MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 28, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 28, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 241: Rep. Spaeth, District No. 84, sponsor, stated this is a major bill dealing with wrongful discharge in the state of Montana. Wrongful discharge is one of the most important problems facing the state and this legislature. It is also important as far as the operation of the business community that exists in this state. We can handle a problem that does not need to exist. He explained that the cause of wrongful discharge is basically created. There is nothing on the statute books dealing with wrongful discharge other than the statutes dealing with employment by will and do not apply anymore. HB 241 establishes a cause of action and to set standards and exemptions. It is reasonable tort reform and deals with a problem in a reasonable sort of way. The State of Montana needs to chart new ground in this area because we have different and new problems in this state.

PROPONENTS: BARRY L. YORK, attorney, Montana Association of Defense Counsel, explained that historically, the employment relationship in the United States has been "at-will". The employer and the employee both had the right to terminate the relationship for "...a good reason, a bad reason, or no reason at all". This rule is codified in Section 39-2-503, MCA. The difficulty with the current state of the law is that there are no standards upon which an employer can rely when contemplating the termination of an employee. The increasing number of wrongful termination cases at the district court level is an eye-opener. He stated that the bill brings some rational standards to an area of the law that currently has none. He submitted written testimony. (Exhibit A).

JIM ROBISCHON, Montana Liability Coalition, supported adoption of HB 241 as it stands at the present time. The employer's decision to terminate an employee for a legitimate business reason should not subject to subsequent ratification by a jury at any time. This bill represents a moderation or compromise of that position which was the

position of the law under section 39-2-503 in 1982. (Exhibit B).

GEORGE ALLEN, representing the Montana Retail Association, stated that wrongful dismissal suits create more of a problem for the small business person than it does for the larger companies. Companies who are big enough can afford to have well trained personnel departments, company lawyers and do not seem to have the problem with wrongful dismissals that the small independent business person has. He submitted written testimony. (Exhibit C).

JOHN DOMENISH, President of the Skyland Scientific Services, requested that serious consideration be given to making some basic structural changes in the wrongful discharge act in the State of Montana.

ROSE SKOOG, Montana Health Care Association, supported the legislation.

GERALD ROTHMEYER, Zone Manager for Mini Mart, Inc., testified in support of HB 241 because it regulates wrongful termination litigation. The law, as it is presently construed by the courts, is not working. This bill adequately addresses the abuses found in wrongful termination litigation. He submitted written testimony. (Exhibit D).

BOB PYFER, Montana Credit Unions League, stated that HB 241 is an extremely important piece of legislation; perhaps, a landmark legislation, particularly for small business.

JIM TILLOTSON, Billings City Attorney, and current President of the Montana City Attorney's Association, strongly supported HB 241.

KAY FOSTER, a business owner and Deputy Mayor of Billings, stated she was appearing on behalf of the Billings area Chamber of Commerce to support the bill and the positive impact it will have, particularly on the business community in the area. The rising number of claims ("2" in 1981 to "89" in 1985) allowed under present Montana statutes has become a major disincentive to local business development and expansion of employment. She submitted written testimony. (Exhibit E). She also submitted a booklet titled, ISSUES "87, a preview of the issues facing the 50th Montana Legislative assembly from the Billings Chamber of Commerce. (Exhibit F).

I. DELLINGER, Executive Secretary for the Montana Materials Association, stated the bill was the proper step forward.

STUART DRYGETH, Montana Chamber of Commerce, stated this is one liability issue that cuts across and touches all facets of the business community. He supported passage of this bill.

CHIP ERDMANN, Montana League of Savings Institutions, strongly supported the legislation. He felt arbitration was a good idea.

FRED WALTERS, Montana Oil Well Cementers, Inc., stated that small business in Montana cannot exist if people can sue at the drop of the hat. He supported HB 241. (Exhibit G).

BRUCE W. MOERER, Montana School Board Association, Staff Attorney, stated that school boards, like other business organizations, face this problem every day. He urged support for the bill.

ROBERT MARONICK, Vice President, Geo L. Tracy Company, Great Falls, strongly urged that the committee reform the employment laws of the state of Montana. He submitted written testimony. (Exhibit H).

OPPONENTS: MIKE MALLOY, Attorney, stated there are standards and perspectives from the other side of the fence that the proponents have not touched on. About 15 or 20 years ago, some courts, decided that the balance between an employer and an employee needed some correction. Under the termination at-will doctrine, which has been in effect since the middle ages, the employer had more power than the employee and could hurt an employee with that power. The theory of tort law was adopted which requires the employer to be fair when dealing with the employee. Montana has just recently embraced that tort law but the law in other states has been in existence for many years. The Supreme Court has recognized two theories, the theory of wrongful discharge and the theory of breach of the implied covenant of good faith and fair dealing. He explained that a large company might need to save money in their retirement plan so they terminate people who are close to retirement and it is a legitimate business reason to the company because they want to save money. But, it is not fair. No jury would say that was fair. This bill eliminates the right of action for that person. He also pointed out the bill eradicates every right a non-union employee has in this state.

ANNE MACINTYRE, Montana Human Rights Commission, rose to point out technical corrections in Section 7, lines 17-23. She pointed out that she could draft an amendment if necessary.

KARL ENGLAND, Montana Trial Lawyers Association, stated that section 8 on page 5 needed to be amended.

JACKIE AMSTEN, Woman's Lobbyist Fund, opposed the bill because the injury of wrongful discharge would fall heavily upon women. She stated that almost every major wrongful discharge case in the state of Montana have involved women. The bill severely restricted damages.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 241: Rep. Addy asked Mr. Yort about drafting differences in this bill. Rep. Addy called his attention to page 3, line 14, regarding five years being the probation period for employees. Mr. Yort stated that they based the draft on a California act introduced in the legislature. Rep. Addy asked Mr. Yort about the two year limitation and he stated that there was no research done on this.

Rep. Giacometto asked Mr. Andrews what would happen to his business under the current law. Mr. Andrew stated that he wants to keep his business in Montana but, unless there are some structural changes, he will have a losing battle with his board of directors to keep Skyland in the state.

Rep. Daily questioned Mr. Yort in regard to a legitimate business reason for laying someone off work and asked him if, under this bill, it was legitimate to lay off an employee before his retirement. Mr. Yort stated, "no". If an employer was to terminate an employee because he or she was approaching retirement, the employee would not only have a claim, under this bill, but would also have a claim under the Federal URESA Act.

Rep. Miles asked Rep. Spaeth why should the unemployment fund be paying for a judgment if someone has been wrongfully discharged rather than the employer. He stated the employer could refund the fund in that instance.

Rep. Addy asked Mr. Yort why the national Labor Relation Act is not used in this area as a definition for termination for good cause. Mr. Yort stated to his knowledge, the NLRA does not contain a definition of good cause.

Rep. Spaeth stated they needed to look at where they were at in Montana and the problem they were facing. The volume of wrongful discharge cases is unique in the State of Montana. Present law must be looked at in regard to wrongful discharge and you will see we are charting new ground and are going in a new direction. The legislature has the responsibility to establish public policy and standards for that cause of action in Montana. He closed the hearing on HB 241.

CONSIDERATION OF HOUSE BILL NO. 112: Rep. Addy, District No. 94, sponsor, stated HB 112 establishes programs in each judicial district to provide mandatory arbitration of wrongful discharge cases, granting rulemaking authority. He explained the purpose is to prevent persons from filing, in court, a civil action for wrongful discharge without first attempting to reach a settlement of the dispute through arbitration.

There were no proponents.

OPPONENTS: BARRY L. YORT, representing Mountain Bell, opposed HB 112.

ANNE MACKINTRYRE, Human Rights Commission, stated she did not oppose the merits of the bill, but it needed technical corrections in the area of human rights.

There were no questions on HB 112.

Rep. Addy closed the hearing.

CONSIDERATION OF HOUSE BILL NO. 316: Rep. Addy, sponsor, District No. 94, explained that this is an act providing for involuntary commitment and treatment in the local community of persons who are mentally ill. He stated the bill addresses a serious problem dealing with the seriously mentally ill people. If it is determined, in the proceeding, that the respondent is mentally ill within the meaning of this act, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefore, if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana State Hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able. The new section 14 grants a supplemental hearing and the hearing must be scheduled within five days. New section 15, gives codification instructions.

PROPONENTS: STEVE WALDRON, Mental Health Centers, Helena, presented an article from the STATE GOVERNMENT NEWS, dated August 1986, titled, THE HOMELESS-WHO'S TO BLAME? (Exhibit A). He stated that under the present law, a mentally ill person must be a clear and imminent danger to themselves or to others in order to be involuntarily committed for treatment. The law requires that the mentally ill individual must have committed a recent and overt action to be classed as seriously mentally ill and to be committed for treatment.

A mentally ill person, who needs treatment and is very sick and deteriorating, often does not meet the current legal definition to be committed for treatment. For instance, a suicidal person who is under voluntary outpatient treatment for clinical depression may not meet the current definition to be committed unless they have done a recent and overt act. The proposed law changes the current commitment law allowing the court to commit a mentally ill person to only a community facility for a very limited time with the intention of getting the person stabilized and able to function in the community. He strongly urged support for HB 316 and submitted written testimony. (Exhibit B).

NANCY ADAMS, Montana House and works with the Task Force for the mentally ill, stated that this is a fair bill and it obtains many protections for the mentally ill patients rights.

FLORENCE FOSTER, from Helena, stated that the patient must choose to get help currently and sometimes the patient goes off his medication and cannot choose to get help. This bill will help patients get help when they need it.

JOHN MCREA, Independent Living Counselor, stated that when professionals are unable to help under the current law, this bill enables clients to get help especially in independent living situations.

TINA SMITH, Adult Social Worker, stated that problems arise when mentally ill patients do not take their medication and this bill helps the individuals during this time of crisis.

JACQUE THILEN, Montana House, supported this bill.

GLENN BIRGENHEIER, patient, stated that if he would not have had the medication when he needed it, he would not be here today. He supported the legislation.

HELEN SAMPAL, Miles City, stated that this is essential legislation and urged support.

ED KENNEDY, Montana House, Helena, pointed out that we need this law. He stated that he resisted his medication for years and finally, while very depressed, got in a car accident. He supported the bill because, he said, this is an effort to keep me and my friends alive.

PHILIP PAVERS, Mental Health Expert, urged attention and support for the bill.

SUZANNE TAUNT. Montana Alliance for the Mentally Ill, pointed out that better care and services are needed in this area and urged that HB 316 be passed as it stands.

CLIFFORD MURPHY, Co-Chairman of the Public Policy Committee and a member of the Mental Health Association of Montana, stated that the bill is a greatly improved version of the last session and urged support.

JEANNE PORTER, Mental Health Volunteer, supported the legislation.

RICHARD EMERY, Clinical Psychologist, stated that the current law will not let a person be helped until they impose danger to others and this bill prevents much suffering of the mentally ill patients.

DONALD L. HARR, Billings, stated he felt the bill allowed for the protection of the individual who is in need of treatment.

KELLY MOORE, Board of Visitors Director, supported the legislation.

TOM POSEY, Executive Director of the National Alliance of Mental Health, stated that if this bill can save one life, it deserved support.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 316: Rep. Rapp-Svrcek stated that he counted at least five who made reference to the seriously mentally ill persons and asked Mr. Waldron, why that is. Mr. Waldron stated that the law has a definition for seriously mentally ill and the only time we use that phrase is when we are going to court.

Rep. Hannah asked Mr. Waldron who brings about a hearing and he answered that the county attorney does.

Rep. Addy closed the hearing on HB 316.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:48 a.m.

Earl Lory

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 28, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EX A
1-28-87
#241

WITNESS STATEMENT

NAME Barry L. Hoyt BILL NO. 241

ADDRESS 1458 Beaumont, Helena DATE 1-28-87

WHOM DO YOU REPRESENT? MATSC

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

left w/ committee

CS-34

EXHIBIT 4
DATE 1-26-1987
HB #241

SUBMITTED BY

THE

MONTANA ASSOCIATION

OF

DEFENSE COUNSEL

JANUARY 28, 1987

Exhibit

WRONGFUL DISCHARGE

Why is legislation concerning wrongful discharge necessary? What are the arguments that support a statutory alternative to judicial interpretations that currently make up the law of wrongful termination?

1. Historically, the employment relationship in the United States has been "at-will." The employer and the employee both had the right to terminate the relationship for "...a good reason, a bad reason, or no reason at all." This rule is codified in Section 39-2-503, MCA. Several statutory exceptions to the rule have been adopted in Montana that apply to specific circumstances: (a) no discharge because of attachment or garnishment of wages - 39-2-302; (2) nurses and other health care professionals have the right to participate in sterilization or abortion procedures without jeopardizing job security - 50-5-503; 50-20-111; and (c) employers are prohibited from terminating employees for forbidden discriminatory reasons - 49-1-101, et seq. In 1982, with the decision of Gates v. Life of Montana Insurance Co., 196 Mont. 178, 638 P.2d 1063, the Montana Supreme Court rendered the first of several decisions concerning the employment relationship which have created exceptions of such magnitude that the exceptions have, for all practical purposes, swallowed the "at will" rule.

2. In Gates I, the Supreme Court held that there was a covenant of good faith and fair dealing implied in every employment contract. If an employer adopted policies applicable to its employees and failed to follow the policies in connection with a termination, a breach of the implied covenant could occur. Next, in Nye v. Department of Livestock, 196 Mont. 222, 639 P.2d 498 (1982), the Court established the tort of wrongful discharge which applies in circumstances where the discharge is for reasons that violate public policy. In Gates II, 668 P.2d 215 (1983), the Court held that an employer's failure to follow its own handbook procedures was a breach of the implied covenant, and that such a breach "...is a tort for which punitive damages can be recovered if defendant's conduct is sufficiently culpable." Then, in Dare v. Montana Petroleum Marketing, 687 P.2d 1015 (1984), the Court extended the implied covenant to situations not involving a handbook or written policy violation, saying: "...implication of the covenant depends upon (the) existence of objective manifestations by the employer...(of) job security...."
Next, in Crenshaw v. Bozeman Deaconess Hospital, 693 P.2d 487 (1984), the Court held that the duty of good faith and fair dealing established in Gates I would be extended to probationary employment relationships.

3. The difficulty with the current state of the law is that there are no standards upon which an employer can rely when contemplating the termination of an employee. Virtually any termination can be asserted to be in violation of the covenant of good faith and fair dealing, or in violation of public policy, or done in bad faith, or even negligent (Crenshaw), and the facts will be presented to a jury, with the employer's decision subject to being second-guessed. Termination cases are very expensive to defend (litigation costs can run from $25,000-75,000 per case) and there is frequently a question as to whether the employer's general liability policy provides coverage. The Washington Supreme Court recently held that the discharge of an employee is an intentional, not an accidental act, and that a general liability policy provides no coverage for lost earnings or emotional distress. E-Z Loader Boat Trailers v. The Travelers Indemnity Co., 106 Wn.2d 901 (1986).

4. The increasing number of wrongful termination cases at the district court level is an eye-opener. In Billings, in state and federal court, a total of 182 such cases were filed between 1981 and October, 1986. In Great Falls, 89 such cases were brought in the same time period. Helena's state and federal courts had 84 wrongful discharge cases from 1981 to October of 1986.

5. Wrongful discharge verdicts have been awarded for huge sums. The award in Flanigan v. Prudential Federal Savings, affirmed on appeal by the Montana Supreme Court, was in the amount of $94,170 for economic loss, $100,000 for emotional distress, and $1.3 million for punitive damages. In Farrens v. Meridian Oil, a Billings federal court jury awarded $2.5 million, no part of which was punitive damages.

6. Significant awards of lost future wages do not seem to make any sense. Discharged employees have been awarded lost future wages for the balance of their working lives. For example, the plaintiff in Farrens, a thirty-four year old engineer, sought and was awarded over two million dollars in lost earnings and earning capacity. A successful plaintiff in such a case is free, after the receipt of such an award, to seek and obtain other employment to supplement the windfall without any offset. Such a doctrine is particularly inappropriate when research indicates that 8-10% of all jobs in this country have been lost each year since 1969, and that every five years the economy must replenish about 50% of its available jobs. (David Birch - Inc. Magazine, April, 1985). In today's competitive and changing economy, jobs simply do not last for the duration of the typical person's work life.

7. No fair minded person would disagree that certain protections must be afforded the employee. However, the protection of Montana's existing tort law provides much greater opportunity for recovery, and hence greater leverage in the employment relationship for the so-called "at-will" employee than for the employee whose job security is provided for under the terms of a collective bargaining contract. A typical collective bargaining contract will have a job security clause that requires termination only for "just cause." A terminated employee will usually have the right to challenge his termination through an established grievance procedure, culminating in arbitration before a neutral third party. If the arbitrator determines that the discharge was not for good cause, the remedy generally includes the payment to the employee of lost wages and benefits, and reinstatement to the former position. The so-called "at-will" employee, on the other hand, may recover damages for past and future wage loss, emotional distress, and in appropriate cases, punitive damages. The equation is badly out of balance. In Justice Morrison's dissent in Brinkman v. State of Montana, (Decided: December 11, 1986), he recognized this disparity:

> I believe the direction of the Court, perhaps unwittingly, is clear. Greater job security found through a tort remedy, is afforded to non union employees. They can recover noneconomic compensatory damages plus punitive damages while the union employee is left with the less effective grievance procedure. Organized labor has been dealt another serious blow by this decision.

8. The proposed bill accomplishes a number of objectives. It preserves the right to challenge a discharge in appropriate cases. "Whistleblowers" are protected, as are employees with five or more years of employment with the employer. Employers may terminate for cause which is defined as a legitimate business reason. A successful claimant can recover up to two years of lost wages. The arbitration alternative to litigation is encouraged. Arbitration is usually quicker and less expensive than litigation in the courts. Arbitration has a long and successful history in the context of resolving discharge disputes where employees and employers have a collective bargaining agreement. It is favored and encouraged by court decision. (See the U.S. Supreme Court's Steelworker's Trilogy). The bill brings some rational standards to an area of the law that currently has none.

EXHIBIT 6
DATE 1-28-87
HB # 241

WITNESS STATEMENT

NAME Tim Robischon BILL NO. 241

ADDRESS Helena DATE 1/28/87

WHOM DO YOU REPRESENT? Gaut-Link Coalition

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT C
DATE 1-28-87
HB #241

Montana Retail Association

Executive Office
348 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

TESTIMONY

HB 241

Dear Chairman and Members of the Committee,

For the record, my name is George Allen, representing the Montana Retail Association. I am here today to support HB 241.

Wrongful dismissal suits create more of a problem for the small business person than it does for the larger companies. Companies who are big enough can afford to have well trained personnel departments, company lawyers, etc., and do not seem to have the problem with wrongful dismissals that the small independent business person has.

I would like to share a specific case with you that happened in Great Falls with Miles Taylor, who is the John Deere Farm Implement Dealer. Miles had a problem with one of his employees. The employee left the employment of the Taylor Brothers Implement Dealership. Within a week he called Mr. Taylor and said that he was going to bring a suit against him and was suing him for a "bundle". Mr. Taylor at that point asked him if he had received all of the pay that was due him. The employee responded "yes". Mr. Taylor asked," did you receive your Christmas bonus"? The employee responded "yes". (Mr. Taylor) "Is there anything that I owe you that you have not been fully compensated for"? The employee responded "no, you've treated me fairly, but I'm still going to sue you". A suit prevailed, and Mr. Taylor was taken to court. There was a jury trial, and Mr. Taylor was successful in winning the case.

The unfortunate outcome of this was that it cost Mr. Taylor $4,200 to defend himself against a frivolous lawsuit. After the trial was over Mr. Taylor asked the ex-employee why he brought such a law suit against him when he knew he was treated fairly by his own admission. The employee responded, "from the lawsuits that have been settled that I've read about in the paper, and from the encouragement of my attorney, I chose to file suit against you. My attorney told me that I had a 50-50 chance of getting something, and the statement was made that we have nothing to lose, so let's go for it." Obviously, the attorney was taking it on a contingency basis.

Where is the justice in this type of activity? Something has got to be done to protect the employer against these frivolous type of lawsuits from unscrupulous attorneys.

Respectfully,

George E Allen

DATE 1-28-87

HB #241

WITNESS STATEMENT

NAME Gerald Rothmeyer BILL NO. 241

ADDRESS 824 Sanders DATE 1/28

WHOM DO YOU REPRESENT? Mini Mart Inc

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT 5
DATE 1-28-87
HB #241

January 27, 1987

Mr. Chairman & members of the committee:

My name is Gerald Rothmeyer. I am a zone manager for Mini Mart, Inc., a corporation which is engaged in business in Montana. Mini Mart conducts business in five western states including Montana. Mini Mart operates convenience stores, selling gasoline, groceries and sundry items to the general public. Mini Mart operates on a twenty four hour a day basis for the convenience of the public.

I am testifing in favor of House Bill 241 which regulates wrongful termination litigation. Mini Mart, like any other employer in Montana, has been the target of wrongful termination litigation. The law as it is presently construed by the courts is not working. It invites employees to bring suit against their employers regardless of how fairly those employees were treated. I will cite to you two examples of situations which have arisen and have resulted in suits against Mini Mart. In one suit the employee left Mini Mart to take another position. The employee resigned but when the position he anticipated working in failed, he brought suit against Mini Mart for "wrongful termination". In another instance an employee has brought suit against Mini Mart because of a termination. The employee after working through a progressive disciplinary procedure was terminated when his conduct failed to conform with Mini Mart's personnel policies and job expectations and when the employee committed repeated acts which were inconsistent with his duties as an employee. When it became evident Mini Mart was monitoring this employee's conduct he taunted his supervisors suggesting Mini Mart would not dare to fire him because of the problems he could cause by simply filing a wrongful termination suit.

Mini Mart has adopted a progressive displinary procedure using oral and written warnings to advise employees that

they are not satisfying job requirements. Mini Mart makes periodic evaluations of job performances to assist its employees in understanding their job requirements and improving their job performance. Despite these facts and its efforts to treat employees fairly Mini Mart still, like many other employers, is the subject of several wrongful temination suits.

The question to ask is the impact wrongful termination litigation has upon employers like Mini Mart. In Mini Mart's instance the fact Montana liberally allows the filing of wrongful termination suits has caused Mini Mart management to seriously consider not expanding its operations in Montana and in fact has caused management to consider withdrawing from the Montana market.

House Bill 241 adequately addresses the abuses found in wrongful termination litigation. Mini Mart urges its passage.

2429J

Billings
Chamber of Commerce

EXHIBIT E
DATE 1-28-87
HB #241

January 28, 1987

TESTIMONY IN SUPPORT OF HB241.

My name is Kay Foster. I am a business owner and Deputy Mayor of Billings, appearing on behalf of the Billings Area Chamber of Commerce. The Billings Chamber supports HB241 and the positive impact it will have, particularly on the business community in our area. Wrongful discharge has become the favored tort claim in the Billings District and Federal Courts with the number of cases swelling from "2" in 1981 to "89" in 1985. The rising number of claims allowed under present Montana statutes has become a major disincentive to local business development and expansion of employment.

As Yellowstone County Respresentative Kelly Addy stated in the Billings Chamber's recently published legislative issues pamphlet, "The legislature must define the scope of this tort - what is an acceptable employment practice, and what is not - and the limits of liability..." He concluded that the proposal of the Montana Association of Defense Counsel (which is embodied in this bill)"represents a huge improvement over the present vague state of the law, and should be supported by the business community and the bar."

The Billings Area Chamber must concur.

EXHIBIT F
DATE 1-28-87
HB #241

Billings
Chamber of Commerce

ISSUES '87

A PREVIEW OF THE ISSUES FACING THE 50th MONTANA LEGISLATIVE ASSEMBLY

EXHIBIT

EXHIBIT C
DATE 1-28-87
HB #241

WITNESS STATEMENT

NAME FRED WALTERS BILL NO. 24

ADDRESS BOX 1227 CUT BANK MONT DATE 1-28-8

WHOM DO YOU REPRESENT? MONTANA OIL WELL CEMENTERS IN

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Exhibit 4
DATE 1-28-87
HB# 241

HB 241

The Geo L. Tracy Company of Great Falls supports House Bill 241. Our company has been a family-owned business for 66 years and is engaged in food brokerage. We represent national clients, such as Alpo Dog Food and Del Monte Foods, and we sell and market those companies' products to local grocery stores in Montana.

In 1984, upon the advice and recommendation of our certified public accountant, we decided to computerize our bookkeeping system. The decision resulted in the elimination of the bookkeeping position and a termination from employment of our bookkeeper. Our decision was based purely on financial considerations and after consultation with our CPA and corporate attorney. Following the discharge of our bookkeeper, we did not hire anyone to replace her; there was no need for a bookkeeper because we no longer had a bookkeeping department. The bookkeeper had been with our company for over 20 years and was a loyal employee. She did not have an employment contract with us.

Our bookkeeper then sued the company. She also sued my brother and myself, individually, on the basis that we interferred with her contract of employment which was to be implied from her long-standing years with the company. We reported the claim to our insurance company. It told us that our company did not have insurance coverage and if we lost the case, we would have to pay any judgment with our own company assets and personal money.

In the lawsuit, we were required to produce individual financial information, including income tax returns and financial statements given to banks, corporate records and financial statements of the corporation, as well as having our depositions taken for hours. We spent a tremendous amount of time defending the lawsuit.

We settled the case out of court. The amount of the settlement is confidential, but the insurance company agreed to pay it. Had our company been forced to trial or been required to pay the settlement, it would have bankrupt our business. We strongly urge this committee to reform the employment laws of Montana.

RESPECTFULLY SUBMITTED,

GEO. L. TRACY COMPANY

By: Robert Maronick

Robert Maronick
Vice President
Phone: 727-1050

WITNESS STATEMENT

NAME Cliff Murphy BILL NO. 316

ADDRESS 1301 Rimrock Rd. Blgs. MT. 59102 DATE 1/28/86

WHOM DO YOU REPRESENT? Dental Health Assoc. of MT.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT A
DATE 1-28-87
HB #316

The homeless—Who's to blame?

by Kevin Osbourn

They can be found in virtually every American city, living on park benches, street corners, or in public shelters. They survive on society's castoffs, the clothes, shoes, and blankets no one else wants. They subsist on food they find in garbage cans and on the kindness of strangers.

They are America's homeless. Some—no one knows how many—are also America's mentally disabled.

Many of those who number among the homeless and mentally ill are a product of a social reform known as deinstitutionalization, a movement to release many chronic mental patients from state-run asylums and return them to productive lives in the community, reducing residential populations at state and county mental hospitals.

Approximately one-third of the nation's homeless are mentally ill.

The grim reality of deinstitutionalization is that many of the 450,000 patients released since 1955 have discovered a new imprisonment outside institution walls.

An untold toll

Determining how many homeless people are former mental patients living on the streets of America is no easy task. Ironically, the visible homeless are often statistically invisible since they frequently do not interact with record-keeping public agencies.

Precise figures are simply unavailable, but media reports and recent surveys have estimated that approximately one-third of the nation's homeless are mentally ill. However, the total figure for homeless people, which varies from 350,000 to 3 million, is itself the subject of considerable debate.

According to the National Institute of Mental Health, 2.4 million Americans should be classified as chronically mentally ill and approximately 1.5 million of them now live in the community. This includes those who live in halfway houses, with their families or by themselves in rooming houses and cheap hotels, those who have been referred for short-term stays in the psychiatric wards of local hospitals, and those who live on the streets.

Any one of these 1.5 million patients may be homeless at one time or another because the life of the chronic disease schizophrenia tends to be cyclical.

Civil rights versus public protection

For many of the homeless and mentally ill, there is a familiar pattern. Though the person has a history of mental trouble, which sometimes includes a propensity toward violent behavior, he or she is likely to be returned to the community after an admission to a mental ward. The full weight of the court system stands behind such decisions.

For the past decade, the courts have consistently held that no one may arbitrarily abridge a mentally ill person's right to freedom. The result is that long-term involun-

tary commitment has been abolished in most states for all but the most dangerous mental patients, and even short-term commitment can be difficult to attain. In most cases, common legal standards dictate that a patient must be a danger to himself or to others, which frequently means that a patient must commit some overt act of violence before the courts will intervene. In some cases, these rigid legal provisions fail to protect both the patient and the public.

For example, in the wake of the Statue of Liberty celebration in New York City over the weekend of July 4, a homeless Cuban refugee went on a sword-wielding rampage, killed two people, and wounded nine others. Reported to the police by homeless shelter attendants only days before the attack, the assailant was overheard saying that God had told him to kill. He was subsequently treated at an area hospital and released when he promised to seek help at an outpatient clinic.

In one California incident, long-term commitment was sought for a male patient in 1982, but, on the recommendation of state mental-health officials, a California court turned down the commitment petition. After deteriorating mentally, the patient's brother took him to the hospital where he received medication and was released. Later, he stabbed a 76-year-old woman to death.

The law also inhibits psychiatric intervention at many levels. There is widespread recognition of a patient's right to refuse medication. According to the American Psychiatric Association, half the states have such laws. And the strong tradition of advocacy for the mentally ill sometimes means attorneys will seek release of a client even if that decision hinders treatment.

The challenge governments face

Authorities are struggling to cope with the thousands of former mental patients who are homeless. In New York City, the challenge is to keep the homeless from freezing to death during the cold months. City Hall has advised the police that state law allows them to round up anyone who appears to be mentally ill and refuses shelter, and transport that person to a hospital for observation when the temperature goes below 32 degrees.

In response, the New York Civil Liberties Union formed its own "freeze patrol" to advise the homeless of their rights.

For the past decade, the courts have consistently held that no one may arbitrarily abridge a mentally ill person's right to freedom.

In Wisconsin efforts are underway to adopt new language which would allow involuntary commitment for the "obviously mentally ill." Others want to use the wording of "gravely impaired" to replace current legal standards for institutionalization.

But mental health practitioners and advocates perceive the problem as the result of an inadequate commitment of funds to community mental health, not legislative limitations.

Some programs are making a difference. In Chicago "The Bridge" is a community-based program that enables mentally ill men and women to lead near-normal lives outside institutions. The Bridge adopts people only after repeated admissions to mental wards. Nearly all receive federal disability checks.

To keep Bridge participants out of psychiatric wards, staffers go where the patients live. Social workers help the patients manage their Social Security and welfare checks and assist in buying clothes and food. In addition, the program helps participants cope with bureaucratic red tape.

Some federal funding for homeless former mental patients is now available through the Department of Housing and Urban Development, which has joined with private interests to improve housing and other services. The program, sponsored by the Robert Wood Johnson Foundation, will provide $28 million to eight of the nation's largest cities. Those cities will be eligible for HUD rent subsidies of up to $75 million over 15 years.

Up for public debate

Many social critics have expressed outrage at the number of mentally handicapped people living on the streets of a country as prosperous as the United States.

Some argue that the situation would be eased by changes in the law which would make involuntary institutionalization less difficult. But civil libertarians and advocates of community mental health care shudder at the possibility of returning to the nightmares of early mental health institutions, which were infamous for horrible living conditions and indefinite, sometimes inexplicable periods of incarceration. That fear still figures strongly in the current debate on how to deal with the problem.

Virtually everyone, however, agrees that deinstitutionalization has failed. It was a movement for which success was totally dependent upon alternatives in the community.

Without adequate community resources, enhanced support where it is needed, thousands of the mentally disabled will continue to number among America's homeless.

Mr. Osbourn is an information specialist with The Council of State Governments in Lexington, Kentucky.

MONTANA COUNCIL OF MENTAL HEALTH CENTERS

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#316

MONTANA MENTAL HEALTH CENTERS

512 Logan
Helena, Mt. 59601
(406) 442-7808

REGION I
EASTERN MONTANA COMMUNITY MENTAL HEALTH CENTER
1819 Main Street
Miles City, Montana 59301
(232-0234)

REGION II
GOLDEN TRIANGLE COMMUNITY MENTAL HEALTH CENTER
Holiday Village Shopping Center
P.O. Box 3048
Great Falls, Montana 59403
(761-2100)

REGION III
MENTAL HEALTH CENTER
1245 North 29th Street
Billings, Montana 59101
(252-2882)

REGION IV
MENTAL HEALTH SERVICES, INC.
512 Logan
Helena, Montana 59601
(442-0310)

REGION V
WESTERN MONTANA COMMUNITY MENTAL HEALTH CENTER
Fort Missoula T-12
Missoula, Montana 59801
(728-6870)

FACT SHEET - PROPOSED COMMITMENT LAW

I. Why is there a need for a new type of involuntary commitment?

Under the current law a mentally ill person must be a clear and imminent danger to themselves or others in order to be involuntarily committed for treatment. The law requires that the mentally ill individual must have committed a recent and overt action to be classed as seriously mentally ill and to be committed for treatment.

A mentally ill person, who needs treatment and is very sick and deteriorating, often does not meet the current legal definition to be committed for treatment. For instance, a suicidal person who is under voluntary outpatient treatment for clinical depression may not meet the current definition to be committed unless they have done a recent and overt act.

The same could be true for a client in a day treatment program who suddenly stops taking care of themselves including eating. The client can even be hearing voices telling him (her) to do violent acts. Even though the person is obviously deteriorating and requires treatment, there is nothing that can be done until the individual commits some overt act.

II. What is the proposed law change?

An additional definition, mentally ill, would be added to the current commitment law. The court could commit a "mentally ill" person to only a community facility for a very limited time with the intention of getting the person stabilized and able to function in the community.

In order to be committed to a community facility under this additional definition, the "mentally ill" person would have to meet all the following criteria:

The person would have be suffering from a mental disorder which:

(1) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with available assistance from family, friends, or others;

(2) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment, at or through the community facility to which the person is to be committed;

When all else is lost, the future still remains.—Bovee

(3) has deprived the person of the capacity to make an informed decision concerning treatment;

(4) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(5) will, if untreated, predictably result in further serious deterioration in the mental condition of the person or poses significant risk of the person's becoming seriously mentally ill. Predictability may be established by the patient's medical history.

III. What are the safeguards in the proposal?

1. The commitment procedure requires a court hearing in which the person will be represented by an attorney.

2. The court must hold an initial hearing on the petition for commitment within 5 days.

3. The court must appoint a professional to evaluate the person who is alleged to be "mentally ill".

4. The person alleged to be "mentally ill" can also receive an additional evaluation by a professional person of his (her) choice.

5. The person may not be detained until after a hearing is held, a determination is made, and a court order is issued committing the person for treatment.

6. The person who is alleged to be "mentally ill" can demand a jury be impaneled to hear the case.

7. The person has the right to know in advance of the hearing the names of the witnesses who will testify.

8. To be committed the person must meet all of the criteria to be adjudicated as being "mentally ill." (See item II above for a list of the criteria.)

9. In order to require treatment which includes medication the court must make a separate finding and make a separate order for medication. However, the court may not order the use of physical force to administer medication.

11. The person can only be committed to a community facility for a 30 day period. There can be only one extension of the 30 day period for an additional 30 days.

12. The person declared to be "mentally ill" retains other safeguards such as the right to appeal the court decision.

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BILL NO. HB-316 DATE Jan. 28, 1987

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Jim Robischon	Mont. Life Coalition	✓	
~~Gerald Rothmeyer~~	~~Mini-Mart/324 Sanders Helena~~		
Clifford W. Murphy	Bldg. Mgr. - M.H.A.M.	✓	
Nancy Adams	Montana House 422 N. Main, Hdn.	✓	
Jacque Thulen	" "	✓	
[illegible]	" "	✓	
Jeanne Porter	1425 Winne Helena	✓	
Dana Smith		✓	
John McCue		✓	
[illegible]	Helena	✓	
[illegible]		✓	
STEVE WILSON	HELENA MENTAL HEALTH CENTERS	X	
RICHARD EMERY	MENTAL HEALTH CENTER	✓	
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Kay Foster	Billings Chamber of Commerce	✓	
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