

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 12, 1993, at 10:08 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. Tom Towe (D)

Members Excused: Sen. Harp, Sen. Rye

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: HB 496
HB 561
HJR 21
Executive Action: HB 561
HB 405

HEARING ON HB 561

Opening Statement by Sponsor:

Representative Dave Brown, District 72, said HB 561 would amend the Montana Human Rights Act to prohibit discrimination by an agent or employer. HB 561 was requested by the Human Rights Commission. The purpose of HB 561 is to amend the definition of employer in the Human Rights Act so an agent of an employer may be held liable for acts of discrimination committed by the manager or employee. The definition is on page 3, line 16. HB 561 does not expand the liability of the employer for acts of discrimination. Under the present law, an employer is liable for

discriminatory acts committed by management employees. Because the law does not define the management employee or employer there is no liability on part of the manager because of their own act. HB 561 does not waive liability, but allows it to be placed on an employee if the employee should have known better.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, read from prepared testimony. (Exhibit #1) Ms. MacIntyre submitted a copy of the provision of the Human Rights Act. (Exhibit #2)

Dan Ritter, Montana Chamber of Commerce, supports HB 561.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Rep. Brown closed.

HEARING ON HB 496

Opening Statement by Sponsor:

Representative Wyatt, District 37, said HB 496 revises the Montana Human Rights Law replacing the term "handicapped" and "handicapped person" with the term "disability" and "person with a disability." HB 496 also amends sections introduced at the request of the Human Rights Commission. The purpose of HB 496 is to update terminology used in the Montana Human Rights Law so it is consistent with the terminology used in the Americans with Disabilities Act (ADA). Rep. Wyatt told the Committee the other change is on page 11, line 14, and page 15, line 8, which talks about marital status. Rep. Wyatt urged support for HB 496.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, supports HB 496.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Ms. MacIntyre if the language "a person using a wheelchair" would be more appropriate than "a person in a

wheelchair." Ms. MacIntyre said yes.

Closing by Sponsor:

Rep. Wyatt told the Committee that the term handicapped came from an old english phrase. "Carry your cap in hand in order to beg." Rep. Wyatt said people with disabilities do not see themselves as carrying their cap in hand and they are asking the Committee to recognize that change.

HEARING ON HJR 21

Opening Statement by Sponsor:

Representative Whalen, District 93, said HJR 21 is a resolution that addresses concern of the current nominee process to nominate Justices to the Federal Bench. The purpose of HJR 21 is to request the Attorney General to discontinue the practice of granting the American Bar Association the privilege of recommending judicial nominees.

Proponents' Testimony:

Representative Randy Vogel, District 86, said he is in support of HJR 21 because the American Bar Association gives the nominations to the Attorney General. The citizens have no say in the choice of the nominee even though those judges would be deciding high and important decisions.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Halligan asked Rep. Whalen why the ABA should discontinue recommending judges. Rep. Whalen said the American Bar Association takes positions on political and social issues which cause a loss of public confidence. Judges are supposed to decide issues in a fair and impartial manner.

Senator Blaylock asked Rep. Whalen if other groups recommend judgeships. Rep. Whalen said the ABA was the only group with the privilege of recommending judicial nominees.

Senator Blaylock asked Rep. Whalen who recommended Judge Thomas. Rep. Whalen said Judge Thomas was on the list of the ABA.

Senator Blaylock asked Rep. Whalen if there would be a free speech problem with HJR 21. Rep. Whalen said no. Rep. Whalen said the ABA can still recommend as a private agency, but they would not be given governmental authority and sanction by the Attorney General.

Senator Blaylock asked Rep. Whalen if Judge Souter was nominated by the ABA. Rep. Whalen said yes. There has not been anyone nominated to the Supreme Court that has not been submitted by the American Bar Association. Rep. Whalen said no one is considered unless they are submitted by the ABA, which is a privilege the Attorney General's office extends to the ABA.

Senator Blaylock asked Rep. Whalen about the controversial issues in HJR 21. Rep. Whalen said the issues in HJR 21 are very controversial in the United States. The legislature has an obligation to the public to make sure the public has confidence in the Federal Bench.

Senator Grosfield asked Rep. Whalen who would make the recommendations. Rep. Whalen said there is no specific substitute for choosing a nominee in HJR 21. Rep. Whalen's main concern is that there is a real danger in losing the public's confidence.

Senator Bartlett asked Rep. Whalen if the Attorney General was a source for all recommendations to the President on judicial appointments. Rep. Whalen said no. The Attorney General refers that to the ABA. The ABA submits a list of the nominees to the President for the selection of the Justice. That is true for the United States Supreme Court and also Circuit Court nominees.

Senator Bartlett asked Rep. Whalen if that was a requirement. Rep. Whalen said there is no requirement in the constitution, but it is a requirement in the Attorney General's office.

Senator Bartlett asked Rep. Whalen if the Attorney General could use a different process. Rep. Whalen said yes and that is what HJR 21 would do.

Senator Bartlett asked Rep. Whalen if the Attorney General could consult with any group. Rep. Whalen said the Attorney General has the power to discontinue the process of having the ABA make the recommendations and that is what he is encouraging.

Senator Bartlett asked Rep. Whalen if the president could request nominations from any group. Rep. Whalen did not know.

Senator Bartlett asked Rep. Whalen if the president could select someone who is not recommended on the list submitted by the ABA. Rep. Whalen said that would be possible, but could be severely criticized for doing so.

Senator Bartlett asked Rep. Whalen if the ABA recommended attorneys who were not members of the ABA. Rep. Whalen said yes.

Senator Towe asked Rep. Whalen about the ABA list. Rep. Whalen said the ABA provides a list for nominees and also rates the nominees.

Closing by Sponsor:

Rep. Whalen hopes the Committee would view this issue not based upon particular feelings about the position the State Bar has taken on controversial issues, but on the standpoint of sending a message to the Attorney General. The concern is with the appearance it creates to the American public because the nominees are selected by a private organization that does not represent the American public. The ABA does not attempt to represent the American public and represents less than half the lawyers in the country as members. Rep. Whalen urges support for HJR 21.

EXECUTIVE ACTION ON HB 496**Motion:**

Senator Brown moved HB 496 BE CONCURRED IN.

Discussion:

Senator Bartlett asked to hold on the motion in order to check on the terminology in regard to wheelchairs.

Senator Brown WITHDREW his motion.

EXECUTIVE ACTION ON HB 561**Motion/Vote:**

Senator Franklin moved HB 561 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 405**Motion:**

Senator Halligan moved amendment hb040501.avl. (Exhibit #3)

Discussion:

Senator Halligan explained the amendments.

Senator Towe asked Ms. Lane about item #8. Ms. Lane said the language came out of the statute that extends the statute of limitation for sexual abuse of children. Ms. Lane said she was going to include ritual abuse of a minor in that statute, but every other sentence contained sexual abuse of a child and it would become awkward to include ritual abuse of a minor. Ms. Lane said it would be less complicated to duplicate the statute for ritual abuse of a minor. Ms. Lane said the language was

almost identical to the language in the statute on sexual abuse of children.

Senator Halligan told the Committee that HB 405 does not change the criminal law statute of limitations except for the one existing in HB 405.

Vote:

The motion to AMEND CARRIED UNANIMOUSLY.

Motion:

Senator Towe moved amendments hb040502.avl. (Exhibit #4)

Discussion:

Senator Towe explained the amendments.

Senator Grosfield asked Senator Towe about item #5. Senator Towe told the Committee that item #5 is not clear, but it is better than including a laundry list which is dangerous because something could be left out.

Senator Grosfield asked Senator Towe about animal husbandry. Senator Towe told the Committee that his proposed amendment, hb040503.avl, would provide protection with regards to animal husbandry. The branding process is not a ceremony right or ritual. The language is very clear that a ritual offense only occurs when it is done purposely or knowingly by taking part of a ceremony, rite, or ritual.

Motion:

The motion to amend CARRIED UNANIMOUSLY.

Discussion:

Senator Towe explained amendment hb040503.avl. (Exhibit #5)

Motion:

Senator Towe moved amendment hb040503.avl.

Motion:

Senator Halligan moved to divide the question between item #1 and item #2.

Discussion:

Senator Halligan said he would like to insert a period after ceremony on the fourth line in item #1.

Senator Towe suggested deleting "practice on a daily basis in our culture" instead of deleting most of the paragraph.

Senator Halligan did agree with the suggestion from Senator Towe.

Senator Towe said the language "satanic cult" is important.

Senator Grosfield said many religions are referred to as cults. Senator Grosfield suggested striking "a cult religious activity including." Senator Towe accepted the proposal.

Senator Halligan said it does not.

Motion:

Senator Halligan made a substitute motion to adopt the statement of intent (item #1, hb040503.avl) after striking the remainder of the language after the period on line 4.

Discussion:

Senator Towe spoke against the substitute motion. Senator Towe would like to keep in the reference to including, but not limiting it, to a satanic cult ceremony.

Valencia Lane suggested that the statement of intent read on line 5, "and that the phrase be interpreted in the manner that includes, but is not limited, to a satanic cult ceremony, rite, or ritual."

Vote:

The motion to adopt the statement of intent after striking the remainder of language after the period on line 4, CARRIED with Senators Towe, Crippen, Yellowtail, and Grosfield voting NO.

Discussion:

Senator Towe told the Committee the passage of the motion deletes any references to the rest of the sections.

Senator Grosfield asked Senator Towe about animal husbandry. Senator Towe said his concern regarding animal husbandry was spelled out to the courts in the statement of intent. Senator Towe said the portion of the statement of intent which was deleted, addressed satanic cults, rites, and rituals. Senator Towe said the deleted language made it easy for a judge to see that normal activity conducted by a farm or ranch, for instance branding or castration of animals, was not included in ritual abuse.

Motion:

Senator Towe moved item #2, amendment hb040503.avl.

Discussion:

Senator Blaylock asked Senator Towe about item #2. Senator Towe said everything in item #2 is already in the law, but does not include the same penalty.

Senator Halligan said if HB 405 is too specific, the prosecutors would only be able to charge a defendant with ritual abuse. Senator Towe said that was not correct because if two separate offenses occur, a defendant could be charged with two separate counts.

Senator Halligan said a defense attorney could argue that all the offenses were tied into ritual abuse, therefore the prosecutors would not be able to charge a defendant with separate counts. Senator Towe asked John Connor, Attorney General's Office, to comment on Senator Halligan's statement. Mr. Connor said he did not understand the intent of the amendment.

Senator Towe asked Mr. Connor about the sentence for an aggravated assault against a child under 16 years of age. Mr. Connor said if a victim under 14 years of age was assaulted by an offender 18 years of age or older, the offender would be subject to being in prison for a term not to exceed five years or fined \$50,000 or above, which would be a misdemeanor.

Senator Towe said there should be an offense of assault when one has committed an assault during a satanic ceremony or rite. Mr. Connor said a defendant could be charged with assault under 45-5-201, sub 3, for an extended penalty and then charged with the ritual abuse of a minor for the acts other than the assault itself. A defendant would not have to be charged under the same statute.

Senator Towe said if a person was assaulted pursuant to a satanic ceremony, the defendant could receive a penalty of five years. Mr. Connor agreed.

Senator Towe said if the next person witnessed the drinking of blood the defendant could be receive a penalty of two to twenty years. Mr. Connor said correct.

Senator Towe told the Committee that was the purpose of item #1. (hb040503.avl)

Senator Towe asked Mr. Connor if item #1 would tie the hands of the prosecutor. Mr. Connor said item #1 would offer options for the prosecutors.

Vote:

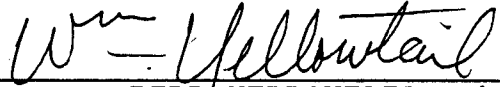
The motion CARRIED with Senators Halligan and Blaylock voting NO.

Discussion:

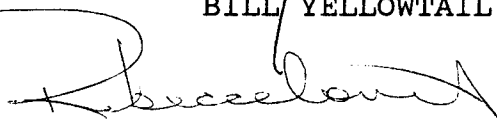
Chair Yellowtail said he would postpone further action on HB 405, to work with the statement of intent.

ADJOURNMENT

Adjournment: 12:00 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-12-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 561 (first reading copy -- blue), respectfully report that House Bill No. 561 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

TESTIMONY OF ANNE MACINTYRE - HB 561
BEFORE THE SENATE JUDICIARY COMMITTEE
March 12, 1993

The Human Rights Commission proposed this bill because of a specific sexual harassment case it heard several years ago. The case arose in Butte and involved a 20 year old woman who worked in a casino there. During the 10 months of her employment, the manager of the casino made many sexual advances toward her, including brushing the front of his body against her buttocks when he passed her behind the bar or in the hallway, putting his hand up her skirt, running his finger over the nipple of her breast, grabbing her breast, pinching her buttocks, attempting to grab her crotch, and making numerous sexually explicit remarks. She objected to his conduct and eventually was fired. The complainant brought her complaint against both the owner of the business for which she worked and the manager responsible for the sexual harassment. Because the manager was not an "employer" for purposes of the Human Rights Act, the Commission was not able to assign any of the responsibility for the harassment to the manager, however. In appropriate circumstances, the Commission or the courts should be able to assign liability against the individual responsible for discriminatory conduct in addition to or in place of the employer.

It is not the intent of this bill to expand the liability of employers for the acts of persons for whom they would not now be liable. The general principles of agency will continue to define the liability of the employer in situations such as these. Thus, a management employee who did not in fact commit a discriminatory practice is not subject to liability under this proposal. Further, the bill does not extend the liability of the employer to the acts of non-management employees or independent contractors when the employer did not have actual or constructive knowledge of their discriminatory acts.

Thank you for your consideration of HB561. I hope you will recommend that it be concurred in. I will be happy to respond to your questions.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-12-93
BILL NO. HB561

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) **an employer** to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or **an employer** or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) **an employer** or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-12-93
BILL NO. HB 561

Amendments to House Bill No. 405
Third Reading Copy (BLUE)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
March 3, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-12-93

BILL NO. HB405

1. Title, line 6.

Following: "PROSECUTED;"

Strike: "AND"

Insert: "CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO
RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF RITUAL
ABUSE OF A MINOR;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS 27-2-204 AND"

Following: "MCA"

Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

3. Page 2, line 10.

Following: "shall"

Strike: ", "

Insert: ": (a)"

4. Page 2, line 11.

Following: "term"

Strike: "not to exceed 10"

Insert: "of not less than 2 years or more than 20"

Following: "and"

Insert: "may be fined not more than \$50,000, or both; and
(b)"

5. Page 2, line 12.

Following: "offense"

Insert: ", "

Strike: "shall"

6. Page 2, line 13.

Following: "term"

Strike: "up to life imprisonment"

Insert: "of not less than 2 years or more than 40 years and may
be fined not more than \$50,000, or both"

7. Page 2, line 14.

Following: line 13

Insert: "(4) In addition to any sentence imposed under
subsection (3), after determining pursuant to 46-18-242 the
financial resources and future ability of the offender to
pay restitution, the court shall require the offender, if
able, to pay the victim's reasonable costs of counseling
that result from the offense. The amount, method, and time

of payment must be determined in the same manner as provided for in 46-18-244."

8. Page 4, line 14.

Insert: "NEW SECTION. Section 3. Tort actions -- ritual abuse of minor. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of ritual abuse of a minor must be commenced not later than:

(a) 3 years after the act of ritual abuse of a minor that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of ritual abuse of a minor.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of ritual abuse of a minor, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "ritual abuse of a minor" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of [section 1].

(4) The provisions of 27-2-401 apply to this section.

Section 4. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) Except as provided in 27-2-216 and [section 3], the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

{Internal References to 27-2-204: None.}

Renumber: subsequent section

9. Page 4, line 15.

Following: line 14

Insert: "(1)"

10. Page 4, line 18.

Following: line 17

Insert: "(2) [Section 3] is intended to be codified as an integral part of Title 27, chapter 2, part 2, and the provisions of Title 27, chapter 2, part 2, apply to [section 3].

NEW SECTION. Section 6. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Retroactive applicability.
[Sections 3 and 4] apply to all causes of action commenced on or after October 1, 1993, regardless of when the cause of action arose. To this extent, [sections 3 and 4] apply retroactively, within the meaning of 1-2-109."

EXHIBIT 3
DATE 3-12-93
HB 405

Amendments to House Bill No. 405
Third Reading Copy (BLUE)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 3, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 3-12-93

BILL NO. HB405

1. Page 1, line 13.

Following: "of"

Strike: "a"

Insert: "any"

Following: "or"

Strike: "similar occurrence"

Insert: "ritual or of any training or practice for any ceremony,
rite, or ritual"

2. Page 1, lines 25 through page 2, line 1.

Following: "(e)" on line 25

Strike: remainder of line 25 through "person," on page 2, line 1

3. Page 2, line 2.

Following: the first "minor,"

Strike: remainder of line 2 through second "minor"

Insert: "threatens any person or animal"

4. Page 2, lines 5 through 7.

Following: "to" on line 5

Strike: remainder of line 5 through "other" on line 7

5. Page 2, line 8.

Following: "procedures"

Insert: "otherwise"

(OVER)

Amendments to House Bill No. 405
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 5, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-22-93
BILL NO. HB 405

1. Page 1, line 8.

Following: line 7

Insert: "

STATEMENT OF INTENT

It is the intent of the legislature that the phrase "ceremony, rite, or ritual" be interpreted in a manner that does not include a ceremony, rite, or ritual performed in a formal, commonly recognized religious ceremony practiced on a daily basis in our culture and that the phrase be interpreted in a manner to include a cult religious activity, including but not limited to a satanic cult ceremony, rite, or ritual."

2. Page 1, line 14.

Following: line 13

Insert: "(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;"

Renumber: subsequent subsections

DATE 3-12-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.R. 496 - Wyatt H.R. 21
H.R. 521 - Brown

Name

Representing

Bill
No.

Check One

Support Oppose

D ZITTEL	MT CHAMBER	HB 561	X	
Anne MacIntyre	Human Rights Comm.'s	HB 566	X	
Anne MacIntyre	Human Rights Comm.	HB 496	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY