

## Window Safety Regulation: selected history

### 1. Problem: Death, brain injury, and other injuries to children.

- American Academy of Pediatrics: Falls are second to motor vehicle collisions as cause of death from unintentional injury.<sup>1</sup>
- Analysis of calendar year 2000 Kids Inpatient Database (1) identified highest risk for children aged 0 – 4 and (2) concluded that **window guards** (in New York) are associated with reduced injury resulting from falls from buildings “and **should be mandated in multifamily dwellings where small children reside.**”<sup>2</sup>
- Multi-million dollar settlements do not heal clients or lead to effective change.

### 2. Oregon Legislative Effort: HB 2726 (2001).

#### A. Summary.

- Author: Jeff Merrick
- 7 co-sponsors, Bi-partisan<sup>3</sup> (Exhibit 2, pp 1 & 14). Minority leader Dan Gardner (Democrat) was champion
- Main supporters / testifiers: (a) Jeff Merrick, (b) family members of children who’d fallen, and (c) OHSU.
- Hearing occurred. (Exhibit 2, p. 5)
- Committee chair (Republican) demanded agreement with landlords before moving bill.
- Landlords refused to support even a simple bill notifying tenants of the risk and allowing them to add guards. (Ex. 2, pp 17-19) The bill would have served their legal interests. Without the landlords’ agreement, the bill died.

<sup>1</sup> *Pediatrics* 2001; 107:1188-91 (2001), *reaffirmed, Pediatrics* 2005; 115:1438 & 2007; 120:683-4.

<sup>2</sup> *Injury Prevention* 2005; 11:267-273.

<sup>3</sup> Reps: Gardner, Backlund, Ringo, Tomei & Senators: Burdick, Courtney, Deckert

**B. Landlords' stated objections to 2001 Bill.**

- Window guards cost money.
- Window guards are dangerous because they impair emergency or fire ingress and egress.
- Window guard law would violate laws against discrimination in housing because it would treat families with children differently.
- No (or insufficient) evidence that children injured or killed from window falls.

**C. Response to Arguments in Legislative Record.**

- **Cost?** Guards are tax deductible to owners. Oregon Dept. of Revenue stated that the cost of "safety bars" may be claimed as a current expense, a depreciable expense, or an increase to the basis of the property. (Exhibit 2, p. 6)
- **Fire Safety?** State Fire Marshall Garrison supported the concept and offered to work with the Building Codes Division (or any other agency) to implement. (Exhibit 2, p. 7)
- **Discrimination?** Fair Housing Council of Oregon opined that no federal or state law would restrict landlords from. (Ex. 2, p. 8)
- **Need?** Evidence was good then (Ex. 2, pp. 9-11) and is better now.

**3. Regulatory and other historic landmarks.**

**A. 1970s New York City Ordinance.**

- The city Health Department mandated that by 1979, all owners of multiple dwelling in the city had to provide window guards in apartments where children under 11 years old resided. Harlem Hospital records showed a 96% decline in accidental falls from windows by children in 1979-1981, compared to 1970-1978--from average of 16 every three years, to one every three years.
- Prescribed notice to tenants upon leasing and annually

**B. 1992 Window Safety Study Committee<sup>4</sup> formed.**

- Findings included identifying age 1-4 as highest risk for death
- Current message is balance: Windows key for home fire escape but open windows pose potential hazards.

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<sup>4</sup> Committee consisted of: American Architectural Manufacturers Assn., National Safety Council, Screen Mfgs Assn, Window and Door Mfgs Assn.

**C. 1995 New Jersey Statute.**

- Landlords must provide guards upon request when child age 10 or younger
- Notice to tenants of this right
- Exempts windows providing access to fire escapes
- Exempted owner-occupied units, condos, etc.

**D. 1999 development of window guard standards through American Society of Testing and Materials (ASTM). ASTM has since updated standards. (Lesson: do not define standard in law, delegate to administrative agency.)**

**E. 2006 New Jersey state law amendments:**

- Clarifies that cities can have more protective standards
- Now covers condos, co-ops or mutual housing corporations
- Requires instruction in safe use initially and annually
- Requires inspection 2 times per year and keep a record
- Tenant may complain to agency, which may investigate and penalize
- Requires verbal notice of right to request guards in addition to written notice
- Annual education on safe use required if 4 or more stories and built with public funds (in part) or tenant gets public rent assistance

**F. Minnesota.**

**(1) 2007 Statute.**

- Directed Commissioner of Labor and Industry to adopt rules for window fall prevention devices **as part of the State Building Code.**
- “Window fall prevention devices” include:
  - Safety screens
  - Hardware
  - Guards
  - Other devices that comply with standards set by Commissioner
  - Must comply with ASTM standards
- Rules to define which buildings and occupancies will require devices

**(2) 2009 Minnesota Rules.**

- Occupancies: Apartments, Condos, hotels & motels.

- Exceptions:
  - Fixed, nonoperable windows
  - Basements and below the first story
  - Windows that cannot open more than 4 inches
  - Bottom sill higher than 24 inches above finished floor
- Rule applies when: (1) building additions occur & (2) windows added or replaced requiring a permit
- Guard Standards:
  - ASTM F 2006 for non-emergency escape (egress) and rescue windows (Ingress)
  - ASTM F 2090-01A for guards with release mechanisms for emergency escape (egress) windows
  - Updated standards that equal or exceed the above, including ASTM F 2006-08 or ASTM F 2090-08

#### 4. Oregon Building Code re Window Sills<sup>5</sup>

Oregon Residential Specialty Code requires “window opening fall prevention devices.”

- If:**
- (1) The window opening is more than 72 inches above ground below,
  - (2) The window opening is less than 24 inches above finished floor,
- And
- (3) The window opens more than 4 inches,

**Then:**  
Openings must have window opening fall prevention devices that comply with ASTM standard.

#### 5. Conclusion.

Every summer, I fear heat waves. When windows open and I hear reports of kids falling out of windows, I feel sick and guilty that we failed in 2001 to enact a law protecting children.

I am hopeful that we can develop a strategy to reduce the number of falls as a cause of child injury and death.

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<sup>5</sup>See, OAR 918-480-0010(5)(b)&(c).

# Window Safety Guard Law

## Fact Sheet on HB 2726

### 1. What is it?

HB 2726 would require certain landlords to provide safety guards in upper-floor windows only when tenants age 10 and younger live there. New York City enacted a similar law in the 1970s, and New Jersey followed in 1995. A proposal to amend the bill to apply only to tenants age 8 and younger has the support of the chief sponsor.

### 2. Why?

Because an astonishing number of children fall from windows every year, ending up in emergency rooms, brain damaged, and / or dead. This law will save family tragedies.

### 3. Who supports window guards?

- The Consumer Product Safety Commission
- The National Safe Kids Coalition
- Department of Housing and Urban Development
- The following Oregon Newspapers have published favorable articles on the bill:

*West Linn Tidings*  
*Springfield News*  
*Newberg Graphic*  
*Lake Oswego Review*

- Bill Sponsors are the following:

#### House

Dan Gardner - Chief Sponsor  
Vic Backlund  
Vicki Walker  
Carolyn Tomei  
Charlie Ringo

#### Senate

Ginny Burdick  
Peter Courtney  
Ryan Deckert

### 4. What will it cost landlords.

Landlords should expect to spend about \$20 per window, although some guards sell for as little as \$12.00 and bulk pricing will be available. *This cost is deductible.* So, actually, it will cost landlords nothing.

Landlords may realize a savings in lower insurance costs. Also the bill provides immunity from suits involving falls from windows.

**5. What about emergency exits? I heard that fire codes prohibit bars on windows.**

Unlike security bars, these safety guards may be opened. National standards control the design of the guards (ASTM PS 120-99). The guards meet all codes, and there have been no problems reported with safety guards that open in the quarter century New York City has required them.

**6. What will it cost taxpayers?**

Nothing. It will **save** money. For example, one boy who fell through a window has cost the Oregon Health Plan over \$31,000 in medical costs to date and he will likely need additional help over the next several decades of his life.

**7. The penalty for noncompliance seems too harsh.**

The chief sponsor would not oppose softening the penalty provision significantly.

**8. For more information.**

Contact: Jill Brunelle - Legislative Assistant to Rep. Gardner  
Phone: 503.986.1907  
E-mail: Jill.Brunelle@state.or.us

Jeff Merrick - The Pediatric Law Group  
Phone: 503.224.1957  
E-mail: JeffMerrick@PediatricLaw.com

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# NEWS RELEASE

REP. DAN GARDNER  
HOUSE DEMOCRATIC LEADER

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For Immediate Release  
February 7, 2001

For More Information, Contact:  
Shauna Shindler 503-986-1904  
Jeff Merrick 503-224-1957

## Bill aims to protect Oregon children from unintentional injuries *Up to 4,000 child injuries could be prevented each year by using window guards*

(SALEM) - Backed by a strong sense of concern for child safety, a bipartisan group of legislators has introduced legislation to reduce the number of unintentional injuries sustained each year by children who fall through open windows or window screens.

House Bill 2726, sponsored by House Democratic Leader Dan Gardner (D-Portland), Rep. Vic Backlund (R-Keizer), Sen. Ginny Burdick (D-Portland) Sen. Peter Courtney (D-Salem), Sen. Ryan Deckert (D-Beaverton), Rep. Charlie Ringo (D-Beaverton), and Rep. Carolyn Tomei (D-Milwaukie), would require landlords to provide, install and maintain window guards on second story and above windows.

According to the U.S. Consumer Product Safety Commission (CPSC), more than 4,000 children ages 14 and under are treated annually in hospital emergency rooms for window fall-related injuries. Fortunately, only a small percentage of the injuries are fatal, but many children sustain permanent, debilitating injuries. At least 30 children sustain window fall-related injuries each year in Oregon, according to information from Oregon Health Sciences University.

"It only takes a second for a fall to occur, but the effects of an injury can last a lifetime," said Rep. Gardner. "We have a responsibility as a state to take this simple step to protect the health and well-being of our children."

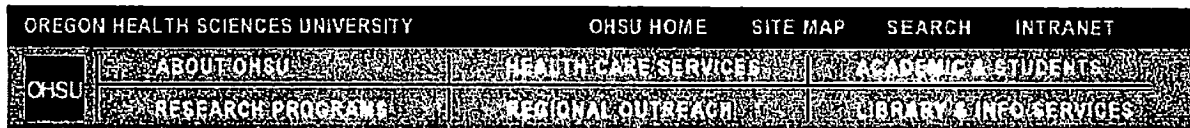
"An astonishing number of children fall through window screens every year," said Jeff Merrick, a Portland-area pediatric trial lawyer whose organization, The Pediatric Law Group, is leading the effort to reduce these types of injuries. "Children lean against them because maybe they see a friend or an animal outside, and then the results can be tragic."

Landmark legislation on this issue was enacted through "Kids Can't Fly" initiatives in New York City and Boston. After window guard requirements were passed by those cities, the number of recorded window falls decreased an estimated 35 percent and 83 percent, respectively.

The CPSC, in cooperation with window manufacturers, fire and health care leaders and consumer groups, has established national standards for uniform window guard production, making the products readily available for installation. For more information about the proposed legislation, window guard guidelines, or background on the "Kids Can't Fly" initiative - call (503) 224-1957 or visit [www.pediatriclaw.com](http://www.pediatriclaw.com).

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## News and Information

August 7, 2000

# OHSU

Contact: Josephine E.M. Martell  
(503) 494-8231  
martellj@ohsu.edu

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## COOLING OFF WITH OPEN WINDOWS AT HOME CAN BE A HAZARD FOR YOUNG CHILDREN

### *More Than 30 Kids Are Injured in Oregon Every Year After Falling out of Windows*

PORTLAND, Ore. - Three-year-old Cameron Vasant toddled over to the open window in his grandparents house. He and his 4 year-old brother were supposed to be watching a movie but, like most kids, became bored. Idly, he stuck his finger into a hole on the screen. To his momentary delight the entire screen fell out from the two-story window with a clatter. When his brother turned around, Cameron was gone.

Thankfully, Cameron landed on a small patch of wet grass and miraculously was uninjured. Julie Vasant, Cameron's mother, said that the fall turned out to be an important learning experience. "Always err on the side of caution. Don't ever leave your windows open unless you have regulation standard window guards in place," said Julie. "You can't always watch your children and have to assume they will get in trouble."

At Oregon Health Sciences University Hospital this year, nearly 20 children came to the emergency department after falling out of windows. In 1998 31 children in Oregon were injured. The majority of these cases were boys younger than 6.

Mark Silen, M.D., chief of surgery at OHSU Doernbecher Children's Hospital and the head of the Division of Pediatric Surgery in the OHSU School of Medicine, said that window falls are a common problem. "We probably see one or two window-fall cases a week in Portland. These are tragic incidences for both the parents, because of the guilt, and the children, because of the resulting injuries."

According to the SAFE KIDS Coalition, each year nationwide approximately 18 children under the age of 10 die as a result of falling from windows. An estimated 4,700 children 14 years of age or younger are treated in emergency departments for injuries related to falls from windows.

SAFE KIDS has found that the majority of window-related falls happen during the warmer months when windows are open, and occur more often in highly populated urban areas and low-income housing neighborhoods. Children living in apartment buildings are five times more likely then children living in houses to fall from windows.

Silen recommends that parents with small children install window guards on all windows that can be opened. Since establishing an education and window guard distribution program, and instituting window guard legislation, New York City has seen a 35 percent reduction in window-fall-related fatalities. Moving furniture away from all windows also will increase child safety.

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# PEDIATRIC LAW GROUP NEWS

The Pediatric Law Group

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*We are trial lawyers helping injured people with an emphasis on helping children against insurance companies and the people or products that caused them harm.*

- Free consultation
- Home appointments available
- We accept cases on a contingent fee, which means if there is no recovery, there is no obligation to pay attorney fees.

## WINDOW GUARDS SAVE TRAGEDIES

On April 24, 2001, a legislative committee heard testimony on a bill that would require landlords to install window safety guards when young children live in the apartment.

An average of one child per month dies from falling out of windows, according to the Consumer Product Safety Commission. Over 4,000 per year are treated in hospital emergency rooms.

And the injuries are serious: brain damage to over 50% of the children. In fact, the impetus for the bill in Oregon was a young boy from Roseburg, who fell 12 feet onto concrete. Heroic efforts saved his life, but he suffered brain damage and will have special needs the rest of his life.

In representing the boy, The Pediatric Law Group learned that New York City has required landlords to offer window guards since the 1970s. New Jersey enacted a similar law in 1995. Jeff Merrick of the Pediatric Law Group contacted pediatricians and legislators last summer to propose a similar law in Oregon.



Jeff Merrick testifies before a House Committee in support of window guards.

Landlords oppose the law, some claiming that, even though they know of the risk, it is not their responsibility. Instead, they argued, parents should watch all their children 24 hours per day.

Michelle Martin, of Newberg, disagreed. She told the committee about her daughter, Kaitlyn, who was playing in her own bedroom. Kaitlyn was standing on her bed, slipped on a book, and fell through the window screen, down two stories onto the concrete driveway. Once again, heroic medical efforts averted death.

Deanna Dallas of Hood River told of how her three year old daughter Katrina crawled from the bed to the dresser and fell through the screen, cracking her skull. After 10 days in a coma, she awakened. Deanna, a certified nursing assistant, had to quit her job to care for her daughter.

Jeff Merrick testified that a law would also benefit parents who own their home, because guards would become more available. Now, parents usually can only find guards online. One place to look is [www.johnsterling.com](http://www.johnsterling.com).

## PLAYGROUND SAFETY AT HOME AND SCHOOL

Oregon playgrounds are substandard.

- 95% of the 21 playgrounds surveyed lacked adequate protective surfacing to cushion falls. Surfacing and fall zones are the most critical component to safety.
- 70% had chipping or peeling paint, often lead-based paint.
- 62% had at least one piece of hazardous equipment, such as climbing rings, heavy animal swings, or track rings.
- 33% had inadequate fall zones around slides and other equipment.
- Too tall slides and climbers were found in 48% and 36% of the playgrounds.



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Revenue

955 Center St NE

Salem OR 97310-2501

To Representative Dan Gardner  
House of Representatives  
Oregon State Legislature

From Debra Buchanan  
Agency Legislative Coordinator  
Oregon Department of Revenue

Date March 30, 2001

Subject Deductibility of business expenses

The definition of taxable income of an Oregon resident is the federal taxable income of the resident as defined in the laws of the U.S., with the modifications, additions and subtractions provided in Oregon law. This is supported by Oregon Revised Statute 316.048.

If a business expense is allowed as a deduction on the federal income tax return the business expense is also allowed as a deduction on the Oregon tax return.

For example: the cost, to an owner of residential rental property, to install safety bars on the windows of property in which young children live; is allowable on the taxpayer's federal tax return. The cost may be claimed as a current expense, as a depreciable expense, or as an increase to the basis of the property. The same treatment of the cost that is allowed for federal purposes would be allowed on the Oregon tax return for the property owner.

If you have any questions please contact me at [debra.l.buchanan@state.or.us](mailto:debra.l.buchanan@state.or.us) or at 503-945-8653.

**316.048 Taxable income of resident.** The entire taxable income of a resident of this state is the federal taxable income of the resident as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter and other laws of this state applicable to personal income taxation. [Formerly 316.062; 1999 c.580 s.4]

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# Oregon

John A. Kitzhaber, M.D., Governor

Department of State Police  
Office of State Fire Marshal  
4760 Portland Road NE  
Salem, OR 97305-1760  
(503) 378-3473  
FAX (503) 373-1825  
TTY (503) 390-4661  
E-mail: [oregon.sfm@state.or.us](mailto:oregon.sfm@state.or.us)  
<http://www.sfm.state.or.us/>

April 20, 2001

*Quality Service First*

The Honorable Dan Gardner  
H395 State Capitol  
900 Court Street NE  
Salem, OR 97301

**Re: House Bill 2726**

Representative Gardner,

At your request I have reviewed the information submitted on the Guardian Angel II Window Guards and the ASTM standards for such products. By this letter I am adding my endorsement to the concept of protecting children from the dangers of falling out of second story or higher windows and offering to work with the Building Codes Division of the Department of Consumer and Business Services in implementation of this bill. Of course if the implementation is assigned to another agency I will be pleased to work with them as well.

It is important to remember in this discussion that these windows serve a critical safety function that must be preserved. They are, by design, by building code, and in practical application intended to serve as an emergency means of egress in the event that fire traps the occupants in the room. Equally as importantly, they serve as an emergency means of ingress to allow fire service rescuers to enter and effect rescue when fire makes that necessary. To the extent that these devices protect children from falls from these windows and still maintain these critical lifesaving capabilities, the public is well served.

If I can be of further assistance in this matter, please feel free to contact me at your convenience.

Sincerely,

Robert L. Garrison  
State Fire Marshal

cc: Joe Brewer, DCBS Building Codes Division

m>window guard letter

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April 19, 2001

Representative Dan Gardner  
State Capitol  
900 Court St NE  
H-395  
Salem, Oregon 97301

In the opinion of the Fair Housing Council of Oregon, there is no prohibition in either federal or Oregon fair housing law that would restrict a housing provider from any proactive action directed towards families with children.

Sincerely,



Michael Anderson  
Acting Director



310 SW Fourth Avenue, Suite 430 • Portland, Oregon 97204  
503/223-8295 • Toll Free 1-800/424-3247 (TDD) • Fax 503/223-3396

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# The Pediatric Law Group<sup>SM</sup>

*Lawyers helping injured children.*

Phone (503) 224-1957  
Fax (503) 977-1894  
www.PediatricLaw.com

Pioneer Tower, Suite 650  
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Portland, OR 97204

*From the desk of Jeff Merrick*

## **Executive Summary**

Every year, thousands of young children are killed or injured in falls from windows.

We propose a law requiring certain landlords to provide window guards on upper-floor units that house children age ten or younger. New York City has enforced a similar law since 1976.

After years of effort and negotiation among the Consumer Product Safety Commission, industry groups, and fire department representatives, the American Society for Testing and Materials published a standard for the design of child safety window guards that would open to allow escape in the event of an emergency. (ASTM PS 120-99) (12/10/99). ASTM had previously adopted a standard for window guards for very high floors, where an emergency exit is not feasible. (ASTM PS 112-98) (12/10/98).

Before any more children die or suffer catastrophic injuries by falling from windows, the State of Oregon or its cities should require certain landlords to provide child safety window guards. We ask you to support this effort.

### **“Kids Can’t Fly”**

That is the slogan on New York City posters advising people of the need to have window safety guards on upper floors of residential rental properties.

Oregon health statistics have not kept track of falls from windows. The closest statistics are on hospitalizations caused by falls from structures, which would include falls from balconies, roofs, windows and any other place on a structure. The data on Oregon falls from structures follow:

<b>Year</b>	<b>Inpatient hospital visits</b>
1996	1057
1997	690
1998	729

*Window Guard Background Paper - Page 1*

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The United States Consumer Product Safety Commission performed painstaking research to obtain data on falls from windows. It determined that approximately 4,700 children under age 15 were treated in U.S. Hospital Emergency rooms in 1993 for injuries received from falling out of windows. For 1999, the total for children age 10 and younger was about 4,300, as summarized below:

Age	Number of Injuries
< 2 years	1,119 (26%)
2 years	566 (13%)
3 years	567 (13%)
4 years	294 (7%)
5 years	465 (11%)
6 years	464 (11%)
7 years	392 (9%)
8 years	172 (4%)
9 years	152 (4%)
10 years	113 (2%)
<b>Total</b>	<b>4,304 (100%)</b>

Almost 60 percent of the injuries were to the head / face area. The approximate height of the fall was reported in about 80 percent of the cases. In these incidents, more than 90 percent of those injured fell from the second story or lower. From this, the CPSC concluded that serious injuries can occur even from relatively low heights, and the hazard is not confined to urban, high-rise settings. CPSC noted that the landing surface may contribute more to the severity of the injury than the distance of the fall.

No good statistics exist on fatalities from window falls. However, CPSC knows of at least 120 fatalities from January 1, 1990 through May 15, 2000, or about one dead child per month. The distribution of ages is summarized below:

Age	Number of Deaths
<2 years	37
2 years	30
3 years	24
4 years	12
5 years	9
6 years	4
7 years	2
8 years	2
9 years	0

10 years	0
<b>Total</b>	<b>120</b>

Reported injuries and deaths from falls are more prevalent among the poor due to deficiencies in the environment, such as windows in poor condition and hard surfaces upon which children fall.

In New York City, window guards work. In 1973, before the 1976 law requiring guards, there were 192 falls from windows and 32 fatalities. In 1993, there were 48 falls and six fatalities.

### **How the New York law works**

The New York City Health Code requires owners of multiple dwellings (three apartments or more) to provide, install, and maintain window guards when a child ten years old or younger lives there. Tenants with no children living in the apartment may also request and receive window guards if they want them for any reason.

These same apartment owners must install window guards in public areas of the complex if a child ten years old or younger lives in the building.

As the leader, New York City had to develop its own specifications for window guards. The new ASTM standards differ slightly and are considered safer by the Consumer Product Safety Commission.

Each year, between January 1 and January 15, New York City landlords must provide an approved notice to each tenant in English and Spanish. The tenant must complete the form indicating whether or not children age ten or younger live in the apartment or if the tenants want window guards anyway. Landlords must also attach the official notice to all leases, both new and renewal.

### **Proposal for Oregon**

Highlights of the proposed law follow.

#### **Windows Guards Required**

Landlords who lease at least two residential buildings or four or more units within a single building would be required to provide window guards if either a child age ten or younger lives in the unit or if requested by the tenant.

The guards would comply with ASTM PS 120-99 (for windows on the sixth floor or lower) and ASTM PS 112-98 (for windows above the sixth floor).

### **Notice Required**

The landlord would provide tenants notice of the opportunity to have window guards as an attachment to every lease and renewal lease.

Additionally, landlords would survey tenants annually to determine if any children were occupying the unit or if the tenant wanted window guards even if she had no children living with her.

### **For More Information. . .**

If you would like more information or would like to become actively involved, please contact Jeff Merrick at (503) 224-1957 or 800 514-7723.

Thank you for your help.



August 22-28, 2000

## FOR KIDS' SAKE

■ Jeff Merrick



## Kids can't fly

"Kids Can't Fly."

That's the slogan on New York City posters advising people of the law requiring landlords to provide window safety guards on upper floors of apartments.

An astonishing number of children fall through window screens every year. They lean against them because they see a friend or a dog outside; they sit on a windowsill and lean back; or they jump or play on an adjacent bed or couch.

New York City's law has been on the books since 1976. Before the law, in 1973, the city knew about 192 falls from windows and 32 fatalities. In 1993, 48 falls and 6 fatalities were reported. Oregon has not kept statistics on falls from windows, but it has kept track of inpatient hospital stays from falls off of any structure, which would include window falls. For the years 1996 through 1998, there were an average of 825 such hospital stays per year in Oregon.

The Consumer Product Safety Commission determined that, nationally, for 1999, approximately 4,700 children under age 15 were treated in hospital emergency rooms for falls from windows, with the largest number being age 2 and under. The CPSC has been working with leaders from industry, fire departments, and consumer groups to establish uniform standards for window guards, and they reached agreement in December of 1999. This will make it easier for Portland or the State of Oregon to follow the 24-year lead of New York City, and require big landlords to provide window guards for apartments that house young children.

However, parents do not need a law to look around their homes and protect their children from this type of catastrophic risk. Here's what you can do now:

1. Check furniture and make sure there is no bed against a screen. Make sure there is no couch or other furniture near windows that open on the second floor and higher.

2. Buy window locks that limit how far the window can open. Make sure the window opens no wider than the head of your child.

3. Because there is no law in Oregon, window guards are not readily available at local stores. However, they can be purchased from a manufacturer at <[www.johnsterling.com](http://www.johnsterling.com)>. The guards should meet the specification known as ASTM PS 120-99, which allows escape in case of a fire or emergency. If you live in a high-rise where you would never escape through a window, the specification is ASTM PS 112-98.

4. Consider planting shrubs or other soft material under the windows. Studies indicate that the seriousness of the injury from a fall is based more on the hardness of the surface below than whether the fall is from a second or third story window.

5. If you are building your home, consider purchasing windows that can open from the top, where children cannot reach the screen. Also, look for windows with built-in stops. Finally, consider using tempered glass in areas where you know your children will play. This glass will reduce the possibility of serious injury because it breaks into small pieces instead of jagged fragments.

Some people are organizing to push for a law similar to the New York City ordinance. We hope that you will support that effort. Feel free to call if you'd like to help, (503) 224-1957.

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# House Bill 2726

Sponsored by Representative GARDNER; Representatives BACKLUND, RINGO, TOMEI, Senators BURDICK, COURTNEY, DECKERT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires certain landlords to provide, install and maintain window guards when landlord knows or should know that child is resident or tenant requests window guards. Expands definition of essential services to include window guards. Defines window guards.

Authorizes Department of Consumer and Business Services to impose civil penalty of not more than \$10,000 for violation. Provides for strict liability of landlord and punitive damages against landlord.

## A BILL FOR AN ACT

1 Relating to window guards; creating new provisions; and amending ORS 90.100.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. Sections 2 to 6 of this 2001 Act are added to and made a part of ORS chapter**  
4 **90.**

5 **SECTION 2. (1) A landlord shall provide, install and maintain window guards on the**  
6 **windows of the dwelling unit of a tenant and on the windows of public areas of the residential**  
7 **building of a tenant if:**

8 (a)(A) The landlord owns, manages or controls at least two residential buildings leased  
9 or offered to lease; or

10 (B) The landlord owns, manages or controls a single building containing four or more  
11 individual dwelling units; and

12 (b)(A) The landlord knows or should know that a child less than 11 years of age is a  
13 part-time or full-time resident of the dwelling unit; or

14 (B) A tenant makes a written request for window guards.

15 (2) Notwithstanding subsection (1) of this section, a landlord is not required to provide,  
16 install and maintain window guards on the basement or first floor level of a building or on  
17 windows providing access to fire escapes.

18 **SECTION 3. (1) A landlord subject to section 2 of this 2001 Act shall provide all tenants**  
19 **with written notice of the requirements of section 2 of this 2001 Act in accordance with ORS**  
20 **90.155. The landlord must provide written notice no later than 30 days after the initial lease**  
21 **signing for a new tenant and annually for all tenants living in dwelling units that do not have**  
22 **window guards and are not exempt from the requirements of section 2 of this 2001 Act. The**  
23 **landlord shall provide the annual notice no later than January 16 of each calendar year. In-**  
24 **itial and annual written notices must contain:**

25 (a) The title "Window Guards Required" in at least 10-point type;

26 (b) A description of sections 2, 4 and 6 of this 2001 Act using words in their common and  
27 everyday meanings;  
28

NOTE: Matter in boldfaced type in an amended section is new; matter *{italic and bracketed}* is existing law to be omitted.  
New sections are in boldfaced type.

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1 (c) A place for the tenant to indicate by signature or initials whether the tenant wants  
2 window guards installed; and

3 (d) A statement that the landlord is liable for injury, death or damage preventable by the  
4 provision, installation and maintenance of window guards only if:

5 (A) The landlord knows or should know that a child less than 11 years of age is a part-  
6 time or full-time resident of the dwelling unit where the injury, death or damage occurs or  
7 of the building having a common area where the injury, death or damage occurs;

8 (B) The tenant of the dwelling unit where the injury, death or damage occurs or of the  
9 building having a common area where the injury, death or damage occurs has returned a  
10 notice or otherwise made a written indication that the tenant wants window guards installed  
11 and the landlord receives the notice or other written indication and has had a reasonable  
12 amount of time to act on the request prior to the date of injury, death or damage; or

13 (C) The tenant has not rendered the window guards ineffective.

14 (2) A landlord subject to section 2 of this 2001 Act shall not indicate to a tenant that the  
15 provision, installation and maintenance of window guards is:

16 (a) Dependent on payment of a fee or charge by the tenant; or

17 (b) Optional if the provision, installation and maintenance of window guards is required  
18 under section 2 of this 2001 Act.

19 (3) A landlord is liable for injury, death or damage preventable by the provision, instal-  
20 lation and maintenance of window guards only if:

21 (a) The landlord knows or should know that a child less than 11 years of age is a part-  
22 time or full-time resident of the dwelling unit where the injury, death or damage occurs or  
23 of the building having a common area where the injury, death or damage occurs;

24 (b) The tenant of the dwelling unit where the injury, death or damage occurs or of the  
25 building having a common area where the injury, death or damage occurs has returned a  
26 notice or otherwise made a written indication that the tenant wants window guards installed  
27 and the landlord receives the notice or other written indication and has had a reasonable  
28 amount of time to act on the request prior to the date of injury, death or damage; or

29 (C) The tenant has not rendered the window guards ineffective.

30 SECTION 4. (1) Landlords subject to section 2 of this 2001 Act may have access to the  
31 dwelling unit of a tenant in accordance with ORS 90.322 for the purpose of providing, in-  
32 stallng and maintaining window guards.

33 (2) Notwithstanding ORS 90.322 (7), refusal by the tenant to allow lawful access to the  
34 landlord under subsection (1) of this section is not grounds for termination of the rental  
35 agreement and taking possession by the landlord.

36 (3) Notwithstanding section 3 (3) of this 2001 Act, a landlord is not liable for injury, death  
37 or damage preventable by the provision, installation and maintenance of window guards in  
38 the dwelling unit of a tenant if:

39 (a) The tenant refuses the landlord lawful access under subsection (1) of this section; and

40 (b) The landlord seeks injunctive relief to compel access under ORS 90.322 (7).

41 SECTION 5. (1) The Department of Consumer and Business Services may adopt rules  
42 establishing standards for window guards. In adopting rules for window guard standards, the  
43 department may give consideration to the standards established by the American Society for  
44 Testing and Materials.

45 (2) The department shall adopt rules making failure to provide, install and maintain

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1 window guards as required by section 2 of this 2001 Act a violation of the state building code.  
2 (3) Notwithstanding the maximum amount established in ORS 455.895, a building code  
3 violation resulting from the failure of a landlord subject to section 2 of this 2001 Act to  
4 comply with section 2 of this 2001 Act is subject to a civil penalty, not to exceed \$10,000. A  
5 civil penalty shall be imposed as provided in ORS 183.090.

6 **SECTION 6.** (1) Subject to sections 3 (3) and 4 (3) of this 2001 Act, in addition to the  
7 provisions of ORS 90.365, a landlord subject to section 2 of this 2001 Act is strictly liable for  
8 any injury, death or damage preventable by the provision, installation and maintenance of  
9 window guards.

10 (2) Subject to sections 3 (3) and 4 (3) of this 2001 Act, in addition to the provisions of ORS  
11 90.365, failure of a landlord subject to section 2 of this 2001 Act to comply with section 2 of  
12 this 2001 Act is sufficient to support a claim for punitive damages against the landlord for  
13 injury, death or damage preventable by the provision, installation and maintenance of win-  
14 dow guards.

15 (3) ORS 12.125 does not apply to actions arising under section 2 of this 2001 Act.

16 **SECTION 7.** ORS 90.100 is amended to read:



44 (8) "Essential service" means:

45 (a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or

recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, window guards if required under section 2 of this 2001 Act, and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and



(41) "Window guard" means a window safety device that meets the standards established by Department of Consumer and Business Services rule under section 5 of this 2001 Act.

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2726**

1 On page 1 of the printed bill, line 2, after “guards” insert a period and  
2 delete the rest of the line.

3 Delete lines 4 through 28 and delete pages 2 through 6 and insert:

4 **“SECTION 1. (1) As used in this section:**

5 **“(a) ‘Fall-hazard window’ means a window capable of being opened**  
6 **and that is more than one story above ground. ‘Fall-hazard window’**  
7 **does not include a window opening onto a fire escape or a window of**  
8 **a type described by Department of Consumer and Business Services**  
9 **rule as not presenting a danger of falling for a child younger than**  
10 **eight years of age.**

11 **“(b) ‘Fall-prevention window guards’ means a device that meets**  
12 **American Society for Testing and Materials proposed standard PS**  
13 **120-99 as existing on January 1, 2001, and any additional standards or**  
14 **specifications adopted by the department by rule.**

15 **“(2) A landlord of a residential structure must provide written no-**  
16 **tice regarding the right of a tenant to install fall-prevention window**  
17 **guards to a tenant who commences tenancy in a dwelling unit that**  
18 **has one or more fall-hazard windows. The landlord shall provide the**  
19 **notice to the tenant before the tenant signs a written rental agree-**  
20 **ment or, if there is no written agreement, before the tenant takes**  
21 **possession of the dwelling unit.**

22 **“(3) The written notice described in subsection (2) of this section**  
23 **must be in substantially the following form:**

24 “  
\_\_\_\_\_

1 **Brain damage or death**

2 **can occur when children fall from windows,**  
3 **even windows with screens.**  
4

5 **For this reason, you have the following RIGHTS under Oregon law:**

6 **1. You have the right to purchase window safety guards and have**  
7 **those guards installed on upper-floor windows. You may not install**  
8 **window guards on fire escape windows or on types of windows identi-**  
9 **fied by the Department of Consumer and Business Services as not**  
10 **presenting a danger of falling. The window guards must be a type ap-**  
11 **proved under Oregon law and must allow you to easily exit through**  
12 **the window in case of fire or emergency.**

13 **2. If you have a child younger than eight years of age living with**  
14 **you, you have the right to deduct your costs for the purchase and in-**  
15 **stallation of window guards from the rent you would otherwise pay to**  
16 **your landlord.**

17 **Date: \_\_\_\_\_**

18 \_\_\_\_\_  
19 **Tenant signature**

20 \_\_\_\_\_  
21 **Print name**

22 "  
23 **"(4) A tenant has the right to purchase fall-prevention window**  
24 **guards for the fall-hazard windows in a dwelling unit and to have those**  
25 **window guards installed by a qualified person. Upon installation, the**  
26 **window guards become a part of the dwelling unit.**

27 **"(5) If a tenant incurs costs for the purchase and installation of**  
28 **fall-prevention window guards under subsection (4) of this section, and**  
29 **the tenant lives with a child younger than eight years of age, the**  
30 **tenant may deduct the tenant's cost for purchase and installation of**  
31 **the window guards as an offset against the monthly rent paid by the**

1 tenant. The deduction may be taken only against rent that becomes  
2 due within one year following completion of the installation.

3 “(6) For purposes of ORS chapters 314 to 318, a landlord may treat  
4 a rent deduction by a tenant pursuant to subsection (5) of this section  
5 as a capital improvement by the landlord to the dwelling unit.

6 “(7) The Department of Consumer and Business Services may make  
7 all rules necessary and proper for the administration of this section.

8 “SECTION 2. Notwithstanding section 1 (2) of this 2001 Act, for a  
9 tenant commencing a tenancy after the effective date of this 2001 Act  
10 and prior to March 1, 2002, the written notice regarding tenant rights  
11 to install fall-prevention window guards must be given on or before  
12 March 1, 2002.”  
13

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