the law does not waive the landlords right to pursue unless otherwise agreed.

SEN. BEA MCCARTHY asked if he had insinuated in his testimony that landlords were evicting tenants from mobile home parks in order to accept bribes from mobile home dealers? **Mr. Birnie** said that he had not used the word "bribe" but that this is acceptable under the current law. It is called a tie-in. **SEN. MCCARTHY** asked if he had evidence of trumped-up charges that allow landlords to evict tenants? **Mr. Birnie** said there had been evictions that were not held up in court, but couldn't produce trumped-up evidence.

SEN. DEBBIE SHEA asked the ways a landlord could evict a tenant? **Mr. Birnie** explained three different ways that this can be handled. In mobile home courts, there needs to be a cause for eviction. There are 10 reasons which are considered to be just cause. In rental units, the law does not specify any reason for eviction if it is a month- to- month rental lease. If there is a long term lease between tenant and landlord, the stated conditions that have been agreed upon would have to be followed or the tenant could be evicted for a violation.

SEN. JOHN HERTEL asked if **Mr. Van Horssen** had any comments on **Mr. Birnie's** interpretation for reasons to evict. **Mr. Van Horssen** replied that the terms of the rental agreement basically dictate the relationship between the landlord and tenant. As that relates to residential tenancies, the termination provisions exist in the law. If they don't exist in the rental agreement, they exist in the law. In a thirty-day lease arrangement, the landlord has the right to terminate by giving the tenant 30 days to vacate. The tenant has that same right. Anything longer, that termination is set forth in the rental agreement. And unless there is a breach, then the termination takes place on its own accord. As it relates to mobile home parks, there is a just cause law on the books regarding termination regarding folks who own their trailer but rent the space in the park. Under those circumstances, if we are talking about a breach of a rule, 70-24-311 and 70-24-313 provide that any rule in a mobile home park must be in writing to be effective, must be delivered to the folks, must be reasonable and must be applied uniformly. A breach of any one of those rules, you have to give notice of that breach and exercise your rights in a reasonable time frame in order to justifiably go before a court and say yea, they violated a rule and I terminated them for that violation. They cannot do that.

{Tape: 1; Side: A; Approx. Time Count: 9:43 AM; Comments: N/A.}

Closing by Sponsor:

REP. WELLS closed. I would like to begin my closing by pointing out once again that landlords are in the business of keeping people in their rental properties and not evicting them. The comment about evicting someone so that you can get another college student in and raise the rent is not a good example. In Bozeman, college students are a very good source of tenants. In that light, most landlords structure their rental agreements so that they accommodate that particular type of renter. Most landlords don't allow their students to move out in the summer and leave the apartment vacant. Most expect the student to pay rent over the summer or sub-lease. It is not a habit of landlords to have a temporary renter in the summer and kick them out in the fall so that they can rent to a college student. So there is not a great deal of validity in the opponent's example.

Month-to-month rental agreements are the majority of rental agreements. Both landlord and tenant need only give a 30-day notice of termination without any cause. You don't need to evict someone to raise the rent. A letter may be written telling the renter that the rent is being raised in a month's time. If they don't like the raise, they can move out and the landlord is saddled with getting a new renter which is not economically the best thing one can do. So the idea of waiting for a long time and then evicting someone in a high-rent season doesn't really hold much water.

The vacancy rate in Bozeman is going up rapidly. The renters should be happy about that. The comment about 51% of the people make less than \$15,000 was not made in the right context. I would point out that only 27% of those people are renters.

This bill is very responsible. A lease agreement is the vehicle by which both tenant and landlord know where they stand. If a breach is not acted upon as stated under current law, the landlord cannot later use that breach as evidence of a violation and subsequent eviction. The idea of making another written agreement with the tenant over a violation would most likely be a verbal agreement which doesn't hold any water. And why should the landlord be forced to make written agreement after written agreement. With the lease, everyone knows their responsibilities.

{Tape: 1; Side: B; Approx. Time Count: 9:48 AM; Comments: N/A.}

With my amendment to the law, landlords can give their tenants time to correct a breach without losing their income and without losing their right to evict over a breach of the contract. Thank you for your attention and I hope you can give this bill your concurrence. SEN. STEVE BENEDICT will carry the bill.

{Tape: 1; Side: B; Approx. Time Count: 9:59 AM; Comments: A 10 MINUTE BREAK WAS TAKEN.}

HEARING ON HB 382

Sponsor: REP. SCOTT ORR, HD 82, LIBBY

Proponents: Bob Gilbert, MT/WY L.P. GAS ASSOC.
Darryl South, Montana Propane, Helena
Dean Smith, Northern Energy
Dan Beavers, Farmers Union Oil Co., Great Falls

Opponents: None

Opening Statement by Sponsor:

REP. SCOTT ORR, HD 82, LIBBY. HB 382 is a short bill and on line 24 it states currently below-grade liquefied petroleum gas-burning appliances are allowed only in single family dwellings. This bill allows them to be put anywhere, which would include commercial establishments, etc. We had some confusion in the House and I know you wouldn't have that same confusion here, but below-grade doesn't mean that it is a lesser grade of propane, it means that it is below ground--or underground. Thank you.

Proponents' Testimony:

Bob Gilbert, MT/WYO L.P. Gas Assoc. We are happy to be here on this bill today. The bill does a few things. It extends the rule making authority to all structures for these units. We would like to give the industry and the Department the ability to write rules to go beyond single family dwellings. Both the Department and industry have worked on this bill. They both agreed to the change. There is a need for flexibility. When these rules are written, they have agreed that negotiated rule making process is not a problem so the people who sell the units and the people who will be involved in installing the units, the industry and the regulators will be able to sit down and write rules that will be agreeable to both parties.

Daryl South, Montana Propane, Helena and MT/WYO L.P. Gas Assoc. Below-grade means only the appliances and piping are to be allowed. It is not the tanks like in fuel oil. Tanks are set apart by 25 feet. Piping is underground, comes up to the building even if it is below-grade, goes in and goes through a pressure regulator and at that time it cuts the pressure down to about 6 oz. of pressure. That is what would be allowed in these below-grade situations. If Montana passes this bill, it will be joining about 42 other states that allow this to be done. Those who will benefit mostly from this bill are the small "mom and pop" businesses to places like Montana State University. The small businesses will benefit, because prior to 1972, propane was allowed in basements. At that time the Uniform Mechanical Code was adopted which prohibited this. So we now have many installations that have been in place since 1972 and now that they are old, they are not as safe or efficient, but the units

cannot be replaced because it is against Code. They have two options: leave it there and hope it doesn't break down or do it themselves. Having been in this business for 22 years, I know that most accidents are caused when people try to do installations who do not know or understand how to do it properly. We think it is a safety issue. For the economic issue, places like MSU currently are trying to get what they call a standby system in place. What this does is they put in large tanks at a greatly reduced gas rate, they can turn their natural gas systems off and turn on their propane systems. Currently as the Code is, they cannot do this and in the long run it would save them hundreds of thousands of dollars over the years. We hope for your support on this bill.

Dean Smith, Northern Energy. I am here to support HB 382. We have many low-grade applications for reinstallations especially in older houses where there are below-grade appliances and under current law you cannot reinstall below-grade. This bill would free up a lot of grief for everyone. We urge your support.

Dan Beavers, Director of MT/WY L.P. Gas Assoc. and Farmers Union Oil Co., Great Falls. I appreciate the previous testimonies and would say that I am in agreement with them. I urge your support also.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked if it was a safety reason in 1972 for the change in law? **REP. ORR** said that is what it was. The safety aspect was a legitimate concern because there were explosions. Propane is heavier than air and does tend to settle in lower places, but with the advent of our technology and improvement in appliances, it is simply not a problem anymore.

SEN. EMERSON asked how MSU is going to save money? **Mr. South** replied that their natural gas supplier will reduce their rate because when the pressure drops and the power company has a hard time providing pressure, they like these large users to switch to propane and when they do that their rates are reduced. It is not a saving from burning propane, they do it by "interruptable services".

SEN. MCCARTHY asked exactly what are appliances? **Mr. South** answered: a boiler system, a forced-air furnace, a water heater, and maybe a range or fireplace. In commercials, the first three would be the appliances.

Closing by Sponsor:

REP. ORR closed. Thank you for a good hearing and hope all questions have been answered. **SEN. TOM BECK** will carry the bill.

{Tape: 1; Side: B; Approx. Time Count: 10:12 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 382

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 382 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 357

Motion/Vote: SEN. CASEY EMERSON MOVED HB 357 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

ADJOURNMENT

Adjournment: 10:14 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW