

Assembly

MINUTES

0034

JOINT COMMITTEE HEARING - ASSEMBLY JUDICIARY AND COMMERCE COMMITTEES

NEVADA STATE LEGISLATURE - 58TH SESSION

February 26, 1975

The hearing was called to order for the purpose of hearing testimony on AB 130 at 3:10 P.M. jointly chaired by Mr. Barengo and Mr. Robinson.

AB 130 - Enacts Fair Rental Housing Act

MEMBERS PRESENT: Commerce Committee - Mr. Robinson, Mr. Moody, Mr. Demers, Mr. Schofield, Mr. Harmon, Mr. Getto, Mr. Benkovich, Mr. Hickey\*

Judiciary Committee - Mr. Polish, Mr. Banner, Mr. Sena, Mr. Barengo, Mrs. Hayes, Mrs. Wagner, Mr. Heaney, Mr. Hickey\*

Note: Mr. Hickey serves on both the Commerce Committee as well as the Judiciary Committee.

MEMBERS ABSENT: Commerce Committee - Mr. Wittenberg

Judiciary Committee - Mr. Lowman

SPEAKING GUESTS: • Rex Lundberg - Nevada State Consumer Affairs Division  
• Gene Milligan - Nevada Association of Realtors  
• Rusty Nash - Washoe County District Attorney's Office  
• Bill McNeil - Washoe County Legal Aid Society  
• Joshua Landish - Clark County Legal Services  
• Nick Psarras - Northern Nevada Apartment Association  
• Irv Rappaport - Nevada Apartment Association  
• Vicenta Montoya - Poor People Pulling Together  
• Father Larry Dunphy - Franciscan Center  
• Gene Empey - apartment owner  
• Ruby Duncan - Clark County Welfare Rights  
• Marilee Railton - home owner/rentor

Assemblyman Robinson asked for proponents, history and proposed amendments to AB 130 to begin the hearing. The first testimony was from Mr. Lundberg.

Mr. Lundberg said this bill has come about because of problems Nevada has had because of its relationships between management and residents. Many states have passed similar laws. Members of both groups as well as other interested persons put together a bill to take into consideration all the rights and responsibilities of all involved to create an equality between the parties. The Uniform Residential Landlord/Tenant Bill, which was unacceptable to them, was used as a base. This document (AB 130) is what we believe to be the most fair compromise to afford an even balance their relationships. There are three sets of amendments. Those that will help clarify any remaining problems in the bill should

be included in the bill. However, he said the attached set of amendments is the one that he believed to be the best and is a compromise between the sets of amendments.

Some of the key elements in the bill have to do with:

1. A mandatory written formal agreement which is advantageous to both parties because it sets forth in writing and is signed by both parties all the terms. This was taken from NRS chapter 118.
2. Requirements by law of the resident as well as requirements for management.
3. Also a provision for an escrow fund whereby if management was not living up to his requirements, rent would still be paid by the resident but it would go into an escrow fund until the requirements were met by management and the tenant would not be living rent-free.

This bill covers just about all the foreseeable things we have come in contact with. We have heard that there might be some problems with regard to rentals in the "hinterlands" such as in the agricultural areas so there have been exemptions made in this bill with this in mind.

Evictions are not included in this because we did not want to tamper with the existing law because there are commercial and other type of tenent situations that are non-residential. This bill addresses itself to merely to resident-landlord situations.

Gene Milligan then rose to say that the real estate industry he represented was not in opposition to the principles of this bill. In fact, they worked along with this idea since the last session. However, this bill is not exactly the same one that came into the bill drafter. They have had insufficient time to analyze it and especially the new amendments. He said they may even wish to submit additional amendments.

Father Dunphy then spoke in favor of the bill saying that although he had not worked on this bill personally, his staff had and he had worked on a similar bill in the State of Arizona. He continued by saying "shelter is absolutely necessary to man and his good functioning". Man's surroundings have a profound consequence on his good health, safety and his whole source of order. This then makes it public concern. The State attempts to participate in those things that concern the protection of both parties and in the interest of public peace and order. Up until very recent time the whole matter of rentals has been treated very little. The whole concept of Landlord/Tenant is reminiscent of feudal times; however, AB 130 attempts to give to both sides a clear statement of public policy and law. It tries to give to both sides clearly defined and defensible rights and duties. The priniple and the general direction of this bill has been approved by apartment owners themselves

because it protects them from unscrupulous owners who would undercut the general levels of rent by offering something inferior. If the State does not take action, eventually, Federal action will come into play. Even though this bill might not ever totally please everyone, he urged that this piece of legislation not be lost this year but that it be passed.

Vincenta Montoya representing Poor People Pulling Together (PPPT) and Home Owners Management Education (HOME) said these organizations support the bill in principle and felt it should be passed.

Rusty Nash, Civil Deputy District Attorney in the Washoe County District Attorney's office, spoke from several different positions: as a landlord, as a former legal aid attorney dealing with landlord/tenant problems for 4 1/2 years and now as a member of the Washoe County District Attorney's staff in charge of counseling the consumer protection division of that office. It seems this legislation essentially tries to reconcile existing law much of which is conflicting so that both landlords and tenants will know where they stand and govern their actions and decisions accordingly. It tries to set up ground rules and make them explicit. En toto, it is a clarification of both party's positions. A specific interest of Washoe County is the thrust this bill will have upon clean up our slums and hopefully guarding against further deterioration of our cities. Under the present law, if a tenant complains to some regulatory body, as soon as the landlord finds out about it, the tenant gets an eviction notice. Another concern of Washoe County is the hidden cost of the present situation. For example, if a tenant is locked out or has his personal belongings confiscated, he cannot go to work because he has no clothes, County welfare agencies will be saddled with taking care of their children because they do not have shelter to house their children and ultimately this becomes a public burden supported by the taxpayers. This type of situation does not come from the majority but from the very few unscrupulous landlords that refuse to obey the law. Another concept is that under present law if a landlord locks a tenant out without proper notice, he can be guilty of a misdemeanor. What this means, that criminal prosecutions must be brought against these people and the District Attorney's office is saddled with these cases. The strength of the proposed bill is that it makes very explicit what the private remedies are. With the bill as it is written, you would be able to engage an attorney and take the matter to civil court and relieve the public of the expense of prosecuting the few landlords who continually violate these laws.

Mr. McNeil, associate of Rusty Nash, wished to comment on constant problems in terms of landlords and tenants. He said he believed 95% of the landlords were fair and equitable and that 5% are the ones creating problems. To remedy this, he felt a written rental agreement was extremely important with

specifics set forth in that agreement. Most arguments come from oral agreements. Rights are much easier to settle with a written agreement and usually will not have to be taken to court. Also, Warranty of Habitability was a topic he touched upon. He said it used to be the concept of independent relationships between landlord and tenant which was that landlord merely rented the property. If the building on it was falling down, you owed the rent or you were out in the street. The concept of the law is now changing. There is now a mutual agreement between landlord and tenant whereby if landlord does not for example meet state or county codes, the tenant can withhold rent. He said he wholeheartedly agreed with the concept of an escrow fund for these types of situations. This bill gives the tenant a chance to counterclaim or at least an answer.

Another topic he talked about was what is exempt when a person is evicted. Currently it is personal items and those items necessary for work. He felt this should be put very specifically in the bill. He was in support of the bill and felt it would resolve many problems in Washoe County. He also felt it would make the relationship between the landlord and the tenant much easier. He felt it was a humanization of living conditions.

Joshua Landish then spoke saying the bill began in 1973 after the defeat of the last landlord/tenant act. He felt this one met the needs of both the landlord and the tenant. He felt many of the disputes in the landlord courts could be settled in one fell swoop with the enactment of this bill. He also felt that with this bill a person would have every reason to take better care of the property and thereby making the relationship between landlord and tenant much better.

Mr. Nick Psarras, President of the Northern Nevada Apartment House Association, then spoke. He felt the bill was getting very close to solving most of the problems now present with regard to landlord/tenant relations; however, he felt there was a great need at this time for refinement so it does not become an attorney's haven and it as fair to both sides as possible and so it does not crowd our courts. He felt the State of Nevada has different problems than other states because of the transient element and also, we don't have more than probably 5% of the whole rental market that could be called tenement or ghetto housing. This is very rare. He proposed getting people together perhaps with representation from the Legislature also to sit down for a couple more weeks in order to do this refining. The particular problems here in Nevada are, for example, the seasonal hiring, seasonal moving in and moving out for the weather. The corporation he represents has offices in eleven western states and the turnover in Nevada is 100% higher than any other state. Where lease contracts are demanded in other states, you cannot even have them here as no one will sign one and your competitor will let them have a month to month agreement.

Ruby Duncan representing Clark County Welfare Rights spoke briefly stating that this association represented 2900 members comprising of poor and near poor people. She said they supported this bill and felt it would support the rights of the tenants and their obligation to support the rights of the landlord.

Mr. Erv Rappaport, representing the Nevada Apartment Association, spoke stating that the role of management is to provide and maintain housing and respect the rights of the residents. On the other hand, the resident has the obligation of paying rent on time so management can meet their financial obligations and also to respect the property and also to respect the rights of their fellow residents. We definitely want an act of this nature passed at this Legislature. We have only one desire---we wish to make it fair to both sides. This act should be liberally construed and apply to promote its underlying purposes and policies to simplify, clarify, revise and modernize the law governing the rental of dwelling units and the rights and obligations of landlords and tenants - i.e. management and residents. The philosophy that is attendant with this act is the fact of equal responsibilities. If the Legislature comes forth with a fair rental housing act, the Nevada Apartment Association is in complete unanimity with regard to passage of this bill.

Dr. Robinson then said that he has always felt the intent of what they are trying to do into the law and it certainly would not be beyond the scope of the committee to put a section in there saying this is the intent.

Marilee Railton who owns some rental units spoke saying there should be something included in this bill to protect the owner from tenants who leave without paying the rent current. She said presently a tenant upon receiving an eviction notice can go to the Justice of Peace and file an affidavit saying he is current on his rent and when issuing this affidavit, no proof of payment is necessary and then I must hire an attorney at my expense in order to collect the due rent. Her suggestion to remedy this situation was, in Section 63 (Page 18, Line 36) that the underlined words be inserted to the presently proposed bill:

Such notice shall advise the tenant of his right, upon reasonable evidence of payment of current rent

or, in Line 37: an affidavit together with a copy of proof of payment of rent

Joshua Landish said there was no need for her to hire a private attorney because the affidavit states that you have paid the rent and then it is set down for hearing in Justice Court and the whole idea of the Justice Court is for the landlord to appear on his own to disagree. He added that this was the way it was handled in Clark County when Mr. Barengo commented that this is not the way it has been handled in Washoe County. Rusty Nash added that on the other side of the story, the landlord is not

required to give any proof of cause of eviction when attaining an eviction notice. Right now the law is equal in this regard and it would be unfair to require proof from the tenant and not the landlord. He also said it might be a good idea for the Small Claims Courts to handle this so an attorney need not be hired. Mr. Landish thought requiring proof would be putting a burden on tenants.

Mr. Rappaport commented that they originally wanted the bill to have some reference to lockouts and that was that the judge or Justice of the Peace should sign the eviction order before management could lock out a tenant. Mr. Lundberg said the original draft of the bill provided that the jurisdiction of the landlord/tenant act would be within the Justice Courts so this hopefully could be done on an informal basis without necessitating the hiring of attorneys. On the attached proposed amendments to AB 130, Item 3 again provides for this. He also suggested that it would be a good idea to include a time limit on how long it could be before this is heard in Justice Court.

Mr. Barengo questioned Section 23 regarding Notice. He thought this was a departure from what is required in other laws. Mr. Landish said the Notice provision was taken from the Uniform Commercial Code (NRS 104.120). Mr. Nash said the provision for Notice seemed to be explicit. Mr. Landish said the Uniform Commercial Code could be tailored but Mr. Barengo said if the intent was to avoid involvement of lawyers, that time tested language should be used.

Mr. Barengo also had a question with regard to Section 27, Subsection 3 dealing with securities held by management. Are these to be held in a separate account and if so, where and are they to collect interest? Mr. Landish replied that a security deposit is conceptually a bond usually requires interest. This has not been put in the bill because we thought we would get objection from the landlords if we did. Mr. Rappaport added that on an FHA mortgage, this has to be put in a separate account. He also questioned interest for the tenant who only stays one month. Mr. Landish said they did not require interest in the bill. He also asked if language would be preferable in the bill to the effect that no interest is required and a separate account is not required. Mr. Barengo felt this advisable and would solve many problems.

Mr. Barengo questioned Section 62, Subsection 1 regarding a tenant of real property or a mobile home to which section 2 to 61, inclusive, of this act do not apply. He commented that he thought a tenant of real property is what we had been talking about. However, Mr. Lundberg said the discussion was a a resident of real property as opposed to a commercial tenant. But, Mr. Barengo said he didn't feel the italicized language changed the meaning. Mr. Nash said he was of the same opinion when he first read the bill but he said that he no longer feels that way because of the way residential dwellings are defined. Mr. Barengo still maintained that this doesn't say what is intended.

