

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on February 8, 1989, at 8:10 a.m.

#### ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown announced the committee would be hearing 6 bills; HB 512, HB 443, HB 450, HB 470, HB 316 and HB 336.

#### HEARING ON HOUSE BILL 336

#### Presentation and Opening Statement by Sponsor:

Rep. Driscoll stated that HB 336 would prohibit discrimination in housing to families with children with the exception of housing that is designed for senior citizens or intended to be used by senior citizens.

#### Testifying Proponents and Who They Represent:

Ann McIntyre, Administrator of Human Rights Division, Department of Labor  
John Ortwein, Montana Catholic Conference  
Nancy Griffin, Montana Womens' Lobby  
Joseph Moore, Montana Rainbow Coalition  
Walter Jakovich, Butte Apartment Owner  
Yvonne Darcy, Bozeman Housing Coalition  
Virginia Jellison, Montana Low Income Coalition  
Joanne Peterson, Bozeman Housing Coalition

#### Proponent Testimony:

Ann McIntyre stated that the bill was introduced at the request of the Human Rights Commission and the Department of Labor and Industry. The purpose is to make it clear that under the Montana Human Rights Act it is illegal for housing providers to discriminate against families with children. The primary reason the department and the commission seek

this bill is that the U.S. Congress enacted a similar law which goes into effect next month (See EXHIBIT 1).

Ms. McIntyre stated that amendments had been suggested to the bill as it had originally been written. She distributed copies of the suggested amendments to the committee members (EXHIBIT 2).

John Ortwein testified as a proponent of the bill (See EXHIBIT 3).

Nancy Griffin stated that Montana Womens' Lobby strongly supports HB 336. She said that in every community in the state there is an acute shortage of housing. Locating housing, especially suitable housing, can be a major problem for families. She said that as a mother of four she would rather live next door to her children than a lot of single adults she knows. With good management techniques landlords can screen out undesirable tenants by checking references or requiring a reasonable deposit. The Montana Womens' Lobby encouraged the committee to allow families a chance to prove themselves (See EXHIBIT 4).

Joseph Moore said he would urge a Do Pass on this excellent piece of legislation as it is in the spirit of the Montana State Constitution and it should have been passed a long time ago.

Walter Jakovich stated that he manages a 160 unit apartment complex in Butte that he has been affiliated with for the past fifteen years. He feels this is a necessary piece of legislation so that our elderly people do have a place where they can be spending their rainbow years and he recommended the committee give it strong consideration.

Yvonne Darcy testified in favor of the bill. She said that she was a poor, single mother who graduated from college recently and it took her seven weeks to find a place to live. She answered ads in the paper and when she said she had a child she was told to not even come by. She said that landlords discriminate not only against children but also against single parents with custody.

Virginia Jellison, stated that the Montana Low Income Coalition is a coalition of member-based organizations representing people who are concerned about social justice and equity issues. They are made up of senior citizens, welfare families, low income workers, minority groups and people concerned about peace. HB 336 is a reaffirmation of one of the basic principles of democracy that everyone has an equal opportunity to housing without the threat of discrimination. It is widely accepted that it is wrong to discriminate based upon one's color, faith or sex, but discrimination of families with children has been a common practice. MLIC believes that it is unfair and unconscionable to allow this violation of human rights to continue. Landlords have legal

recourse to protect themselves from noisy, disruptive or damaging tenants whether they have children or not. Tenants are expected to follow their lease and state law and not disturb the neighbors. She did recognize that the exception was in elderly housing and it was not proper to place children with them. She asked for support of HB 336.

Joanne Peterson stated that in Bozeman there are 700 units that children were not allowed in. She urged acceptance of HB 336.

Testifying Opponents and Who They Represent:

Tom Hopgood, Montana Association of Realtors  
Marty Heller, Helena Real Estate Agent  
Martin Bainer, Western Montana Landlord's Association  
Ken Showgood, Montana Builder's and Landlord's Association

Opponent Testimony:

Tom Hopgood stated that on behalf of the Montana Association of Realtors, himself and especially his two children. He said, however, that he would like to point out something the committee should address. He called the committee's attention to the first page of the bill, beginning on line 18, one of the purposes of the bill is "whereas, persons or families with children have been denied housing opportunities for reasons unrelated to public safety, public health or the protection of children." He feels that is something that should be in the purpose section, however, he had not seen it carried through into the language of the bill itself and suggested that if there was a bonafide reason not to have children in a particular unit it should be allowed. The reason would be something that could possibly endanger the children. Examples would be an apartment located on a busy street with no place to play or perhaps near an irrigation ditch. He said he would suggest to the committee that language preserving a landlord's prerogative within reasonable boundaries should be inserted into the bill.

Marty Heller stated that he owned a 40 unit apartment building and he agreed with Mr. Hopgood that he was not discriminating against any children, however, there should be some exceptions considered. For example, the building that he owns is basically a zero lot line apartment. There is a busy street on each side. One of the streets is across from the Post Office where there is a mail drop. There is absolutely no place for children to play outside. It is sixty or seventy percent elderly tenants and has been for twenty years. The problem that exists is that many tenants, by choice, or in some cases by doctor's orders, require rest in the afternoon. With children there, the only place to play is inside. The concern he has is with the exception being you have to have 90% of the units rented to people 55

and over. He said he wasn't clear about the section which says "and significant facilities and services specifically designed to meet the physical and social needs of elderly people." He did not recall there ever being a shortage of rental units for people with children in Helena.

Martin Bainer told the committee that the Western Montana Landlord's Association would like to go on record as stating that this would be discrimination against the elderly.

Ken Showgood said that there is definitely a problem. Landlords try to make their apartments the best they can so that tenants are happy. If you're required to have children there, you're driving other people out. Their function is to make things as appropriate as they can so that they can rent their units. If they are required to have little children distributed with everybody else like older people, they would then be discriminating against the older people. As landlords, sometimes they ask the people next door if it's alright to have little kids living nearby. It is their function as landlords to have these things work right. If laws are made so that they are absolutely forced to have kids next to other people, they are taking rights away from them. A person who works nights wants to sleep during the day, he doesn't want a bunch of little kids screaming right in front of his bedroom window. Motherhood and children are fine but there are other people who have rights too.

Questions From Committee Members:

Rep. Darko asked Mr. Hopgood if a child were occupying a dwelling with his parents and he was run over in the street, would that be the responsibility of the landlord? Mr. Hopgood said that is within the realm of possibility that the landlord could be named in a lawsuit for failure to provide appropriate facilities and at the same time renting the unit to families with children.

Rep. Hannah told Rep. Driscoll that he has a basement apartment that is similar to the situation the young lady from Bozeman was referencing. It's been his experience that primarily because of the price range that it is in that there have been many single mothers come forward who were interested in the apartment. He has rented it to single mothers who have one child. His problem is that it's a very small place and it is not conducive for children to have room to play in. Rep. Hannah's question is, should a single mother come to him with his one bedroom apartment that's \$185 per month rental with no utilities so it qualifies for what he thinks the needs are of many single parents, and she's got two or three children and says this is exactly what she wants. Under this bill would he be required to rent it even though in his best judgment it would be not only difficult for her and her children to live there but would be hard for him to maintain property value. Rep. Driscoll said he's not sure.

He said he would defer the question to Ann McIntyre. Ms. McIntyre said that she doesn't think anything in the bill is designed to prevent landlords from utilizing reasonable occupancy restrictions in their dwellings so that in the situation Rep. Hannah described it's probably reasonable to limit occupancy to two people. In a five bedroom house it's not reasonable to limit occupancy to two people.

Rep. Hannah asked who decides the standard of reasonableness. Ms. McIntyre said the landlord would make the determination. If someone were to file a complaint against the landlord then the commission would make a determination in the case about whether that was reasonable.

Rep. Rice stated that Ann McIntyre mentioned the law had to be changed to comply with the workshare agreement with the federal government. He asked her to explain what that is. Ms. McIntyre responded that the Human Rights Commission has a work sharing agreement with the U.S. Department of Housing and Urban Development. That federal department is responsible for enforcing federal laws which prohibit housing discrimination. Prior to the amendment of the federal Fair Housing Act, the act prohibited discrimination on the basis of sex, race, religion, color and national origin. The Montana Human Rights Act presently prohibits discrimination also, for all of those reasons. So, because they were enforcing what the federal government considers to be a substantially equivalent law to the federal fair housing law, they were eligible to participate in a work sharing arrangement with HUD. The primary benefit of that work sharing arrangement is that when a complaint is filed in Montana that alleges a violation of both Montana law and the federal law, only one agency or the other will investigate the complaint. It reduces duplicative enforcement procedures. When Congress enacted the amendments to the federal Fair Housing law in September of this past year they provided that in order for states to be able to continue to participate in work sharing arrangements, the state laws would have to comply with the amendments to the federal law within forty months from the date of enactment.

Rep. Gould asked if a person who buys a duplex and just doesn't like kids could say he doesn't want to rent to people with kids. Ms. McIntyre said under this bill a person would not be able to do that.

Rep. Nelson said Ann McIntyre stated that discrimination is one of the factors that contributes to homeless children. She asked Ann McIntyre if she was suggesting that parents put their children out in the streets because they can't take them into one of these places that doesn't allow children? Ann McIntyre said that is not what she meant to imply. The homelessness survey found that those children who were homeless were living in a variety of situations, but often

times with their parents. In other words, both the parents and the children were homeless.

Closing by Sponsor: Rep. Driscoll closed saying that the opponents missed the point. When there are houses on busy streets next to ditches and they are run down, that's when they will finally rent to people with children. They are not protecting the children. If you go downtown to the busy streets with the run down houses there are no "no children" signs. It's in the nicer parts where they don't want any children. This is a good bill and he hoped the committee would give it a Do Pass recommendation.

HEARING ON HOUSE BILL 316

Presentation and Opening Statement by Sponsor:

Rep. Whalen stated that this is a bill that would allow the law enforcement personnel to turn over a copy of an accident report to the victim. The insurance commissioner's office expressed some concern that if they were investigating a conspiracy or something similar, and this information was released it might get back to the individuals who are being investigated. He pointed out that this bill would deal expressly with the victim.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

Tom Harrison, Montana Sheriff's and Peace Officer's Association  
Chuck O'Reilly, Lewis and Clark County Sheriff

Opponent Testimony:

Tom Harrison said the Sheriff's and Peace Officer's Association has some concern with the bill as it is drafted. Motor vehicle accidents and that type of information are not a problem. However, the bill is vastly more broad than that. The bill says "criminal justice information" and it refers to only victims. There are not victims in civil lawsuits so "victims" is inclusive of criminal conduct. The reason that criminal information is referred to as confidential criminal information and the reason that system is of value is because of the word confidential. It is confidential. When you are interrogating people, when you are able to talk to witnesses, when you receive anonymous phone calls or whatever, the thing that makes that system have some value in an investigation is the fact that you can relate to the

person you are talking to that this information is confidential. Obviously, under this bill, the victim of a particular piece of criminal conduct can get a copy of the whole criminal file and it can be on the front page of the paper just by the victim delivering it. Who would talk to a police officer knowing that was the system.

Chuck O'Reilly said he agreed with everything Mr. Harrison said. He said the explanation Rep. Whalen gave was incorrect as accident reports are not confidential criminal justice information. That information is readily available to anyone who requests it. Under this bill, we would have to divulge their informants and their names to whoever asked for them, not just the victim, but to whoever is representing the victim which could be a buddy or an attorney or any number of people. Keep in mind that many crimes are committed by criminals against criminals and if they were obligated to release information they could have an assault set up by an individual to try and determine who an informant was if they had suspicions along those lines. They would literally destroy their investigatory ability. They would never again get informants if they knew that their name could possibly be let out. Sheriff O'Reilly urged the committee not to pass this bill.

#### Questions From Committee Members:

Rep. Boharski asked Rep. Whalen if the amendment was attached to give the Department of Justice rulemaking authority couldn't they turn around and negate the effect of the law presented here? Rep. Whalen said he didn't think so but they could make rules that would provide the protections that the Department of Justice feel they need to have in order to bring out the intent of this bill and at the same time deal with any specific situations in which there might be a danger.

Closing by Sponsor: Rep. Whalen stated that Sheriff O'Reilly was in error when he said that those reports are available right now and that they are not part of the Criminal Justice Information Act. The fact of the matter is you have to go into court and get a court order just to get a copy of an accident report. I don't think that should be required and I don't think it was part of the original intent of the act as it was passed. We are talking about victims. Victims have an interest in having the investigative authority of the police officer's work or the sheriff's officer's work. The victim isn't going to go and spread information that is going to have a negative impact on the ability of peace officers to solve a crime where they were the victim. That just doesn't make sense.

Rep. Boharski asked Rep. Whalen to comment on the statement that this would eliminate testimony from informants due to the fact that their confidentiality could not be assured. Rep. Whalen said the victim has a vested interest in the crime being solved. He is the one who lost as a result of the criminal activity. Unless they are insane or something like that, they have a vested interest in having the investigators go forward in their investigative powers in a realistic way. They're not going to be giving out information that will undercut the ability to bring whoever perpetrated the crime to justice.

#### HEARING ON HOUSE BILL 443

##### Presentation and Opening Statement by Sponsor:

Rep. Whalen opened the hearing on HB 443 saying this bill was introduced at the request of Jim Potter, a constable in Yellowstone County. The law currently provides that there shall only be one constable per justice in justice courts. As a result of several things it's getting to the point that the two constables in Yellowstone County can't serve all the papers that need to be served in justice court. With the economy being down, there are more and more unlawful detainer actions going on. It's a problem because with that going on and the additional filings going on in JP court as a result of raising all of the fees in order to get into district court, in the last two years there were a tremendous number of filings that went into JP court because the fees were substantially lower and the amounts in controversy were such that JP's could handle them. Right now it can take two weeks to get a constable to get a constable to go out and serve papers in an unlawful detainer action and meanwhile the landlord is there with someone in the premises they can't get service on. Once they get service it's about a month before you can get a hearing date set and get an order out of the court and then you have to go back out and serve that order in order to get the person out. You could be talking about two months under the best of circumstances to get somebody removed from a dwelling that's being rented. We need more constables and the statute right now provides for only one per JP. This doesn't mandate more than one per JP, it just allows a county to hire more than one constable if they have the money to do it and they feel the need is there to do it. It's an artificial restriction in the law that's being lifted by this bill.

##### Testifying Proponents and Who They Represent:

Wally Jewell, Montana Magistrate's Association



Proponent Testimony:

Wally Jewell stated that the Montana Magistrate's Association is in favor of this legislation (See EXHIBIT 5).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Whalen closed.

DISPOSITION OF HOUSE BILL 443

Motion: Rep. Darko moved HB 443 DO PASS. The motion was seconded by Rep. Boharski.

Discussion: Rep. Addy said if there's a problem a processor can be hired but there is no need to put somebody else on the payroll full time.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Question was called for on the DO PASS motion and CARRIED with Rep. Addy and Rep. Aafedt voting No.

HEARING ON HOUSE BILL 450

Presentation and Opening Statement by Sponsor:

Rep. Giacometto opened the hearing saying that HB 450 is a clarification in the law as it stands and adds a new section. Under current law a city or town can regulate the use of a firearm within their jurisdiction. They have clarified that use to also mean discharge. The new section of law would make it unlawful to discharge a firearm. A person commits an offense of unlawful discharge of a firearm if the person intentionally or negligently discharges a firearm or shoots an arrow or a bow in a manner likely to cause bodily injury or death to a person or domestic animal or to cause wanton destruction of property. This section does not prohibit the justifiable discharge of a firearm. A person convicted of unlawful discharge of a firearm shall be fined not to exceed \$250 or imprisonment in the county jail.

Testifying Proponents and Who They Represent:

Gary Marbut, Montana Rifle and Pistol Association, Western  
Montana Fish and Game Association, Big Sky Practical  
Shooting Club

Brian Judy, Northwest Legislative Liaison for National Rifle  
Association

Charles Wooley, competitive shooter from Plains, MT

Terry Smith, Secretary of Montana Rifle and Pistol Association

Alfred Budola, Montana Weapons Collectors Society

Proponent Testimony:

Gary Marbut told the committee that responsible gun owners in Montana have been working on this issue since 1983. It was in 1983 that there was a problem in the Missoula area with an irresponsible discharge of a firearm outside the city limits but near an urban area. There were a number of people who felt that there should be some way to regulate that kind of problem. The city of Missoula chose to use an 1889 quarantine authority under law that allows the mayor to assert a quarantine five miles out for tuberculosis and say whether or not you get a shot is a health matter and therefore we can ban the use of firearms within a five mile radius of the city. We complained about that and worked with City Council at some length and finally at our request they were willing to request an Attorney General's opinion on that. The Attorney General said no, you cannot use health authority to ban the use of firearms outside the city limits. However, you may be able to use disorderly conduct authority up to three miles. That Attorney General's opinion is in volume 42 number 8 and is, at best, a tenuous extrapolation of any real potential authority. The next step in this issue is in last session there was HB 307 heard by the House Fish and Game Committee that would set the mechanism whereby county commissioners could ban the discharge of firearms in any or all parts of counties. We objected to that bill and it was killed in committee with a unanimous vote because it was felt that the authority was too broad. At that time we promised them we would come back in the next session with a responsible way to deal with this problem, so we are here with this bill.

Brian Judy urged the committee's support for HB 450. He said we are seeing an increasing problem in the northwest states, typically with the discharge restrictions. It seems that a large part of the problem stems from people from outside of the northwestern region moving into God's country to retire. Unfortunately, when they come up into this area they want to come to the country but they want to bring their city attitudes with them. They often buy a lot and build a house and then are appalled when they hear somebody out shooting. They don't realize that's part of the Montana lifestyle. They complain and pretty soon there is a move for discharge ordinances. To their credit the anti-gun and the anti-

hunting movement have been very effective in the last eight to ten years. They have used fairly anti-gun and anti-hunting media to foster the perception that guns are bad and hunters and shooters are dangerous people. The problem is really getting out of hand. It is reasonable to add a specific reference to negligent or careless discharge of firearms. At the same time we want to close the loophole which now exists to extend the no shooting zones out into rural areas where it's not a problem. Mr. Judy urged the committee to adopt this bill to protect hunters and shooters and at the same time provide law enforcement a mechanism to get at those who are irresponsibly using firearms.

Charles Wooley provided the committee with a case in point due to quirks in topography. He is in a situation where they sit on a plain in the town. Outside of town there is a large hill. Sometime during the last several years there was an individual who decided he wanted to do some shooting. He went up on the hill irresponsibly shooting into the town. The potential for hazard there is extremely great and the potential for harm was extreme. Under the current ban, if there were one imposed, the person would only be liable for disorderly conduct. The penalty for that kind of behavior should be much greater. On the other hand, other shooting activities that go on within 1/4 mile of town include competitive shooting by myself and my wife. Through the generosity of a local rancher we have a spot allotted to us on his ranch. It's controlled access so no people will be in our line of fire. We have specific directions as far as how to handle his livestock. Very close neighbors say they never even hear us there and they don't mind us being there. Mr. Wooley backed this bill to extend severe penalties to anybody who would endanger livestock, human life or property through negligent use of firearms. However, he said he would not back any kind of extraterritorial discharge ban which would limit the legitimate and safe use of firearms outside city limits.

Terry Smith said that since the Yellowstone Rifle club is outside the city limits but not by a large distance, the club has some concern over the rights of communities to extend bans beyond their city limits. At the same time, we recognize the need for control of people who are irresponsibly using firearms. He made a suggestion for an amendment to the bill on page 2 line three at the end of the underscored sentence to add the words "and upon any property owned or leased by the city or town." Riverfront Park in Billings is owned and operated by the city but it is outside the city limits. The city would not want to lose their right to control that nor, would it be my intention that they should lose that right (See EXHIBIT 6).

Alfred Budola said that the Weapons Collectors' talks face to face with more people who are responsible firearms owners than any organization in the state. As far as supporting this bill, the Board of Directors has directed him that full support should be passed on to the committee.

Testifying Opponents and Who They Represent:

Tom Harrison, Montana Sheriff's and Peace Officer's Association  
Ann Mary Duso, Missoula County Commissioner  
Ken Stoltz, Director of Campus Services at University of Montana  
Representative Brooke  
Captain Bill Fleiner, Montana Sheriff's and Peace Officer's Association

Opponent Testimony:

Tom Harrison said the Montana Sheriff's and Peace Officer's Association is not entirely objectionable to this bill. The last section that creates the new offense is not bad. He is concerned, as a lawyer, with the language that says the test would be proof that the discharge was in a manner likely to cause bodily injury. That's not a very objective test. He wouldn't look for any great ability to prosecute under that. The meat of the bill is the avoidance of extraterritorial jurisdiction. That is to say that when they come to the city limits the city would be able to prohibit firearms discharge and right next door there could be no one who could control that.

Ann Mary Duso referred the committee to page 2 section 2 of the bill. The reality of this bill is that if it passes there is absolutely no authority that allows for the control of firearms outside of the city limits for public safety purposes. The legislature, in its wisdom, elects not to give that authority to county commissioners to regulate the discharge of firearms in the county. They do elect to give that authority to the city. It is true that when they are petitioned by their constituents who live in the county in densely populated areas, they work with the city to utilize their powers because we don't have them. She suggested that giving no one the authority to regulate the discharge of firearms for public safety purposes doesn't seem to make any sense and is inherently irresponsible. It gives their constituents absolutely nowhere to go. They must give county residents the same kind of protection city residents have.

Ken Stoltz told the committee that among the services he oversees at the University of Montana is the safety and security division. The University of Montana is opposed to that part of HB 450 that would limit the regulation of the discharge of firearms in the cities of Montana. The main campus of the University of Montana is directly adjacent to county lands. The "M" is in Missoula County. The family housing

units on the south of campus are directly adjacent to county land. The golf course and Dornblaser track facilities are in the county. They would be very much concerned about the safety of their students, staff and golfers if hunting were to be permitted on the properties directly adjacent to their busy campus. For that reason they oppose the limits on the city's authority.

Representative Brooke told the committee she has a friend who lives in the district that is being spoken of in Missoula that has the no shooting areas that were designated by the City Council. Rep. Brooke submitted Alice Austin's written testimony (EXHIBIT 7). Ms. Austin is not a recent resident of this area. Rep. Brooke stated that she has lived in Missoula more than 25 years and Ms. Austin was there before she was. Most of the citizens that petitioned the city and county for these restrictions are not recent residents. Many hunters also live in this area and are very much in favor of the no shooting regulations they have received through the city ordinance.

Captain Bill Fleiner told the committee they are continually receiving complaints from the people who live in the areas. The people who live in the areas also have weapons and want to be able to discharge them but they are the same people who are calling us to come out and do something because they are very concerned about what is taking place with the discharge of weapons in the residential area.

#### Questions From Committee Members:

Rep. Gould asked Gary Marbut what he thinks should be done in regard to the area in question in Missoula. Mr. Marbut said that part of what can be done has already been done in that the Department of Fish, Wildlife and Parks has restricted hunting in that area to the use of shotguns only and shotguns have a very limited range. Also, it's the position of the MRPA that people who are discharging irresponsibly ought to be punished. If there is anybody in that area who is discharging a firearm in a dangerous or irresponsible way, they should be dealt with in whatever way is necessary to correct that problem. They do not think, however, that general discharge bans are going to solve the problem.

Rep. Addy said he has some legal dispute as to whether the city or the county has the right to regulate the discharge of firearms beyond the city limits. He asked Ann Mary Duso if this issue has been appealed in court. Ms. Duso said she does not believe there has been any appeal to any court.

Rep. Brown asked Rep. Giacometto about the language in subsection 2 that says "in a manner likely to cause bodily injury or death to a person or domestic animal or to cause wanton destruction or property". He said it seems that in putting this language in the bill if he shoots an old car on the

back 40 of his ranch for target practice, he would be in violation of this law. It doesn't say if it's your property or not. Rep. Giacometto stated that the bill is broad but it gives the law enforcement the capability of prosecuting. What someone sees as serviceable property may be different to somebody else.

Closing by Sponsor:

Rep. Giacometto said he is not a member of the NRA and this is not a politically motivated bill. It's a clarification of who should have the right to regulate these things. The city has the right to take care of business within its boundaries. Currently there's already a law on the books with disorderly conduct if there is a problem. With this statute if a person is shooting over a city or town and there is any way somebody can be hurt or property can be destroyed, there is grounds for prosecution. There's also the right for private property owners. They can go ahead and ban the discharge of firearms on that property. It comes down to who has the right to ban the discharge of firearms. The issue we are dealing with here is whether or not the city has the right to go beyond their boundaries to regulate discharge.

HEARING ON HOUSE BILL 470

Presentation and Opening Statement by Sponsor:

Rep. Jim Rice opened the hearing saying this bill is noncontroversial. The 1987 session passed HB 748 which allowed a corporation to limit or eliminate a member of their Board of Directors personal liability to the corporation or the stockholders for breach of fiduciary duty. The bill that was passed in 1987 also applied to state banking corporations. Since that time it has been argued and questions have been raised that since there are other statutory sections specifically dealing with state banking corporations that were not amended to reflect those changes that perhaps state banking corporations were not included. This bill, with the exact same language as the 1987 bill, simply includes state banking corporations.

Testifying Proponents and Who They Represent:

George Bennett, Montana Bankers' Association

Jim Whitehead, Executive Director of Montana Liability Coalition

Proponent Testimony:

George Bennett said this bill would affect only the state chartered banks. Mr. Bennett submitted a copy of the bill that was passed in 1987 (See EXHIBIT 8). That bill extended to profit corporations, nonprofit corporations, cooperatives and rural cooperative utilities the same authority to limit

liability. He said he thought the bill in 1987 extended to state banking corporations. He asked the committee to pass HB 470.

Jim Whitehead told the committee that the Montana Liability Coalition completely supports this bill. It's an area that does need to be addressed. There are businesses and organizations that do have Boards of Directors and are having a very difficult time finding people who will serve because of the potential exposure on liability in this area. They thought this was covered last session and it wasn't. He urged the committee's approval of this measure.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 470

Motion: Rep. Rice moved HB 470 DO PASS. Rep. Eudaily seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED with Rep. Wyatt voting against the motion.

HEARING ON HOUSE BILL 512

Presentation and Opening Statement by Sponsor:

Rep. Rice opened the hearing on HB 512 saying that this bill would prohibit a plaintiff in a lawsuit from collecting punitive damages for a defective product if the manufacturer of that defective product has complied with governmental standards that have been passed and promulgated in the making of the product. The most important part of the bill is what it does not do as opposed to what it does do. First of all, they're talking strictly about the cases in which the product or structure is the product of an action which is known in the business as a "products liability action". In the broad range of actions that are possible, products liability is a narrow type of action and this bill only

applies to that type of action. It is further narrowed by the fact that this is applied only to cases in which governmental standards have been promulgated in regard to the manufacturing or construction of the product. Further, it does not prohibit most kinds of damages. If someone has been injured by a defective product, they still have the right to bring an action to court and sue for their financial loss, their physical injuries, pain and suffering, psychological damage, inconvenience and all general damages. What this statute applies to is the right of a plaintiff to receive punitive damages.

Testifying Proponents and Who They Represent:

Jim Robidron, Montana Liability Coalition  
Charles Brooks, Executive Vice President of Montana Retail Association

Proponent Testimony:

Jim Robidron supported HB 512. He summarized the evolution and current status of the punitive damage law. Prior to the 1987 amendments that came through HB 240 and ultimately resulted in Chapter 627 of the laws of 1987, the law in Montana provided that punitive damages may be awarded in any tort action where the defendant was guilty of fraud, oppression or malice, actual or presumed. Also, the law provided for a cap on the amount of punitive damages that could be awarded under these legal circumstances. Under HB 240 of the last session, the Legislature eliminated oppression and presumed malice as grounds for punitive damages and the punitive damage statute now provides that punitive damages are allowed only where the defendant has been guilty of actual fraud or actual malice. The monetary caps were removed so there is no monetary limit in the event these grounds are found to exist. It is submitted that HB 512 is a further evolution of the process as it relates to single products liability action and as it relates to only those actions in which the products or the structure is subject to standards of either the United States or the State of Montana. The legal question is why is this legislation required. The reason is because actual malice is now defined in a rather broad description. Actual malice is defined as follows, "a defendant is guilty of actual malice if he has knowledge of facts or intentionally disregards facts that have a high probability of injury to the plaintiff and deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff or deliberately proceeds to act with indifference to the high probability of injury to the plaintiff." Under that language, it is probable that in every product liability case, whether the product complied with standards or not, the issue would remain to be resolved, either by the judge or the jury. HB 512 is directed to resolve the question in favor of the product if



the product comes into compliance.

Charles Brooks told the committee the Retail Association has some exposure in this area and they are here to support HB 512. The average general merchandise retailer in the State of Montana will carry in his inventory 30 to 40,000 different merchandise items and will be dealing with 5 to 6,000 different manufacturers. Since the retailer is the last person that the consumer deals with, when they have a problem with a product they go to the retailer. We feel that we should not be subject to punitive damage because we are purely a distributor of the merchandise. Mr. Brooks urged the committee to support HB 512.

Testifying Opponents and Who They Represent:

Michael Sherwood, Montana Trial Lawyers Association  
Lon Dale, attorney from Missoula  
Alan Cronnister, State Bar of Montana

Opponent Testimony:

Michael Sherwood spoke in opposition to HB 512 (See EXHIBIT 10). Mr. Sherwood presented the committee with a punitive damage chart and Supreme Court survey (EXHIBIT 11).

Lon Dale opposed the bill because it positively will not affect Montana business (EXHIBIT 12).

Alan Cronnister suggested to the committee that if they do act favorably on the bill there is a problem on the face of it in that the standard that the product complies with is not required to be a standard which is relevant to the injury in question. For example, if the injury is caused by a lawnmower defectively designed so it would cut someone's foot without warning, as long as that lawnmower met a standard which applied to the design of the handle which had nothing to do with the blade exposure, under the bill as it's written, that standard could be used as a defense for punitive damages.

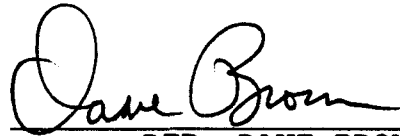
Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Rice closed the hearing on HB 512 saying a company who complies with standards will not be punished. A product that does not comply with standards is not acceptable.

ADJOURNMENT

Adjournment At: 10:55 a.m.

A handwritten signature in cursive script, reading "Dave Brown".

REP. DAVE BROWN, Chairman

DB/je

3208.min

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 8, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 443 (first reading copy -- white) do pass .

Signed: \_\_\_\_\_  
Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 8, 1989

Page 1 of

Mr. Speaker: We, the committee on Judiciary report that House  
Bill 470 (first reading copy -- white) do pass .

Signed: \_\_\_\_\_  
Dave Brown, Chairman

EXHIBIT 1  
DATE 2-8-89  
MB 336

Testimony in support of House Bill 336  
Before the House Judiciary Committee  
Anne L. MacIntyre, Administrator  
Human Rights Division

The purpose of House Bill 336 is to make it clear that under the Montana Human Rights Act, it is illegal for housing providers to discriminate against families with children. It is an important bill for several reasons. The primary reason the Department and the Human Rights Commission seek this amendment is that the U.S. Congress enacted a similar law which goes into effect next month. In order to maintain our work sharing agreement with the U.S. Department of Housing and Urban Development, it is important that the state law be in conformity with the federal law. This bill would ensure that our statute conforms to the federal law.

The bill adds a new subsection 4 to §49-2-305, MCA, which clarifies that the existing prohibition against age discrimination extends to persons or families with children. The bill does contain an explicit exception for three types of housing for senior citizens:

- housing provided under any state or federal program specifically designed and operated to assist elderly persons
- housing communities consisting of housing units intended for and occupied by persons 62 years of age or older only
- housing communities consisting of housing units intended for and occupied by at least one person 55 years of age or older in 90% of the units, and providing significant facilities and services specifically designed to meet the physical or social needs of older persons

These exceptions mirror those contained in the federal Fair

2-8-89

Housing Amendments Act of 1988, which makes housing discrimination against families with children illegal. I have given the committee staff a copy of the new federal law and would be happy to make additional copies available for any committee member.

Furthermore, based on the Montana Constitution, it should be the policy of the state to insure that families with children are not denied housing. Article II, Section 15 of the Constitution provides that minors are entitled to the same rights as adults, except as specifically precluded by laws designed to enhance their protection. This constitutional provision stands as clear policy guidance to the legislature to take action which will enhance the protection of children.

Discrimination against families with children is a problem in Montana. Numerous ads appear in the "for rent" sections of the classified advertisements which say "no children". A recent survey by the Office of Public Instruction (copy attached) identified 1,633 homeless children in the state and estimated that nearly another 1,000 homeless children are present in the state. Discrimination is one of a number of factors which contribute to the existence of homeless children.

For all of these reasons, I hope you will recommend House Bill 336 do pass. I'll be happy to answer any questions you may have.

EXHIBIT 2  
DATE 2-8-89  
HB 336

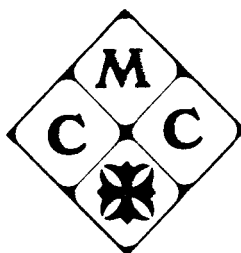
Amendments to House Bill No. 336  
First Reading Copy  
Requested by Human Rights Division

For the Committee on the Judiciary

Prepared by John MacMaster  
February 7, 1989

1. Page 2, lines 11, 14, and 25.  
Following: "origin" in each line  
Insert: ", or because the person has a child or children who will live with the person or because of the age of a child or children who will live with the person"
2. Page 2, line 20.  
Following: "property"  
Insert: "or of whether the person has a child or children who will live with the person or of the age of a child or children who will live with the person"
3. Page 3, line 12.  
Strike: "of age"  
Insert: "a person has a child or children who will live with the person or because of the age of a child or children who will live with the person do not"
4. Page 3, lines 12 and 13.  
Strike: "persons or families" on line 12 through "respect to" on line 13





# Montana Catholic Conference

EXHIBIT 3  
DATE 2-8-89  
HB 336

February 8, 1989

## CHAIRMAN BROWN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference.

Last year in testimony before both the Republican and Democratic Platform committees the United States Catholic Conference presented the following testimony concerning housing for families.

Housing is not just a commodity. Decent housing is a basic human right. This nation has all but abandoned its responsibility to ensure every citizen an adequate place to stay.

Public policy should combat discrimination in housing based on race, ethnicity, sex, disability or families with children.

We would hope that this committee will recommend a "do pass" on H.B. 336 to ensure the rights of those with children to adequate housing.

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



February 7, 1989

EXHIBIT 4  
DATE 2-8-89  
HB 366

H.B. 336

Recommend: Do Pass

The Montana Women's Lobby strongly supports H.B. 336. Food and shelter--the basics of life. In every community in our state there is an acute shortage of housing. Just locating housing, let alone acceptable housing, can be a major problem for our families. One has only to check the classifieds to see how prevalent this discrimination can be. (Great Falls Tribune - 2/7/89)

It is common to find "no children", "no pets" linked together in housing ads. Is it really the intent of public policy to link our children, our pride and joy, with animals? No wonder some children grow up with stunted self esteem.

There are 207,524 families in Montana. 4%, or 3,074, of those families are single female-headed households. There are 448,349 children under 18 living in Montana. There are 13,854 families with children under 18 living below the poverty level in Montana. These are the families most effected by housing rules which discriminate against children. It is difficult enough for these families to find any housing in their price range, let alone be handicapped by a discriminatory exclusion.

Why is it that landlords may exclude children from consideration for rental property? It is because we assume children will destroy property? Do we assume they will disturb other tenants? Do we assume families with children are less responsible than families without children? As a mother of four, I can assure you that I would rather live next door to my children than a lot of single adults that I know! (For one thing, they go to bed at 8 p.m.).

With good management techniques, landlords can screen out "undesirable" tenants by checking references or requiring a reasonable deposit. This law is a good one. It protects the elderly and allows landlords reasonable discretion. It is required by changes in the federal Fair Housing act.

The Montana Women's Lobby urges you to allow families the chance to prove themselves. Don't discriminate against our children, give a do pass recommendation to H.B. 336.

# Montana Magistrates Association

EXHIBIT 5  
DATE 2-8-89  
HB 443

8 February 1989

Testimony offered in support of HB443, a bill for an act entitled: "An act to allow county commissioners to appoint more than one constable for each Justice's Court."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association is in favor of this legislation. It would be advantageous if there were some provision made to mandate at least one, and maybe more, constable per Justice's Court in the larger counties. In speaking with Justice of the Peace Gladys Vance in Great Falls last evening, she stated that in Great Falls there is only one constable appointed to be shared by the two Justice Courts. The constable position could be utilized more if he had more time or if there were two constables, one per court; perhaps an amendment could be written that would mandate three constables, or more if needed, in counties of 75,000 population or more; and so on.

The problem is that the county commissioners do not have the money to appoint any more county officials or to offer more county services; allowing for the appointment of more than one constable will be of little benefit if there is no money in the county budget to pay his or her wages.

In many counties the Sheriff is responsible for the serving of civil papers because the county commissioners have not appointed a constable. In those counties the Sheriff would be able to devote more of his time to criminal work if the commissioners would appoint a constable.

The Montana Magistrates Association stands behind the intent of this legislation but we do not think that as written it will be of much benefit to the Justice Courts.

*Wallace A. Jewell*

EXHIBIT 6

DATE 2-8-89

HB 450

HB 450 EXTRA TERRITORIAL DISCHARGE

TESTIMONY by TERRY SMITH  
BILLINGS, MT.

BASED ON DISCUSSIONS w/ BILLINGS  
CITY ATTORNEY JIM TILLOTSON, suggest  
CLARIFYING AMENDMENT following the  
WORD "TOWN" ON LINE 3, PAGE 2

" AND UPON ANY PROPERTY OWNED  
OR LEASED BY THE CITY OR TOWN. "

THIS WOULD INSURE BILLINGS' RIGHT  
TO CONTROL DISCHARGE IN RIVERFRONT PARK  
~~THE~~ AND AT THE CITY DUMP (BOTH LOCATED  
OUTSIDE THE CITY LIMITS ON CITY  
OWNED PROPERTY).

RECOMMEND PASSAGE to give law  
enforcement a tool to control  
UNSAFE & IRRESPONSIBLE discharge of firearms.

EXHIBIT 7  
DATE 2-8-89  
HB 450

*Miss Austin*  
Citizen Petition  
4741 Sundown Rd.  
Missoula, MT 59801

February, 1989.

Statement for the Montana House Judiciary Committee  
re House Bill 450

In Missoula County outside Missoula there are three "no shooting" areas which were created by the city council. All are within three miles of the city line. All were created in response to unsafe shooting. It was the opinion of County Commissioners and City Council as well as of citizens living in the areas that these locations are not appropriate for shooting.

Citizen Petition worked on the area which includes portions of the Larchmont Golf Course, Fort Missoula, McCauley Butte, the edge of the Vocational Technical School, Maclay Flats (which includes the Lower Blue Mountain Recreation Area where shooting is forbidden by USFS), Big Flat Ditch, KYSS radio towers, KGVO radio towers, Maclay Bridge, Buckhouse Bridge and many homes and farms. This area is now protected from shooting by city ordinance 2546.

Shooting is not safe in locations like this where there are so many people, including residents and recreationists, as well as homes, farms and domestic animals.

HB 450 makes it convenient for those who might wish to shoot. It does not consider the need for Public Safety.

We ask your help and good judgement in defeating a bill which would give a recreational use greater importance than Public Safety.

Citizen Petition  
(The citizen Group which  
petitioned for the "no  
shooting" area south  
west of Missoula)

HOUSE JUDICIARY COMMITTEE  
TESTIMONY OF MONTANA BANKERS ASSOCIATION  
IN SUPPORT OF HOUSE BILL 470

The Montana Bankers Association is the principal trade association of the commercial banks, state and federal, in the State of Montana.

This bill (H. B. 470) will allow state banking corporations, by amending their articles of agreement (articles of incorporation), to limit the liability of their directors to the shareholders and the corporation.

In the 1987 session House Bill No. 748 (copy attached) was enacted and became Chapter 559 of the Laws of 1987. House Bill 748 of the 1987 session authorized various corporations to limit their directors' liability in the same manner now proposed in House Bill 470. House Bill 748 of the 1987 session allowed a limitation of liability for directors of business corporations, nonprofit corporations; cooperative, agricultural, cooperative marketing, and cemetery associations; and rural cooperative utilities.

The need to allow corporations to limit the liability of their directors is directly affected by the costs and availability of directors and officers liability insurance. Since this insurance, if available, has become almost prohibitively expensive, corporations will either have to limit the liability of their directors, or agree to indemnify in order to obtain the services of qualified directors. House Bill 470 simply extends

EXHIBIT 8  
DATE 2-8-89  
HB 1770

Testimony on House Bill 470

Page 2

to state banking corporations the same ability to limit their directors' liability as was extended to the other corporations and associations in 1987 under House Bill 748 of that session.

1. Page 2, line 5

Following: "product"  
STRIKE: ", "  
INSERT: "or"  
Following: "structure"  
STRIKE: ", or service"

2. Page 2, line 7

Following: "manufacture"  
STRIKE: ", "  
INSERT: "or"  
Following: "construction,"  
STRIKE: "or rendering of the service,"

3. Page 2, line 11

Following: "packaging,"  
STRIKE: "performance,"

4. Page 2, line 12

Following: "product"  
STRIKE: ", "  
INSERT: "or"  
Following: "structure"  
STRIKE: ", or service"



*House* BILL NO. 512

INTRODUCED BY *Rep. Mike B. Bismuth + 8 Dina Stark*

*Mark Nelson*

1  
2 INTRODUCED BY *Rep. Mike Bismuth + 8 Dina Stark*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE AWARD  
5 OF PUNITIVE DAMAGES IN AN ACTION IF A PRODUCT, STRUCTURE, OR  
6 SERVICE ALLEGED TO HAVE CAUSED HARM COMPLIED WITH GOVERNMENT  
7 STANDARDS; AMENDING SECTION 27-1-220, MCA; AND PROVIDING AN  
8 APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 27-1-220, MCA, is amended to read:

12 "27-1-220. Punitive damages -- when allowed. (1)  
13 Except as otherwise expressly provided by statute, a judge  
14 or jury may award, in addition to compensatory damages,  
15 punitive damages for the sake of example and for the purpose  
16 of punishing a defendant.

17 (2) (a) Unless otherwise expressly provided by  
18 statute, punitive damages may not be recovered in any action  
19 arising from:

20 (i) contract; or  
21 (ii) breach of contract.

22 (b) Subsection (2)(a) does not prohibit recovery of  
23 punitive damages in a products-liability-action or an action  
24 arising under 33-18-201.

25 (3) Absent proof by clear and convincing evidence that

1 the defendant intentionally and fraudulently withheld from  
2 or misrepresented to the state or federal agency information  
3 known to be material and relevant to the harm in question,  
4 punitive damages may not be awarded in an action in which a  
5 product ~~of~~ structure ~~or service~~ alleged to have caused the  
6 claimant's harm complied in material respects, at the time  
7 of manufacture of construction, ~~or construction of the structure~~  
8 with standards, conditions, or specifications established,  
9 adopted, or approved by federal or state law or by an agency  
10 of the federal or state government responsible for the  
11 design, formulation, labeling, packaging, ~~performance~~ or  
12 approval of the product ~~of~~ structure ~~or service~~."

13 NEW SECTION. Section 2. Applicability. (This act)  
14 applies to causes of action that arise after the effective  
15 date of this act).

Foot:

WITNESS STATEMENT

NAME Mike Sherwood BUDGET \_\_\_\_\_

ADDRESS \_\_\_\_\_

WHOM DO YOU REPRESENT? MTLA

SUPPORT \_\_\_\_\_ OPPOSE X AMEND \_\_\_\_\_

COMMENTS: \_\_\_\_\_

The 1987 legislature has addressed punitive damages. Subsection (2) is primarily the product of hard fought battles and ultimately compromise between varying interests

The burden of proof was raised from "preponderance of evidence" to "clear and convincing evidence". The instances in which a claim may be brought were limited.

Now we are being asked to further restrict recovery.

The jury experience is minimal and the legislation is not only unwarranted, but socially undesirable.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXEMPLARY (PUNITIVE) DAMAGES MONTANA SUPREME COURT - 1965 TO DATE

AMOUNT OF EXEMPLAR  
DAMAGE ASSESSED  
SUPREME COURT

	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLAR DAMAGE ASSESSED BY SUPREME COURT	
v. Bozeman Hospital, Dalhberg	Hospital	\$125,000	\$25,000	Affirmed - \$25,000	med - \$30,000
v. Franks	Individual (rancher)		\$5,000	Affirmed - \$5,000	ded \$0
v. Cullinan	Individuals (2)	\$614.32	\$10,000 for each of 4 Defendants	Affirmed total of \$40,000 remanded other grounds	med - \$100,000
Western Fire Co. (1984)	Western Fire Ins. Co.	\$250,000	\$300,000	Affirmed - \$300,000	med \$50,000
Wallace	Individual	\$4,346.52 total combined	\$500	Affirmed - \$500	med \$5,000
for Muffler Leasing England, Massachusetts Colonial- Leasing Co.	Muffler Co. Leasing Co.	\$30,000 \$10,000	\$90,000 \$40,000	Affirmed - \$90,000 Vacated - other awar	med \$15,000 sed & ded (-0-) med \$750
and Gary v. Gas Distributors, Inc.	Gas Distributors	\$13,198	\$50,000 each Plaintiff	Affirmed - \$100,000	sed & ded New Trial
The Goodyear Tire Co., 801	Tire Co.	\$325,000	\$1,500,000	Remanded \$0 New Trial	med \$80,000
er v. Lutey	Industrial	\$100,000	\$10,000	Reversed \$0	med \$8,500
Life of MT Co. (1983)	Insurance Company	\$1,891	\$50,000	Reinstated \$50,000 from N.O.V.	med \$17,500
Allen (1983)	Industrial/ Business	\$0	\$500	Reversed \$0	med est. \$20,000
					med \$11,500

2-8-87

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Toeckes v. Baker (1980)	Individual	\$230	\$1,000	Affirmed \$1,000
First Security Bank of Bozeman v. Goddard v. Bankers Union Life Ins. Co. (1979)	Life Insurance Co.	\$4,227.95	\$5,000	Affirmed \$5,000
Butcher v. Petranek (1979)	Individual	\$925	\$20,000	Affirmed \$20,000
Bermes v. Sylling (1978)	Individual	\$130,463.62	\$5,000	Affirmed \$5,000
Miller v. Fox (1977)	Individual	No value specified	\$400	Affirmed \$400
Purington v. Sound West (1977)	Music Co.	\$4,350	\$1,500	Remanded (\$0)
Johnson, et al. v. Doran, et al. (1975)	Real Estate Broker	\$16,772	\$43,500	Affirmed \$43,500
Holland v. Briggs, et al. (1975)	Individuals	\$600	\$7,000	Vacated & Remanded (\$0)
Sheehan v. Dewitt (1969)	Individual	\$1,000	\$5,000	Affirmed \$5,000
Hurley v. Northern Pacific Railway Co. (1969)	Railroad	\$6,640	\$3,000	Affirmed \$3,000
McCusker v. Roberts, Gallatin Lumber Co., Western General Enterprises & Chauner (1969)	Builder, Lumber Co. and its manager	\$2,500	\$7,500	Affirmed \$7,500
Gagnier v. The Curran Construction Co. (1968)	Construc- tion Co. & Individual	\$10,661	\$25,000	Reversed \$0
Dutton, et al. v. Rocky Mountain Phosphates (1968)	Phosphate Plant	\$113,283.80	\$10,000	Affirmed \$10,000

Ex. 11

2-8-89

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Security State Bank of Harlen v. Kittleson (1967)	Bank	\$144	\$5,000	Affirmed \$5,000
Ryan v. Ald, Inc. (1965)	Corporation	\$3,415	\$7,500	Reversed & Remanded \$0

TOTAL ASSESSMENTS FOR TWENTY YEARS \$1,054,150

LG83

EXHIBIT 12

DATE 2-8-89

HB 512

## WITNESS STATEMENT

NAME

Jon Dale

BILL NO.

H/B 512

ADDRESS

2555 Garsight Ct; M. 55001 MT

WHOM DO YOU REPRESENT?

Self

SUPPORT

OPPOSE

☒

AMEND

COMMENTS:

Bill will not affect Montana business positively. Bill will have a negative effect upon litigation involving violations where code standards are met on a minimal basis. The violators are out of state concerns, many of whom have a care less attitude toward change of defective products. All Montanans are affected by such violations. Without punitive damages no club exists. This bill is comparable to legislation that would remove all criminal fines. The change in the law is premature. There already have been numerous changes in the punitive damage bills. Juries are the best place to decide assessments. Just because a product meets minimum standards, does not mean that it is safe. Standards are admitted into evidence and are considered by juries. Juries ought to be able to give code standards whatever weight each merits.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 336DATE FEB. 8, 1989SPONSOR REP. DRISCOLL

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Joseph Moore/Rainbow Coalition	585 S. Robney	✓	
John O'Brien	429 S. California	✓	
Tom Hopgood	Mont. Assoc. Realtors		✓
Nancy Ryffin	mont Q's Lobby	✓	
Marty Heller			✓
Maria Youngman	B. Housing Coalition	✓	
Virginia Johnson	MCIC - Helena	✓	
WALTER JACKSON	3000 Hill Ave Suite	✓	
Mike D. Baker	1011 1/2 7th Ave		✓
Johnnie Turner	B. Housing Coalition	✓	
Yvonne M. Darcy	Bozeman Housing Coalition	✓	
Johnnie L. Kahn	1611 W. Koch #26 Bozeman	✓	
Ken Chilcote	4020 NORTH AVE, MSIC		✓
Anne MacDuffie	Human Rights Div.	✓	
Elaine Chilcote	4020 North Ave.		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 316

DATE FEB. 8, 1989

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Chuck O'Reilly	St. Louis, Mo.	Amend	
Tom Hannon	" " " "		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 443DATE FEB. 8, 1989SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Wally Jewell	MT. MAG. Assoc.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## COMMITTEE

DATE FEB. 8, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## JUDICIARY

BILL NO. HOUSE BILL 470

SPONSOR REP. RICE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

CS-33

## COMMITTEE

SPONSOR REP. RICE

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.