Mr. Barengo's last question was whether or not this bill would put an unreasonable burden on the person who has a second residence and decides to rent this second residence out? This would someone who is not generally engaged in the business of a landlord. Mr. Landish said this type of landlord would have to be included or else you would have the same type of judicial law in contest is he is not made to meet these requirements. Mr. Barengo did suggest that perhaps those with, for example, 3 or less rentals could be exempt. Mr. Milligan said there was considerable sentiment to exclude these single residences from the Act. Mr. Heaney said the definition in this bill of "dwelling" was different in this bill than it was in the Nevada Fair Housing Act and felt there may be some complications with two different definitions and that they should be consistent. Mr. Getto added that there is an exclusion in the Nevada Fair Housing Act for owners of 3 or less rentals and wondered if this could not be done in AB 130. Mr. Landish said the definition in the Fair Rental Housing Act would be acceptable to him (NRS 118-060.1 & 2).

Dr. Robinson added that this had been his opposition to the bill. In the outlying areas in Nevada, people often rent dwellings in as "as is" condition. Mr. Landish said the definition of the Fair Rental Housing Act would be fine and that it could be put directly into the bill or refer to it within the bill. He added that the intent of this bill is geared to the apartment owner. Mr. Nash added, however, that a big problem with people who rent out their own home is that he still thinks of it as his home and he keeps a key and thinks nothing of going in without notifying the tenants so he felt that the rights and responsibilities of the owners of single family units and their tenants should be clarified. Mr. Milligan said resort type rentals would fall under this bill and he felt it would be a rather large step to take now and suggested if problems came up in this area, remedial action could be taken at the next Session. Rusty Nash felt that you could specifically allow waiver by both parties in the bill for owners of 3 or less rentals but he felt the language of Section 31 should be kept. Mr. Landish said he would work out an amendment along these lines.

Mr. Rappaport said Section 43 was difficult for them to live with. He said if they receive notice from a tenant that said tenant is going to vacate and the unit is subsequently rented to another party and then the original party decides not to vacate, he said under this section, he could be sued for non-performance. He asked that this section be reworded so this doesn't fall on them when they are acting in good faith.

With regard to Section 43, Subsection 1B on line 35, Mr. Barengo felt the word "affirmatively" should be stricken. Mr. Landish said that this would be fine.

Mr. Lundberg said similar laws in other states have been examined and he felt most cases have been covered. He felt this bill should apply to the majority of people concerned. He said if the entire act were delayed because of something of a one-time nature, nothing

would ever get on the books.

Mr. Barengo suggested getting the amendments talked about today and let the committee continue their discussion and input and get this thing moving.

Dr. Robinson suggested that since the pile of amendments was ever growing, the Judiciary Committee should get together these amendments and put this bill out with agreed amendments with a "do pass" and have the amendments adopted and get the first reprint so we can really get an idea of what we are looking at as it is very difficult to read right now looking back and forth from bill to amendments. Then bring it back to the Judiciary Committee or to the Commerce Committee and start with the first reprint including all amendments agreed upon today and the committee will look it over and set another hearing.

Chairman Barengo then adjourned this public hearing at 5:15 P.M.

Respectfully submitted,

Joan Anderson, Secretary



ASSEMBLY  
HEARING

0035

COMMITTEE ON.....COMMERCE/JUDICIARY.....

Date 2/26/75.....Time 3:00 P.M. Room 240.....

Bill or Resolution  
to be considered

Subject

A.B. 130

An Act relating to residential landlord-tenant relationships; providing rights, obligations and remedies; providing for treble damages in certain cases; repealing certain statutory liens of landlords of rental housing; and providing other matters properly relating thereto.

ENACTS FAIR RENTAL HOUSING ACT.

GUEST REGISTER

DATE: Feb. 26, 1975  
3:00 joint meeting

NAME	BILL NO.	SPEAKING	REPRESENTING
Julie Brumbeck	AB 130		Room AP's Dept. & Owners Assn
✓ Fr. Larry Dunphy	AB 130	✓	Franciscan Center
✓ Fred Harris	" "		National Home Dept. also
✓ Gene Engsey			
✓ Rex W. Lundberg	AB 130	✓	Neu. State Consumer Affairs Div
Joe Taylor	AB-130		" " " " "
RAY TRENSE	"		" " " " "
✓ Joshua M. Sandvik	AB 130	✓	CLARK COUNTY LEGAL SERVICE
✓ Vicenta Montoya	AB 130	✓	Room People Pulling Together
Louise Sanders	AB 130		OPPT
✓ Jean Parratt	AB 130		CLARK County Legal Service
Joni James	AB 130		CLARK COUNTY LEGAL SERVICE
Alice Knight	AB 130		CLARK COUNTY LEGAL SERVICE
✓ Dr. Eppert	AB 130		Neu. & Apt. Assn.
✓ Ruby Duncan	AB 130		Clark Co. Welfare Rights
Ben Ford	AB-130		Dist. #4 (Senate)
✓ William H. ...	AB-130		Clark County Legal Aid Society
Brian Fry	AB-130		self
Howard Brasley	AB-130		Capitol Motel
✓ Rusty Wash	AB-130		Wardlaw County District Attorney's Office
✓ Marilee Raiton	AB-130	✓	Self



Amend the title of the bill, page 1, line 3, after "lines" by inserting: "and supplemental remedies" (ref. #7915 p. 3)

Amend sec. 27, page 4, line 37, by deleting "any" and inserting: "either or both". (ref. p. 1, l. 1 #7915 and p. 1, ll. 2-3, #7933)

Amend sec. 6, page 1, by deleting lines 16 and 17 and inserting: "Sec. 6. "Court" means the justice of the peace situated in the county wherein the management's property is located, unless the damages exceed the authority of said court in which case the proper court will be determined by existing laws or practice per NRS 40.410."

Amend sec. 27, page 4, line 39, after the semicolon, inserting "and". (ref. p. 1, l. 3, #7915 and p. 1, l. 4, #7933)

Amend sec. 27, p. 4, l. 41, by deleting ";and" and inserting a period.

Amend sec. 27, p. 4, by deleting line 42 and inserting "(c). The term "security" shall not include cleaning fees or pet fees."

Amend sec. 27, p. 5, l. 8 by deleting "24 hours" and inserting "3 business days"

Amend sec. 27, p. 5, line 20, by deleting "rent," and inserting "rent or".

Amend sec. 27, p. 5 by deleting line 21 and inserting: "than normal wear and tear. The management".

Amend sec. 27, p. 5, line 24, by deleting "1 week" and inserting "2 weeks".

Amend sec. 31, p. 6, l. 50, after "heat", by inserting "or cooling".

Amend sec. 31, p. 6, l. 50, by deleting "weather" and inserting "seasonal".

Amend sec. 31, p. 7, line 1, by deleting "heat" and inserting "heat, cooling".

Amend sec. 40.4, page 9, by deleting lines 44 through 48 and inserting "4.

Management shall not unreasonably raise the rent of a resident to avoid compliance with this section."

Amend sec. 43.1.(b) page 11, line 32, by inserting "incoming or prospective" before "resident".

Amend sec. 43.1.(b) page 11, line 33, by deleting "management or any".

Amend sec. 43.1.(b) page 11, line 36, by inserting "incoming or prospective" before resident's".

Amend sec. 45.1, page 12, by deleting line 17 and inserting: "within one day after it is received, not including Saturdays, Sundays and legal holidays, may:".

Amend sec. 50.2, page 14, line 20, by deleting "by installments".

Amend sec. 52, page 14, line 38, by deleting "except as provided in section".

Amend sec. 52, page 14, line 39, by deleting "53 of this act,".

Amend sec. 53, page 14, by deleting subsection 1, lines 44-47.

Amend sec. 53, page 14, by deleting line 48 and inserting: "Sec. 53. The Management may dispose of personal property abandoned on".

Amend sec. 58.3(c), page 16, line 12 by deleting "after due diligence".

Amend sec. 63, page 18-19 by deleting lines 39-50 (p. 18) and lines 1-9(p.19) and inserting:

"2. Upon noncompliance with such notice, the landlord or his agent may apply by affidavit to the justice of the peace in the township wherein the dwelling, apartment or mobile home is located. Such justice of the peace may thereupon issue an order:

(a) Directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order; or

(b) Allowing the landlord or his agent, in a peaceable manner, to provide for the nonadmittance of the tenant to the premises by locking or otherwise.

3. The affidavit provided for in subsection 2 shall contain:

(a) The date the tenancy commenced.

(b) The amount of periodic rent reserved.

(c) The amounts of any cleaning or rent deposits paid in advance, in

excess of the first month's rent, by the tenant.

(d) The date the rental payments became delinquent.

(e) The length of time the tenant has remained in possession without paying rent.

(f) The amount of rent claimed due and delinquent.

(g) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(h) A copy of the written notice served on the tenant."

Amend sec. 63, page 19, line 10, by deleting "3." and inserting "4."